

Software License

For the Software: **BaRatin** version 2, including the GUI BaRatinAGE (Sealed mail No. 1A 068 586 9770 6, send 29.02.2012)
Baratin v2

IRSTEA, National Research Institute of Science and Technology for Environment and Agriculture, Public Establishment of Science and Technology, Siret No. 180 070 013 0019 8, located 1 rue Pierre Gilles de Gennes, CS 10030, 92761 ANTONY Cedex, hereinafter named "Irstea"

As an author and owner of the Software Baratin V2 authorizes, subject to compliance with all provisions established by this license, the Licensee to use the Software Baratin V2:

Preamble:

The software was developed by Mr. Benjamin Renard, Mr. Laurent Bonnifait, Mr. Jerome Le Coz and Mrs. Flora Branger, Irstea employees as part of their professional activities. The software uses the library DMSL FORTRAN, developed by Dmitri Kavetski, University of Adelaide, Australia.




The purpose of the research that enabled the creation of the Software Baratin V2 is the analysis of uncertainties affecting rating curves (stage-discharge relationships) and the inclusion of these uncertainties in applications using hydrometric data (eg hydrological modeling, predetermination, flood forecasting, etc..).

Irstea as owner of the Software initiated a measure of ownership through a sealed mail with reference No. 1A 068 586 9770 6, dated 29/02/2012.

This contract is a license to use the Software Baratin V2 which aims to give the licensed user the freedom to use the Software licensed hereunder in object code version (executable file).

Accessibility to object code and rights to copy arising from this contract are provided only to authorized users. Only limited warranty is provided and the authors of the Software Baratin V2, as sole copyright owners, have a limited liability.

In this respect, the attention of the authorized user is drawn to the risks associated with downloading and using the Software Baratin V2 given its nature of free software, which may make it complicated to handle and is hence reserved to expert Users (developers or professionals) having prior knowledge in computer science, hydraulics and statistics. The authorized user is therefore prompted to download and test the suitability of the Software Baratin V2 in conditions enabling the safety of his systems and / or his data and, more generally, to use and operate under the same conditions of safety.

| | | | | | |
|---|---|---|-------------------------------|--|---------------------------------------|
|  | Download object codes + 1 backup copy |  | No Modification Allowed |  | No Further Distribution Allowed |
|---|---|---|-------------------------------|--|---------------------------------------|

Must cite the source:
Line referencing "Software BaRatin © Irstea, Renard Benjamin, Bonnifait Laurent, Le Coz Jerome, Branger Flora, Kavetski Dmitri, date of download"
Or "results obtained by using the Software Baratin © Irstea, Renard Benjamin, Bonnifait Laurent, Le Coz Jerome, Branger Flora, Kavetski Dmitri, date of download"

As a result, the following is agreed upon:

Article 1 – Definitions

In this license agreement, the following terms, when spelt with a capital letter, have the following meanings:

Agreement: means this license agreement, and its possible subsequent versions and annexes.

Software: means the software BaRatin Version 2, including the software and its GUI BaRatinAGE, in Object Code form and, if appropriate, the related documentation, in their state at the time of acceptance of the Agreement by the Licensee.

Initial Software: means the Software in its Object Code and Source Code and any appropriate documentation, in their condition when first distributed under the terms of the Contract.

Source Code: means all instructions and program lines of the Software and to which access is necessary to modify the Software. The Source Code is not subject to this License.

Object Code: means the binary files originating from the compilation of the Source Code.

Holder: means the holder of the copyrights in the Software Baratin V2.

Licensee or Authorized User: means the Software user having accepted the Agreement.

Licensor: means Irstea as a corporation distributing the Software under the Agreement. The Licensor is owner of all rights over the Initial Software.

Parties: mean both the Licensee and the Licensor.

These expressions may be used in singular and plural.

Article 2 – Purpose

The Contract aims at granting by the Licensor to the Licensee a nonexclusive, transferable and worldwide license Baratin V2 as defined below in section 5 for the duration of protection of the rights over the Software Baratin V2.

Article 3 – Acceptance

3.1 The acceptance by the Licensee of the Contract shall be deemed obtained due to the first of the following:

- (i) submission of the application, registration and acceptance of the provisions of the License from the website: <http://www.irstea.fr>
- (ii) Downloading the Software Baratin V2 by download from the same remote server

User applicant is considered as Authorized User upon acceptance of his request, by email. Alternatively, the user applicant may apply for access to the software by email. After written acceptance of license terms that will be sent (by email) a link to download the Software will be sent.

3.2 A copy of the Agreement, containing a notice relating to the characteristics of the Software Baratin V2, to the limited warranty, and to the use of the software restricted to experienced users, has been made available to the Licensee prior to its acceptance as defined in Section 3.1 above and the Licensee acknowledges having read this.

Article 4 - Entry into Force and Duration

4.1 Entry into force

The Agreement is effective on the date of its acceptance by the Licensee as defined in 3.1.

4.2 Duration

The Contract shall be effective for the duration of legal protection of property rights over the Software.

Article 5 - Extent of rights granted

The Licensor grants the Licensee, the following rights over the Software for all destinations and for the duration of the Contract under the conditions set forth hereinafter.

Moreover, if the Licensor owns or comes to own one or more patents protecting all or part of the functionality of the Software or its components, it undertakes not to enforce the rights granted by these patents against successive Licensees using, exploiting or modifying the Software. If these patents are transferred, the Licensor agrees to take over the obligations of this paragraph to assignees.

5.1 Right of Use

The licensee is not permitted to make copies of the Software Baratin V2, other than a backup copy, or copies referred to in art. L. 122-61 of the Code of Intellectual Property.

The Licensee may use the Software without restriction as to scope, being hereinafter specified that this comprises:

1. the permanent or temporary reproduction of Baratin V2 Software in whole or part by any means and in any form.
2. loading, displaying, running, or storing the Software Baratin V2 on any medium.
3. the opportunity to observe, study or test its operation to determine the ideas and principles which underlyie any element of this Software Baratin V2; and this, when the Licensee carries any loading, displaying, running, transmitting or storing the Software Baratin V2 he is entitled to make under the Contract.

5.2 Limitation of the rights granted

The Licensee is not authorized to modify, or distribute in any manner whatsoever the Software Baratin V2.

The Licensor is the sole copyright holder with the right to translate, adapt, arrange, or make any other changes to the Software Baratin V2 and the right to reproduce the resulting software. It includes in particular the right to create a Derivative Software, and the right to distribute the Software Baratin V2 and / or its derivatives.

The Licensee is not authorized to make any change whatsoever in the Software Baratin V2.

Section 6 - Intellectual Property

6.1 On the original Software

Readers are reminded that the Licensor is the author of the Software Baratin V2, it is his exclusive property and that the Software Baratin V2 is protected under the provisions of Articles L. 111-1 of the Intellectual Property Code (Law No. 92597 of 1 July 1992 - OJ 3 July 1992).

The Licensor is the sole owner of copyright in the Software Baratin V2. Any use of the Software Baratin V2 is subject to the conditions under which the Licensor has elected to distribute its work and no one has the right to modify the terms of distribution of this Software Baratin V2.

Licensor agrees that the Initial Software will remain ruled at least by this Agreement and, for the period stated in section 4.2.

6.2 Legal Rights

The Licensee expressly undertakes: to:

1. mention in any publication or communication relating to use of the Software Baratin V2 and the results obtained through the Software Baratin V2, the origin of the Software Baratin V2 citing the address of the website and its authors: Baratin V2 Software © Irstea, Renard Benjamin, Bonnifait Laurent, Le Coz Jerome, Branger Flora, Kavetski Dmitri, download date.

2. Do not delete or modify in any way the intellectual property notices affixed to or referencing the Software Baratin V2;
3. reproduce identically such intellectual property notices or referencing any publication or communication on his use of the Software Baratin V2.

The Licensee agrees not to harm, directly or indirectly, rights of intellectual property of Licensor and take, if any, in respect of his staff all necessary measures to ensure respect of said property rights Intellectual Licensor.

Article 7 - Technical Assistance

The Contract does not imply that the Licensor will provide any technical assistance or maintenance of the Software Baratin V2.

Article 8 - Responsibility - Rights and Obligations

8.1 Subject to the provisions of Article 8.2, the Licensee shall be entitled, subject to prove the fault of the relevant Licensor, to claim compensation for any direct loss it suffered from the Software and subject to providing proof.

8.2 The Licensor's liability is limited to the commitments made under this Agreement and shall not be held because of:

- (i) loss due to the failure of all or part of its obligations by the Licensee -
- (ii) for any direct or indirect damage arising from the use or performance of the Software by the Licensee
- (iii) more generally, any consequential loss. In particular the Parties expressly agree that any financial or business (eg, loss of data, lost profits, business interruption, loss of customers or orders, opportunity cost, any disturbance to business) or any action taken against the Licensee by a third party, shall constitute consequential loss and is hence not entitled to compensation from the Licensor.

8.3 Obligations of the Licensee

The Licensee is personally liable for breach of these provisions.

The Licensee understands and accepts the constraints and conditions of use of the Software Baratin V2.

The Licensee takes full responsibility for his use of the Software Baratin V2.

The Licensee is not authorized to give, make available or transfer in any manner whatsoever, directly or indirectly, the Software Baratin V2.

The Licensee agrees not to transmit the Software Baratin V2 to third parties even partially, to only use it on his computer terminal, not to transfer it.

The Licensee notifies the Licensor of the use he makes of the Software Baratin V2.

Article 9 – Warranty

9.1 The Licensee acknowledges that the current state of scientific and technical knowledge at the time of downloading the Software Baratin V2 does not allow to test and verify all uses or detect the presence of possible defects. The Licensee's attention was drawn to this point about the risks associated with loading and using the Software Baratin V2 which are reserved for experienced users.

It is the responsibility of the Licensee to control, by all means, the suitability of the product for his requirements, his operation and make sure it will not cause harm to people and property.

9.2 The Licensor hereby ensures in good faith that he is entitled to grant the rights to the Software Baratin V2 (including the rights referred to in section 5.1).

9.3 The Licensee acknowledges that the Software Baratin V2 is provided "as is" by the Licensor without any other warranty, express or implied, as provided for in Article 9.2 and in particular without any guarantee of its value, its secured, innovative or relevant nature.

In particular, the Licensor does not warrant that the Software Baratin V2 is error-free, operates without interruption, will be compatible with the Licensee's own equipment and software configuration, nor that it will meet the needs of the Licensee .

9.4 The Licensor does not either expressly or tacitly warrant that the Software Baratin V2 does not infringe any intellectual property right of a third party concerning a patent, software or any other proprietary right. Thus, the Licensor excludes all liability towards the Licensee against infringement actions that may be instituted under the Software Baratin V2. Nevertheless, should such proceedings be instituted against the Licensee, the Licensor shall provide the technical and legal assistance for his defense. This technical and legal assistance is determined on a case by case basis between the relevant Licensor and the Licensee pursuant to a Memorandum of Understanding. The Licensor disclaims any liability for the use of the name of the Software Baratin V2 by the Licensee. No warranty is made as to the existence of prior rights over the name of the Software Baratin V2 and the existence of a trademark.

Article 10 – Termination

10.1 In the event of breach by the Licensee with the obligations imposed upon him by the Agreement, the Licensor may automatically terminate this Agreement thirty (30) days after notification to the Licensee, even it is has remained ineffective.

10.2 A Licensee whose Agreement is terminated shall no longer be allowed to use the Software Baratin V2.

Article 11 – Miscellaneous

11.1 No Party shall be liable for delay or failure to perform the Agreement which is due to a force majeure, acts of God or an outside cause, such as, notably, defective functioning or interruptions of the electricity or telecommunications, the network paralysis following a virus attack, intervention by government authorities, natural disasters, water damage, earthquakes, fires, explosions, strikes and labor unrest , the state of war ...

11.2 Any failure, by either Party, to omit in one or more occasions to invoke one or more provisions of the Contract, shall not imply that the concerned Party will renounce to invoke it later.

11.3 The Agreement supersedes any previous agreements, written or oral, between the Parties on the same subject and constitutes the entire agreement between the Parties. No addition or

modification to the terms hereof shall be effective for the Parties unless made in writing and signed by their duly authorized representatives.

11.4 In the event that one or more of the provisions hereof were to conflict with a law or an applicable provision, existing or future, this law or this text shall prevail, and the Parties shall make the necessary amendments to comply with this law or legislative text.

All other provisions remain in force. Similarly, the invalidation, for any reason, of any provision of the Contract shall not invalidate the entire contract.

11.5 Processing of Personal Data

The website offering access to download the Software Baratin V2 requires to fill in and submit an online questionnaire. The said questionnaire increments a database managed and maintained by the Licensor on its own servers. The recorded data are considered and treated as confidential by the Licensor.

This database has been declared to the Commission Nationale de l'Informatique et des Libertés (CNIL). Accordance with the provisions of Law No. 78-17 of 6 January 1978 relating to computers, files and freedoms, the Licensee has a right to access, modify, rectify and delete personal data concerning him. To request an amendment, correction or deletion of data about him, the Licensee will send a letter by email or post to Mrs Flora Branger, Mr Jerome Le Coz and Mr. Benjamin Renard, Irstea or flora.branger - at - irstea.fr, benjamin.renard - at - or irstea.fr jerome.lecoz - at - irstea.fr in establishing his identity.

Article 12 - Applicable law and jurisdiction

12.1 The Agreement is governed by French law. The Parties agree to attempt to settle amicably any dispute or disputes which may arise as a result or in connection with the Contract.

12.2 Failing an amicable solution within two (2) months of their occurrence, and unless under circumstances of an emergency procedure, the disagreements or disputes shall be referred by either Party before the competent courts.

Made in Antony, March 26, 2012,

For the Licensor, Irstea

For the Licensee,