

Dated the 21 day of May 2019

SOFTWARE LICENCE AGREEMENT

BETWEEN

THE AUSTRALIAN NATIONAL UNIVERSITY

AND

**NACIONAL FINANCIERA, S.N.C. AS TRUSTEE OF THE
TRUST "FONDO PARA LA BIODIVERSIDAD"**

A handwritten signature in blue ink, consisting of a stylized 'S' followed by a vertical line and a horizontal line, with a flourish extending to the right.

SOFTWARE LICENCE AGREEMENT




BETWEEN: THE AUSTRALIAN NATIONAL UNIVERSITY, a body corporate established under the Australian National University Act 1991, situated at Acton in the Australian Capital Territory ("**Licensor**")

AND: NACIONAL FINANCIERA, S.N.C. AS TRUSTEE OF THE TRUST "FONDO PARA LA BIODIVERSIDAD" ("**Licensee**")

1. Recitals

- 1.1 The Licensor is the absolute owner of the entire copyright, as well as any other industrial or intellectual property rights in the Software described in Schedule 1. The Licensee acquires no title, right or interest in the Software other than the rights granted in this Agreement.
- 1.2 The Licensee wishes to be granted a Licence to use the Software and the Licensor has agreed to grant the Licensee a Licence to use the Software in accordance with the terms and conditions of this Agreement.

2. Definitions

- 2.1 "**Agreement**" means this Agreement and includes Schedule 1 to the Agreement.
- 2.2 "**Commencement Date**" means the date on which the Licensee signs this agreement.
- 2.3 "**Confidential Information**" means and includes all technical, engineering, and operating information, trade secrets and "know-how", financial and other commercially valuable or sensitive information in whatever form it takes which is treated by the Licensor as confidential and disclosed by it to the Licensee but excludes the interpretation, analysis and application of general information in the public domain.
- 2.4 "**Intellectual Property Rights**" includes copyright, trade mark, design, patent, semi-conductor or circuit board layout rights, trade, business or company names, confidential or other proprietary rights, or any rights to registration of such rights, whether created before or after the commencement date and whether created in Australia or elsewhere.
- 2.5 "**Licence**" means the right to use the Software granted by the Licensor to the Licensee under the conditions of this Agreement.
- 2.6 "**Licensor**" means **THE AUSTRALIAN NATIONAL UNIVERSITY**, a body corporate established pursuant to the Australian National University Act 1991, represented by the Fenner School of Environment and Society ("**FSES**").
- 2.7 "**Licensee**" means **NACIONAL FINANCIERA, S.N.C. AS TRUSTEE OF THE TRUST "FONDO PARA LA BIODIVERSIDAD"**
- 2.8 "**Party**" means the Licensee or the Licensor.
- 
- 
- 

2.9 **"Software"** means the Software developed by FSES and described in Schedule 1 together with all related materials including but not limited to source code and manuals.

3. **Licence**

3.1 The Licensor warrants that it has the right and authority to grant the Licence to the Licensee.

3.2 The Licensor agrees to grant the Licensee a non-exclusive and perpetual Licence to use the Software by Comisión Nacional para el Conocimiento y Uso de la Biodiversidad (CONABIO), an interministerial commission created in 1992 by the Mexican government..

3.3 Intellectual Property Rights contained in the Software are and shall remain the property of the Licensor. Confidential Information contained in the Software is communicated to the Licensee on a confidential basis solely for use by the Licensee in accordance with this Agreement.

3.4 The Licensee is responsible for taking all steps necessary to ensure the continued proprietary and confidential nature of the Software.

3.5 The Licensee's obligations with respect to Confidential Information shall continue indefinitely or until such information becomes publicly known other than by breach of this Agreement by the Licensee or by breach of an obligation of confidence by another party.

3.6 The Licensee shall not remove from the Software any trademark, trade name, copyright notice or other notice.

4. **Conditions of Use**

4.1 The Licensee may store or install a copy of the Software on a networked server, used only to install the Software on other computers over an internal network. The Licensee must acquire a licence for each separate computer on which the Software is installed. A licence for the Software may not be shared or used concurrently on different computers.

4.2 Copy Restrictions

The Licensee shall not copy the Software (including copies or translations into any medium) in whole or in part, save for backup copies, without the prior written consent of the Licensor.

4.3 Use Restrictions

The Licensee shall not, without the written consent of the Licensor, through itself or persons under its control:

4.3.1 transfer, assign, rent, lease, sub-license, sell, give or otherwise dispose of this Software except as stated in this licence.

4.3.2 reverse compile, disassemble, or otherwise reverse engineer the whole or part of the Software.

4.3.3 create derivative software based on the Software.

4.4 Licensee's Responsibilities

The Licensee agrees that it is responsible for the installation, management, operation and maintenance of the Software and for determining that the Software will meet its requirements and will operate as the Licensee demands.

5. Warranty and Liability

- 5.1 The Licensee acknowledges that the Licensee's own skill and judgement has been exercised in acquiring the Software, and no reliance has been made on any employee or agent of the Licensor.
- 5.2 The Licensee further acknowledges that the Software is provided to the Licensee as is. The Licensor does not warrant:
 - that the Software will meet the Licensee's requirements; or
 - that the Software is free from defects in material or manufacture, in normal use and service.
- 5.3 The Licensor makes no representations, warranties or conditions of any kind, either express or implied, to the Licensee including express or implied conditions as to merchantable quality or fitness for a particular purpose of the Software.
- 5.4 The Licensor further makes no representations, warranties or guarantees of any kind, either express or implied, to the Licensee regarding the use, or the results of the use, of the software or written materials in terms of correctness, accuracy, reliability or otherwise.
- 5.5 The Licensor shall not, in any event, be liable or responsible to the Licensee or any other person or entity for any direct, or indirect, incidental, special or consequential damages, loss or injury including but not limited to loss of business or profits or interruption of service.
- 5.6 The Licensor warrants that the Software does not use obsolete Fortran Time and Date Routines. The Standard Fortran 90 Date_and_Time Subroutine is only used in the Software to provide date and time for the log file.

6. Modification and/or update

- 6.1 The Software is subject to further development and improvement that may be undertaken by the Licensor.
- 6.2 The Licensor may notify the Licensee of any modification or update of the Software. Such modification or update shall be provided to the Licensee at such further fees as are determined at the time by the Licensor. Schedule 1 may be amended from time to time as and when modifications and updates pursuant to this clause take place.
- 6.3 Any modification or update shall, in the absence of any written agreement to the contrary be subject to the terms of this Agreement.



7. Term and Termination

7.1 This Agreement will commence on the Commencement Date and will be in effect until terminated.

7.2 Termination on Default

Either Party may terminate this Agreement if the other Party fails to comply with or observe any of the provisions of this Agreement, and where that failure is capable of remedy the other Party fails to remedy such failure within twenty (20) days of notice specifying the failure and requiring it to be remedied.

7.3 Automatic Termination

The licence shall terminate automatically forthwith upon completion of any change to the legal character, identity or constitution of the Licensee or the Licensee becoming insolvent or bankrupt as an entity.

8. Consequences of Termination

8.1 In the event of termination for any reason all rights of the Licensee granted under this Agreement will terminate and the Licensee must cease to use the Software in any manner whatsoever. The Licensee must deliver up to the Licensor all copies of the Software in the possession, custody or control of the Licensee.

9. Waiver

9.1 The failure by either Party to enforce at any time any provision of this Agreement shall not affect its right to later require complete performance of the other Party nor shall any waiver of a breach of a provision be taken or held to affect its rights in the event of any subsequent or additional breach of the same or any other provision.

10. Variation

10.1 The provisions of this Agreement shall not be varied except in writing agreed by the Licensee and the Licensor.

11. General

11.1 Law

This Agreement shall be governed by, and construed in accordance with the laws of the Australian Capital Territory.

11.2 The Parties acknowledge that the only relationship between them is that of Licensor and Licensee and that no agency, employment or partnership is created by this Agreement.

11.4 Severability

In the event that any provision of this Agreement is held invalid, illegal, or unenforceable, the remaining provisions shall remain in full force and effect and in no way be affected, impaired or invalidated.

11.5 Headings

The headings of the provisions of this Agreement are provided for convenience only and shall not contribute to or affect the meaning or construction of the said provisions.

11.6 Disputes

11.6.1 A party to this agreement claiming that a dispute has arisen under this agreement shall give written notice to the other party designating as its representative in negotiations relating to the dispute a person with authority to negotiate on its behalf. The other party shall promptly, and in any event within 14 days, give notice in writing to the first party designating as its representative in negotiations relating to the dispute a person with similar authority.

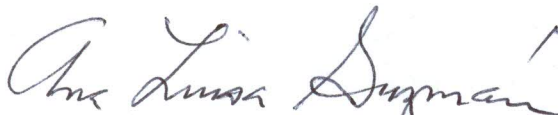
11.6.2 If the dispute is not resolved within 30 days of the latter designation required by subclause (1) (or within such further period as the representatives may agree is appropriate) the representative shall seek to agree on a process for resolving the whole part of the dispute through means other than litigation or arbitration, (such as further negotiations, mediation, conciliation, independent expert determination or mini-trial).

11.6.3 If the parties have not agreed under sub-clause (2) on a dispute resolution process within 14 days (or such longer time as is agreed) or if the process agreed upon pursuant to sub-clause (2) failed to resolve the dispute, then any party which has complied with the provisions of subclauses (1) and (2) may in writing terminate the dispute resolution process provided for in these sub-clauses and may then refer to the dispute to arbitration in accordance with, and subject to, the Institute or Arbitrators Australia Rules for the Conduct of Commercial Arbitration. The decision of the arbitrator shall be final and binding on the parties.

Dated this 21 day of May 2019



Saul Cunningham
Director, Fenner School of Environment and Society
Australian National University
Signed for and on behalf of the Licensor



Ana Luisa Guzman y Lopez Figueroa
Secretaria Tecnica del Fondo para la Bioversidad
Signed for and on behalf of the Licensee



SCHEDULE 1

ANUSPLIN VERSION 4.4

The ANUSPLIN package contains FORTRAN programs for fitting surfaces to noisy data as functions of one or more independent variables. The package also contains programs for interrogating the fitted surfaces in both point and grid form. Procedures for calculating standard error surfaces are being developed.

PLATFORM

Windows 95, 98, XP, NT, Vista, Windows 7

A handwritten signature in blue ink, consisting of a stylized, cursive script that is difficult to decipher. It appears to be a personal mark or signature.