



ALOS

End User Licence Agreement

NON-COMMERCIAL USE

"Licence Conditions Covering ALOS Data and Data Products supplied by Geoscience Australia"

1. Defined terms and interpretation

1.1 Definitions

In this agreement, unless a contrary intention appears:

Agreement means this agreement and any schedules or annexures to it.

ALOS means the Advanced Land Observing Satellite operated by JAXA and includes the three remote sensing instruments known as PRISM, AVNIR-2 and PALSAR.

ALOS Data means any signal transmitted by ALOS to the ground stations and includes any recording of the signal in whatever form.

ALOS Data Node Cooperation means the collaborative arrangements between JAXA and certain entities, including Geoscience Australia, for the data reception, processing, distribution, cataloguing, research and archiving of ALOS data.

AVNIR-2 means JAXA's Advanced Visible and Near Infrared Radiometer type 2.

Business Days in relation to the doing of any action means a weekday other than a public holiday or bank holiday in that place.

Derivative Work Products means a processed product using ALOS Data which retains the original pixel structure and can be converted back to the Primary Data.

End User means the party to this Agreement specified in the end user details.

End User Details means the details provided by the end user when completing the process to enter into this Agreement.

End User Orthorectified Product means ALOS Data orthorectified by the end user to produce an orthorectified or precision image product.

Level 1 Data Level means the standard ALOS products processed from Level 0 data level by GA with radiometric and/or geometric corrections either appended or applied.

Level 0 Data Level means frame-synchronised, de-packetised decoding data that is archived at Geoscience Australia and JAXA.

Licensed Data means the ALOS data processed by Geoscience Australia to a Level 1 Data Level and the GA Orthorectified Products specified in Schedule A and ordered by the end user using GA's ordering system.

GA means the Commonwealth of Australia as represented by Geoscience Australia.

GA Orthorectified Product means ALOS Data orthorectified by Geoscience Australia to produce an orthorectified or precision image product.

Ground Stations means the receiving stations forming part of the ALOS Data Node Cooperation which are capable of receiving the signals transmitted by ALOS.

Intellectual Property means all intellectual property rights, including:

- (a) patents, copyright, rights in circuit layouts, registered designs, trade marks, knowhow, trade secrets and any right to have confidential information kept confidential; and
- (b) any application or right to apply for registration of any of the rights referred to in paragraph (a).

JAXA means the Japan Aerospace Exploration Agency.

METI means the Japanese Ministry of Economy, Trade and Industry

MOU means the Memorandum of Understanding between JAXA and Geoscience Australia concerning the ALOS Data Node Cooperation dated 22 December 2005.

Non-commercial Purpose means the end user's proposed use of the Licensed data specified in Item 1 of Schedule B and approved by GA as a **non-commercial** purpose in accordance with the GA policy for non-commercial use of ALOS data located on the GA website www.ga.gov.au/earth-observation/accessing-satellite-imagery/ordering/order-alos-products/non-commercial-definition-policy/

PALSAR means the Phased Array type L-band Synthetic Aperture Radar jointly developed by JAXA and METI.

Picture Images are grey-scale or colour representations of ALOS data in image formats such as jpg, tiff, gif etc, which have undergone additional resampling and/or lossy compression to reduce the spatial detail. Picture images are normally used for publication purposes.

Primary Data means ALOS data which has not been processed above a Level 1 data level.

PRISM means JAXA's means Panchromatic Remote-sensing Instrument for Stereo Mapping.

Value Added Products means a highly processed product using ALOS data which does not retain the original pixel structure and cannot be converted back to the Primary Data and in relation to the end user includes end user orthorectified products.

1.2 Interpretation

In this Agreement unless the contrary intention appears:

- (a) the singular includes the plural and vice versa;
- (b) other grammatical forms of defined words or expressions have corresponding meanings;
- (c) a reference to a party includes that party's executors, administrators, successors and permitted assigns;
- (d) "including" and similar expressions are not words of limitation;
- (e) a reference to a document or agreement, including this Agreement, includes a reference to that document or agreement as novated, altered or replaced from time to time;
- (f) a reference to dollars or \$ is a reference to Australian (AUD) dollars;
- (g) words and expressions importing natural persons include partnerships, bodies corporate, associations and public authorities;
- (h) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Agreement or any part of it; and
- (i) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day.

1.3 Parties

This Agreement constitutes a legal agreement between Geoscience Australia and the end user.

1.4 End user details

The end user warrants that the end user details provided are correct and complete. The End User must promptly notify Geoscience Australia of any changes to the end user details.

2. Grant of rights

2.1 Licence

Geoscience Australia grants the end user a non-exclusive licence to:

- (a) use the Licensed Data for the non-commercial purpose;
- (b) use and adapt the Licensed Data for the end user's internal purposes and, subject to clause 8, permit agents, consultants, contractors or subcontractors with which the end user has contracted for the provision of services, to so use and adapt the Licensed Data for the end user's internal purposes;
- (c) combine the Licensed Data with other data held by the end user for the non-commercial purpose;
- (d) modify the Licensed Data to produce derivative work products or value added products for the non-commercial purpose;
- (e) copy the Licensed Data and derivative work products for the end user's internal archival or backup purposes;
- (f) reproduce, communicate and distribute value added products to third parties for the non-commercial purpose;

Geoscience Australia, Department of Resources Energy and Tourism
Jerrabomberra & Hindmarsh Dr, Symonston ACT 2609
GPO Box 378, Canberra ACT 2601
Tel (02) 6249 9779 Fax (02) 6249 9938 Email earth.observation@ga.gov.au

- (g) reproduce, communicate and distribute GA orthorectified products to third parties for the non-commercial purpose; and
- (h) reproduce, communicate and distribute picture images to third parties for the non-commercial purpose.

2.2 No limitation

For the avoidance of doubt the parties agree that this Agreement does not prevent Geoscience Australia from distributing or otherwise using the Licensed Data.

2.3 Non-commercial purpose warranty

Notwithstanding any other provision of this Agreement, the end user warrants that any use of the Licensed Data by itself, its employees, agents, contractors, subcontractors or consultants will be for the non-commercial purpose only.

2.4 Not transferable

Except as expressly permitted in clause 2.1, the rights granted to the end user in this Agreement are personal to the end user and are not transferable whether by sub-licence or otherwise.

3. Fees

3.1 Licence fee

The end user agrees to pay Geoscience Australia a licence fee (inclusive of GST where applicable) as consideration for the licence granted under clause 2.1.

3.2 Licence fee exclusive of taxes other than GST, duties and charges

The licence fee is exclusive of all taxes other than GST, duties or charges payable in respect of this Agreement. Any taxes, duties, charges or other government imposts levied in respect of this Agreement including in relation to any supply made under this Agreement, shall be payable by the end user.

3.3 Payment

The end user will pay Geoscience Australia the licence fee in accordance with the methods for payment set out on Geoscience Australia's ordering system for the Licensed Data and in any event, prior to delivery of the Licensed Data.

4. Delivery

Licensed Data shall be recorded on a medium such as CD-Rom or DVD and, as soon as reasonably practicable following receipt by Geoscience Australia of the end user's payment of the licence fee, shall be delivered to the end user using post or other delivery services, or through an online system designated by Geoscience Australia.

5. Intellectual Property rights

5.1 No transfer of ownership

The parties acknowledge and agree that this Agreement does not transfer ownership of intellectual property rights in the ALOS data.

5.2 Ownership of ALOS Data

The parties acknowledge that JAXA, exclusively or jointly with METI, as the case may be, holds the intellectual property rights subsisting in or in connection with the ALOS data and derivative work products or picture images.

5.3 Ownership of Value Added Products and GA Orthorectified Products

Ownership of intellectual property rights in relation to value added products produced by the end user will vest in the end user.

Ownership of intellectual property rights in relation to GA orthorectified products vest in Geoscience Australia.

6. Acknowledgment

6.1 Derivative work products, GA orthorectified products, picture images and value added products

All derivative work products, picture images and value added products must contain an acknowledgment that the Licensed Data was sourced from JAXA and is used under licence. Derivative work products, picture images and value added products using Licensed Data obtained from PALSAR, must acknowledge JAXA and METI as the source of the Licensed Data.

The following copyright statement must be displayed (in a reasonably prominent manner) attached to or embodied in any product which uses Licensed Data which has been obtained from AVNIR or PRISM:

This product (**insert product name**) incorporates data which is © Japan Aerospace Exploration Agency ("JAXA") (**insert the year in which the data was produced**).

The data has been used in (**insert product name**) with the permission of JAXA and the Commonwealth of Australia (Geoscience Australia) ("the Commonwealth"). JAXA and the Commonwealth have not evaluated the data as altered and incorporated within (**insert product name**), and therefore give no warranty regarding its accuracy, completeness, currency or suitability for any particular purpose.

The following copyright statement must be displayed with, attached to or embodied in (in a reasonably prominent manner) any product which uses Licensed Data which has been obtained from PALSAR:

This product (**insert product name**) incorporates data which is © Japan Aerospace Exploration Agency ("JAXA") and the Japanese Ministry of Economy, Trade and Industry ("METI") (**insert the year in which the data was produced**).

The data has been used in (**insert product name**) with the permission of JAXA and METI and the Commonwealth of Australia (Geoscience Australia) ("the Commonwealth"). JAXA, METI and the Commonwealth have not evaluated the data as altered and incorporated within (**insert product name**), and therefore give no warranty regarding its accuracy, completeness, currency or suitability for any particular purpose.

GA Orthorectified Product:

The following copyright statement must be displayed with, attached to or embodied in (in a reasonably prominent manner) any product which uses a GA orthorectified product:

This product (**insert product name**) incorporates data which is © Commonwealth of Australia - Geoscience Australia. Data source: JAXA. (**insert the year in which the data was produced**).

The data has been used in (**insert product name**) with the permission of the Commonwealth of Australia (Geoscience Australia) ("the Commonwealth"). The Commonwealth have not evaluated the data as altered and incorporated within (**insert product name**), and therefore give no warranty regarding its accuracy, completeness, currency or suitability for any particular purpose.

6.2 Publication must be made available to JAXA and Geoscience Australia upon request

If the end user publishes any value added product or GA orthorectified product to third parties the end user must make the published value added product or GA orthorectified product available to JAXA and Geoscience Australia upon JAXA or Geoscience Australia's request and grant JAXA a royalty free right to reproduce, use and distribute the published value added product or GA orthorectified product for its own purposes.

7. Personal Information

The end user agrees that Geoscience Australia may collect, retain and use personal information about the end user for all purposes related to this agreement including, without limitation, providing such personal information to other Australian Government agencies or to JAXA.

The end user agrees that Geoscience Australia may contact the end user using the end user details to obtain feedback and information in relation to the provision of Licensed Data and the end user's use of the Licensed Data.

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GPO Box 378, Canberra ACT 2601
Tel (02) 6249 9779 Fax (02) 6249 9938 Email earth.observation@ga.gov.au

The Licensed Data is not intended to include any personal information. However, if the Licensed Data does contain any personal information:

- (a) the end user must advise Geoscience Australia as soon as the end user becomes aware of that fact; and
- (b) the end user must not use or disclose that personal information in any way.

8. Responsibility for employees and agents

The end user must take all reasonable steps to ensure that any person given access to the Licensed Data on its behalf is aware of the terms of this Agreement and uses the Licensed Data only in accordance with this Agreement.

9. Precautions

Geoscience Australia does not warrant the accuracy, completeness or currency of the Licensed Data or the suitability of the Licensed Data for any purpose or the continuity of the Licensed Data for the term of this Agreement. The end user assumes responsibility for selection of the Licensed Data to achieve any intended results, and for its installation and use. The end user also assumes responsibility for the interpretation of any results obtained from use of the Licensed Data, and must exercise all appropriate precautions before placing reliance on those results.

10. Warranty

10.1 Geoscience Australia's authority to grant licence

Geoscience Australia warrants that it has the full authority to grant the licence set out in clause 2.1.

10.2 Exclusion of warranties

No warranties, express or implied, are given or offered for the Licensed Data except as provided in this clause 10. Where any statute implies into this Agreement any condition or warranty, and that statute prohibits provisions excluding or modifying the application or exercise of, or liability under, such condition or warranty, such condition or warranty will be deemed to be included in this Agreement. However, Geoscience Australia's liability for any breach of such statutory condition or warranty will be limited, at its option, to replacement of the Licensed Data or refund of the licence fee paid by the end user for the Licensed Data.

11. Release and Indemnity

11.1 Release and indemnity

The end user releases and indemnifies Geoscience Australia and JAXA and their respective employees, agents and related entities in respect of all claims, expenses, losses, damages and costs including all claims for personal injury (including sickness and death), loss of data and loss of or damage to tangible property arising, directly or indirectly from:

- (a) the end user's or any other person's use of the Licensed Data, derivative work product, picture image, GA orthorectified product or any value added product;
- (b) any breach of this Agreement by the end user;
- (c) any negligent act or omission or wilful misconduct of the end user in connection with this Agreement; except to the extent that the gross negligence or wilful misconduct of Geoscience Australia contributed to the relevant liability.

11.2 Third party agreements with end user

The end user must ensure that any agreement between itself and a third party for the distribution or publication of a picture image, GA orthorectified product or value added product contains a release in the same terms as the release contained in clause 11.1 and clause 11.3 in relation to any potential claims against JAXA or Geoscience Australia.

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11.3 Survival

This clause 11 survives the expiration or termination of this Agreement.

12. Force Majeure

Geoscience Australia shall be under no liability whatsoever to the end user for any failure to deliver the Licensed Data or any delay in delivery of the Licensed Data by reason of any event outside the reasonable control of Geoscience Australia including, but not limited to, the expiry of any agreement with JAXA or the failure for any reason to conclude agreements or memoranda of understanding with JAXA, and any curtailment or suspension of direct transmission and/or supply of ALOS Data by JAXA to Geoscience Australia for whatever reason.

13. Protection of Licensed Data

13.1 Licensed Data to be stored securely

The end user shall ensure that the Licensed Data is stored securely and in such a way as to prevent access to the Licensed Data by any party not permitted to access the Licensed Data under this Agreement.

13.2 Access to Licensed Data

The end user shall treat the Licensed Data as private and confidential to the end user and undertakes not to permit access to, disclose or otherwise make available, the Licensed Data, a derivative work product, a picture image, GA orthorectified product or a value added product to any person except as allowed under this Agreement.

14. Term and termination

14.1 Term

This Agreement commences on the date on which the end user:

- (a) accepts these terms and conditions; and
- (b) completes its order by following the procedures set out on Geoscience Australia's online ordering system for the Licensed Data; and continues until termination in accordance with this clause 14.

14.2 Termination

Geoscience Australia may, at any time, terminate this Agreement, with immediate effect by giving notice to the end user if:

- (a) Geoscience Australia considers, at its absolute discretion, the end user breaches a term of this Agreement and does not cure such a breach within 7 days of receiving notice of the breach;
- (b) Geoscience Australia is unable to provide the Licensed Data, for whatever reason; or
- (c) the end user ceases to carry on business or becomes unable to pay its debts as they become due.

14.3 After Termination

In the event of termination or expiry of this Agreement, the end user undertakes to return to Geoscience Australia all copies of the Licensed Data and any derivative work products made by the end user.

15. GST

15.1 Definitions

Words or expressions used in this clause 15, which are defined in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* have the same meaning in this clause.

15.2 GST inclusive amounts

For the purposes of this Agreement where the expression GST inclusive is used in relation to an amount payable or other consideration to be provided for a supply under this Agreement, the amount or consideration will not be increased on account of any GST payable on that supply.

15.3 Consideration is GST exclusive

Any consideration to be paid or provided for a supply made under or in connection with this Agreement, unless specifically described in this Agreement as GST inclusive, does not include an amount on account of GST.

15.4 Gross Up

Despite any other provision in this Agreement, if either party ("supplier") makes a supply to the other party ("recipient") under or in connection with this Agreement on which GST is imposed (not being a supply the consideration for which is specifically described in this Agreement as "GST inclusive"), then:

- (a) the consideration payable or to be provided for that supply under this Agreement but for the application of this clause ("GST exclusive consideration") is increased by, and the recipient must also pay to the supplier, an amount equal to the GST payable by the Supplier on that supply; and
- (b) the amount by which the GST exclusive consideration is increased must be paid to the supplier by the recipient without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided.

15.5 Reimbursements and Indemnification

If a payment to a party under this Agreement is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party is entitled for that loss, cost or expense.

15.6 Payment

The recipient need not make a payment for a taxable supply made under or in connection with this Agreement in respect of a taxable supply until the supplier has given the recipient a tax invoice for the supply to which the payment relates.

16. Notice

16.1 Giving of notice

A party giving notice or notifying under this Agreement must do so in writing or by electronic communication:

- (a) directed to the other party's representative at the other party's address, as varied by any notice; and
- (b) hand delivered, or
- (c) sent by pre-paid post, facsimile or electronic communication to that address.

The end user's address and facsimile number are as specified in the end user details.

Geoscience Australia's address and facsimile number are as follows:

Geoscience Australia
Cnr Jerrabomberra Avenue and Hindmarsh Drive, Symonston
Phone: +61 2 6249 9779
Facsimile: +61 2 62499938
Email: earth.observation@ga.gov.au

Geoscience Australia, Department of Resources Energy and Tourism
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16.2 Receipt of notice

A notice given in accordance with clause 16.1 is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by pre-paid post, 3 days after the date of posting;
- (c) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the total number of pages of the notice unless, within one business day after that transmission, the recipient informs the sender that it has not received the entire notice; or
- (d) if sent by electronic communication, at the time that would be the time of receipt under the *Electronic Transactions Act 1999 (Cth)*.

17. General

17.1 Costs

Each party shall bear their own costs arising out of the negotiation, preparation and execution of this Agreement.

17.2 Entire agreement

This Agreement embodies the entire agreement between the parties to this Agreement in respect of the subject matter of the Agreement.

17.3 Relationship

This Agreement does not create a relationship of employment, agency or partnership between the parties.

17.4 Severability

Part or all of any provision of this Agreement that is illegal or unenforceable may be severed from this Agreement and the remaining provisions of this Agreement continue in force.

17.5 Assignment

No party may assign or novate any of its rights or obligations under this Agreement.

17.6 Governing law

This Agreement is governed by the laws of the Australian Capital Territory, Australia.

17.7 Application

Where the end user is an agency of the Commonwealth of Australia, such that neither is permitted to enter into a binding legal agreement except as the Commonwealth, then the licence conditions stated herein shall be read as giving rise merely to an agreement.