

'CABLE' ACADEMIC USER LICENCE AGREEMENT – IMPORTANT, READ CAREFULLY BEFORE PROCEEDING

This is a licence agreement between “**you**” (either an individual or a single entity) and CSIRO for the software that accompanies this agreement (“**Software**”). You accept the terms and conditions of this licence by installing and / or using the Software after being presented with it. These terms and conditions apply whether or not you sign them.

1. About this licence

- 1.1. This is a licence pursuant to which CSIRO makes certain software source code available to you for the research and other non-commercial purposes.
- 1.2. You are permitted to use, test and modify the software in accordance with this licence, and are required to provide feedback to CSIRO as the principal developer of the Software as a basis for improving it. You do so at your own risk.
- 1.3. This licence is conditional on CSIRO first accepting (in writing) your application to use the Software and issuing you with a confidential access user name and password.

2. Definitions

- 2.1. ‘**CSIRO**’ means the Commonwealth Scientific and Industrial Research Organisation (ABN 41 687 119 230), acting through the Marine and Atmospheric Research Division or its successor.
- 2.2. ‘**Improvement**’ means any enhancement, adaptation or modification to or a new release or version of the Software which provides for a technical improvement or error correction but does not necessarily provide additional functionality or performance.
- 2.3. ‘**IP**’ means any rights in any copyright work (including any work or item created in the future), patentable invention, design, circuit layout, new plant variety, trademark, know-how or trade secret.
- 2.4. ‘**Manual**’ means any documentation (in electronic or hard copy form) which CSIRO may provide to you to assist with installation and / or use of the Software.
- 2.5. ‘**Permitted Use**’ means your bona fide evaluation, research and / or teaching purposes, but not including commercial use (where commercial use includes but is not limited to, using the Software to provide reports, findings or services to a third party).
- 2.6. ‘**Permitted Users**’ means those of your employees who have a need to access the Software for the Permitted Use.

3. Licence

- 3.1. CSIRO grants you a non-exclusive, non-transferable licence to use the Software (and Manual) for the Permitted Use.
- 3.2. Commercialisation or other commercial use of the Software or any part of it is prohibited.
- 3.3. You are responsible for ensuring that the Permitted Users comply with the terms of this agreement. You accept responsibility for the acts and omissions of the Permitted Users and anyone else who gains access to or use of the Software through you, as if they were your own acts and omissions.

4. Restrictions on use

You must not without CSIRO's prior written consent:

- 4.1. use the Software for any purpose other than the Permitted Use;
- 4.2. disclose the Software to, or allow it to be used or accessed by anyone who is not a Permitted User;
- 4.3. distribute or make available the Software to third parties; or
- 4.4. (i) use it to develop copycat or functionally equivalent software or derivative software based on the IP embodied in the Software; or (ii) make it available to a third party for such unauthorised purposes. You will not be in breach of this clause to the extent you are exercising your rights under clause 6.1.

5. Installation and support

You are responsible for installing and using the Software on suitable hardware. CSIRO is not obligated to provide you with any maintenance, support or other services in relation to the Software, unless it has entered into a separate written agreement with you to do so.

6. Improvements

- 6.1. You are permitted to make Improvements to the Software and they are owned by you.
- 6.2. If you make Improvements, you agree, on CSIRO's request to disclose them (including the source code and all related technical information) to CSIRO without unnecessary delay.
- 6.3. You grant CSIRO a non-exclusive, worldwide, royalty-free, perpetual, irrevocable licence (including a right of sub-licence) to use, adapt and exploit your Improvements for any purpose.
- 6.4. If CSIRO in its discretion makes any Improvements then it may supply them to you in which case those Improvements are subject to the terms and conditions of this agreement.

- 6.5. CSIRO owns the IP in any Improvements it makes even if they have been made at your request or as a result of ideas or concepts disclosed by you.

7. Back-up and copying

- 7.1. You may make the minimum number of copies of the Software (and Manual) that are necessary for your bona fide use and back-up purposes provided all such copies made, and any media containing such copies, display any copyright notices, confidentiality or other proprietary legends incorporated into the original copy.
- 7.2. Except for those back-up copies permitted to be made under this agreement or by law, you must not copy the Software or the Manual.
- 7.3. You must notify CSIRO immediately on becoming aware of any unauthorised use or copying of the whole or part of the Software or the Manual.

8. IP Rights

- 8.1. CSIRO retains full ownership of the IP in the Software and the Manual.
- 8.2. You do not have the right to sub-license, sell, rent, or distribute the Software or the Manual nor the right to release the Software or the Manual on the Internet or any other public communication network without CSIRO's prior written consent.
- 8.3. CSIRO does not warrant or give any assurance that the Software or the Manual does not infringe the IP of any person or that your use of the Software or the Manual will not infringe the IP of any person.

9. Licence fee

- 9.1. CSIRO is making the Software available to you without charge in return for you keeping CSIRO informed of:
- 9.1.1. any faults, deficiencies or errors detected in the Software; and
 - 9.1.2. your Improvements.
- 9.2. CSIRO may from time to time devise procedures which are designed to facilitate the capture of feedback from you and other licensees of the Software regarding use and development of the Software. For example, CSIRO may publish standard formats or specify dates for reporting Improvements. You agree to cooperate in following those procedures.
- 9.3. If you use the Software for commercial purposes then CSIRO is entitled to charge you a licence fee for any such use in addition to CSIRO's right to terminate this agreement for breach.

10. Limitation of liability

- 10.1. To the extent that the law permits, the Software is supplied to you 'as is'. It may have inherent defects or deficiencies which cause interruptions, errors or downtime. You are solely responsible for ensuring that the Software is suitable for your purposes.
- 10.2. You assume all risk for any liabilities, expenses, losses, damages and costs (including legal costs on a full indemnity basis and whether incurred or awarded against a party) directly or indirectly arising from your use of or reliance on the Software.
- 10.3. All terms, conditions and warranties implied by common law or statute as to the merchantable quality or fitness for purpose of the Software or the Manual ('implied warranties') are excluded unless the exclusion of any such implied warranties would contravene the law or cause any part of this licence to be void.
- 10.4. CSIRO's liability to you for breach of any term of this licence or of any implied warranties that cannot be lawfully excluded is limited, at CSIRO's option, to either repairing or re-supplying the Software.
- 10.5. CSIRO will not be liable to you for any indirect or consequential damage suffered by you in any way arising from your use of or inability to use the Software or the Manual (including but not limited to, loss of data, revenue or goodwill, or failure to realise an anticipated benefit).

11. Resolving disputes

If there is a disagreement between you and CSIRO that cannot be resolved then the matter must be referred to the Australian Commercial Disputes Centre for arbitration in accordance with the Centre's Guidelines on Arbitration. The decision of the arbitrator (including any award as to costs) will be final and binding.

12. Termination

- 12.1. CSIRO may terminate this licence at any time by giving you written notice if you are in breach of this licence and that breach is not remedied within 14 days of CSIRO providing you written notice requiring you to do so; or in any other case otherwise on 30 days' prior written notice.
- 12.2. On termination of this agreement your licence to use the Software and Manual ceases and you must:
- 12.2.1. stop using the Software and Manual;
 - 12.2.2. return to CSIRO or destroy (if requested by CSIRO) all copies of the Software and Manual in your possession; and

- 12.2.3. ensure that the Software and Manual has been permanently removed from any hardware on which it has been downloaded or stored.

13. Use of CSIRO name

- 13.1. You agree to appropriately acknowledge CSIRO as the source of the Software in any publications or reports arising out of your use of the Software or anything derived from it.
- 13.2. Except as permitted in clause 13.1, you must not use CSIRO's name or trade marks in a manner that suggests that CSIRO endorses, or is associated with your research activities or your business, products or services.

14. General

- 14.1. This agreement records our entire agreement and supersedes all earlier agreements and representations that may have been made by CSIRO to you about the Software and Manual.
- 14.2. Any provision of this licence which is illegal, void or unenforceable will be ineffective to the extent only of that illegality, voidness or unenforceability without invalidating the remaining provisions of this licence.
- 14.3. You must not assign your rights under this licence without CSIRO's prior written consent.
- 14.4. This licence is governed by the laws applicable in the State of Victoria, Australia.
- 14.5. You agree that CSIRO may assign its rights in this licence to any other person or entity without notice.