



Resourcesat-1 End User Licence Agreement

COMMERCIAL USE

1. Defined terms and interpretation

1.1 Definitions

In this Agreement unless the contrary intention appears:

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

Antrix means Antrix Corporation Limited India. The marketing and distribution agency representing the Indian Department of Space and ISRO. Antrix can be contacted at:

Antrix Corporation Limited
New BEL Road, Bangalore, India - 560 094
Phone: +91-80-23416273 / 23416274
Fax: +91-80-23418981
E-mail : mail@antrix.gov.in
Web: <http://www.antrix.gov.in>

AWiFS means Advanced Wide Field Sensor.

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

Commercialise or **Commercially Exploit** means:

- (i) to use, make, sell, hire, or otherwise dispose of;
- (ii) to offer to make, sell, hire or otherwise dispose of;
- (iii) to import it or keep for the purpose of doing any of the actions referred to in paragraph (i) or (ii); or
- (iv) to licence or otherwise entitle any third party to do any of the actions in paragraphs (i) to (iii) inclusive,

in respect of the Licensed Data, End User Processed Data, or End User Derived Products for profit.

End User means the person agreeing to enter into this Agreement with GA.

End User Derived Products means any derivative product or information developed by the End User incorporating, referencing, or based on the Licensed Data which the End User can demonstrate is irreversible and uncoupled from the source imagery data (such that they are not able to be reverse engineered to obtain the source image data or a reasonable facsimile of it), and includes Picture Images. End User Derived Products do not include Orthorectified images. End User Derived Products include any Intellectual Property rights in them. Examples of End User Derived Products may include but are not limited to:

- (i) multispectral classifications, image enhancements and mosaics; and
- (ii) maps and information derived from the Licensed Data such as topographic maps, landuse maps etc.

End User Details means the details provided by the End User when completing the ordering process to enter into this Agreement and obtain the Licensed Data.

End User Processed Data means any derivative product or information developed by the End User incorporating, referencing, or based on the Licensed Data, that is not an End User Derived Product. End User Processed Data includes any Intellectual Property rights in it. Examples of End User Processed Data include but are not limited to any derivative products or information that:

- (i) has geometric and radiometric distortions rectified;
- (ii) is registered with respect to features on the Earth;
- (iii) has a calibrated spectral response;
- (iv) has simply undergone Orthorectification; or
- (v) would otherwise be a Picture Image, but has not undergone additional resampling equal to a ratio of 16:1 or higher and/or lossy compression to reduce the spatial detail.

GA means the Commonwealth of Australia as represented by Geoscience Australia. GA includes any representative appointed by GA for the purposes of this Agreement.

Intellectual Property means all intellectual property rights, including but not limited to, the following rights:

- (i) patents, copyright, rights in circuit layouts, designs, trade marks (including goodwill in those marks) and domain names;
- (ii) any application or right to apply for registration of any of the rights referred to in paragraph (i); and
- (iii) all rights of a similar nature to any of the rights in paragraphs (i) and (ii) which may subsist in Australia or elsewhere, whether or not such rights are registered or capable of being registered, but does not include Moral Rights.

Internal Purposes means the purposes of:

- (i) teaching, further research, verification and testing;
- (ii) administration of the End User's organisation;
- (iii) obtaining professional advice regarding the End User's rights; or

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(iv) improving the End User's business processes or methods of operation.

ISRO means the Indian Space Research Organisation.

Licence Fee means the fee specified by GA as applicable to the Licensed Data prior to the End User accepting this Agreement.

Licensed Data means any Resourcesat-1 data sets or other products identified by GA as such and made available by GA to the End User. Licensed Data include any GA Processed Data or GA Orthorectified product and any Intellectual Property rights in them.

LISS-III means Medium Resolution Linear Imaging Self-Scanner.

Moral Rights means the right of integrity of authorship (that is, not to have a work subjected to derogatory treatment), the right of attribution of authorship of a work, and the right not to have authorship of a work falsely attributed, as defined in the *Copyright Act 1968* (Cth).

Orthorectification means the removal of the effects of tilt and relief displacement from image data through the process of geometric rectification and registration with features on the Earth to produce an Orthorectified product.

Personal Information has the meaning in the *Privacy Act 1988* (Cth).

Picture Images are grey-scale, mono colour or colour composite representations of the Licensed Data in image formats such as jpg, tiff, gif etc, that have undergone additional resampling equal to a ratio of 16:1 or higher and/or lossy compression to reduce the spatial detail. Picture Images are normally used for publication purposes.

Processed Data means any data sets or other products specified as such by GA. Processed Data includes data that has been enhanced by:

- (i) rectification of geometric and radiometric distortions;
- (ii) registration with respect to features on the Earth; and
- (iii) calibration of spectral response.

Processed Data includes any Intellectual Property rights in it.

Resourcesat-1 means the Indian Remote Sensing (IRS) P6 satellite operated by ISRO and includes the two remote sensing instruments known as LISS-III and AWiFS.

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,

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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 GA and the End User.

1.4 End User Details

The End User warrants that the End User Details provided are correct and complete as at the date of entry into this Agreement. The End User must promptly notify GA of any changes to the End User Details.

2. Grant of rights

2.1 Licence

Subject to this Agreement, GA grants to the End User:

- (a) A non-exclusive, perpetual, irrevocable, Australia and New Zealand wide, licence to use, process, adapt, reproduce and modify the Licensed Data and End User Processed Data for Internal Purposes only; and
- (b) A non-exclusive, perpetual, irrevocable, licence to commercialise the End User Derived Products.

2.2 Restrictions on Licensed Data use

The End User is not permitted to Commercialise the Licensed Data or End User Processed Data, or include them in any End User Derived Product that is being Commercialised, except to the extent they are a part of the End User Derived Product (as defined).

2.3 Reproduction, Publication or Communication of the Licensed Data-

The End User must include the following acknowledgements in any reproduction of Licensed Data or End User Processed Data for Internal Purposes, and in any reproduction, publication or communication of End User Derived Products, in a reasonably prominent manner:

- (a) for all Licensed Data or End User Processed Data:

(Insert Antrix logo) © Antrix Corporation Limited (insert the year in which the data was produced).

The data has been used in **(insert product name)** with the permission of Antrix Corporation Limited and the Commonwealth of Australia (Geoscience Australia) ("the Commonwealth"). Neither Antrix nor the Commonwealth has evaluated the data as altered and incorporated within **(insert product name)**, and to the extent permitted by law give no warranty regarding the data, including its accuracy, completeness, currency or suitability for any particular purpose. Commercial licence.

Short version:

(Insert Antrix logo). © Antrix Corporation Limited (insert the year in which the data was produced). Satellite data provided by Geoscience Australia and Antrix Corporation Limited. Commercial Licence.

- (b) for all End User Derived Products (including Picture Images) that include a photographic like representation of the Licensed data:

(Insert Antrix logo) © Antrix Corporation Limited **(insert the year in which the data was produced)**. This product has been developed by **(Insert End User name)** using Resourcesat-1 satellite data products provided by Geoscience Australia and Antrix Corporation Limited. For further information please contact Geoscience Australia or Antrix Corporation Limited, India.

The data has been used in **(insert product name)** with the permission of the Commonwealth of Australia (Geoscience Australia) ("the Commonwealth"). Neither Antrix nor the Commonwealth has evaluated the data as altered and incorporated within **(insert product name)**, and to the extent permitted by law give no warranty regarding the data, including its accuracy, completeness, currency or suitability for any particular purpose. Commercial Licence.

Short version:

(Insert Antrix logo). © Antrix Corporation Limited **(insert the year in which the data was produced)**. Satellite data provided by Geoscience Australia and Antrix Corporation Limited. Commercial Licence.

- (c) for all End User Derived Products that do not contain a photographic like representation of the Licensed Data:

This product has been developed by **(Insert End User name)** using Resourcesat-1 satellite data products provided by Geoscience Australia and Antrix Corporation Limited. For further information please contact Geoscience Australia or Antrix Corporation Limited, India.

The data has been used in **(insert product name)** with the permission of the Commonwealth of Australia (Geoscience Australia) ("the Commonwealth"). Neither Antrix nor the Commonwealth has evaluated the data as altered and incorporated within **(insert product name)**, and to the extent permitted by law give no warranty regarding the data, including its accuracy, completeness, currency or suitability for any particular purpose. Commercial Licence.

Short version:

© **(Insert End User name)** **(insert the year in which the data was produced)**. Satellite data provided by Geoscience Australia and Antrix Corporation Limited. Commercial Licence.

2.3 No limitation

For the avoidance of doubt the parties agree that this Agreement does not prevent or restrict GA in any way from distributing or otherwise using the Licensed Data.

3. Fees

3.1 Licence Fee

The End User agrees to pay the Licence Fee (inclusive of GST) in consideration for the licences granted under clause 2.

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, are payable by the End User.

3.3 Payment

The End User will pay the Licence Fee in accordance with the methods for payment set out for the Licensed Data.

Where GA delivers the Licensed Data prior to receipt of the Licence Fee, the Licence Fee is a debt owed by the End User to GA and may be recovered by GA in a court of competent jurisdiction.

4. Delivery

Licensed Data may be recorded on a medium such as DVD and, if it has not already been delivered, as soon as reasonably practicable following receipt of the End User's payment of the Licence Fee, shall be delivered to the End User using post or other delivery services, or shall be distributed by an online method.

5. Intellectual Property rights and ownership

5.1 No transfer of ownership

The parties acknowledge and agree that this Agreement does not transfer or assign ownership of the Licensed Data.

5.2 Ownership of Processed Data

The End User acknowledges that Antrix may own some or all of the Licensed Data and the End User Processed Data under GA's contract with Antrix.

5.3 Ownership of Derived Products

- (a) Ownership of all End User Processed Data vests in Antrix upon creation.
- (b) Subject to this clause 5 and clause 2.3, ownership of all End User Derived Products will vest in the End User upon creation.

6. Personal Information

The End User agrees that GA 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.

The End User agrees that GA 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.

GA is required to treat any Personal Information collected from the End User in accordance with the Information Privacy Principles contained in the *Privacy Act 1988* (Cth). The End User may access the Personal Information that GA has collected by contacting GA with the End User's request.

The Licensed Data is not intended to include any Personal Information. However, if the Licensed Data does contain any Personal Information, the End User must:

- (a) advise GA as soon as the End User becomes aware of that fact;
- (b) subject to paragraph 6.c, not use or disclose that Personal Information in any way; and
- (c) comply with such further directions as may be provided by GA in relation to the Personal Information.

All Personal Information collected by GA is stored in a secure server with access only available to authorised personnel.

7. Responsibility for third party access

The End User must take all reasonable steps to ensure that any person obtaining access to the Licensed Data through the End User is aware of the terms of this Agreement and uses the Licensed Data only in accordance with this Agreement.

8. Precautions

GA 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 GA's ability to provide Licensed Data in the future.

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.

9. Warranty

9.1 GA's authority to grant licence

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

9.2 Exclusion of warranties

To the extent permitted by law, no warranties, express or implied, are given or offered for the Licensed Data except as provided in this clause 9.

Where any law implies into this Agreement any condition or warranty that can not be excluded or modified, GA's liability for any breach of such 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, or where such limitation is not permitted, will be limited to the minimum amount payable by GA to satisfy the condition or warranty.

GA does not provide any warranty where the Licensed Data is provided through a GA nominated third party or GA nominated third party archive maintained by that third party. The End User agrees that no representation or warranty given by a GA representative or third party will be binding on GA unless agreed to in writing by GA.

10. Release and Indemnity

10.1 Release and indemnity

The End User releases and indemnifies GA, its contractors and their respective employees, agents and related entities in respect of all claims, expenses, losses, damages and costs including without limitation, 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, End User Processed Data or End User Derived Products;
- (b)** any breach of this Agreement (including the licences granted under clause 2) by the End User, or by any third party that the End User has permitted or enabled to access the Licensed Data, End User Processed Data or End User Derived Products;
- (c)** any warranty owed by GA to a third party which arises as a result of the End User's conduct

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(including by publishing or providing access to the Licensed Data, End User Processed Data or End User Derived Products), including a warranty that cannot be excluded at law;

- (d) any tax, expense, charge or other liability payable as a result of or in relation to this Agreement;
- (e) any failure by GA, its contractors or their respective employees, agents or related entities to secure or deal with the End User's information, other than where such actions were required to be taken by GA in accordance with this Agreement or at law; or
- (f) 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 GA, its contractors or their respective employees, agents or related entities contributed to the relevant liability.

Each of the indemnities granted in this Agreement may be enforced on behalf of those indemnified or by GA on their behalf.

10.2 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 End User Derived Products:

- (a) contains a release in the same terms as the release contained in clause 10.1 and a clause providing for that release to survive any termination of such agreement, in relation to any potential claims against GA its subcontractors and their respective employees, agents and related entities; and
- (b) contains terms consistent with the licence granted to the End User in relation to the Licensed Data.

10.3 Survival

The following clauses survive the termination of this Agreement:

- (a) clause 2.2 (Restrictions on Licensed Data use);
- (b) clause 3 (Fees);
- (c) clause 5 (Intellectual Property Rights);
- (d) clause 6 (Personal Information);
- (e) clause 7 (Responsibility for Third Party Access);
- (f) clause 8 (Precautions);
- (g) clause 9 (Warranty);
- (h) clause 10 (Release and indemnity); and
- (i) clause 14 (GST).

11. Delay in Delivery of the Data

GA 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, whether outside the reasonable control of GA or for whatever reason.

Where GA fails to deliver the Licensed Data within 30 days after payment by the End User of the Licence Fee, upon request, GA will refund the amount of the Licence Fee to the End User.

12. Protection of Licensed Data

12.1 Licensed Data to be stored securely

Subject to its rights of publication and communication under this Agreement, 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 in accordance with this Agreement.

13. Term and termination

13.1 Term

This Agreement commences on the date on which the End User accepts these terms and conditions and continues perpetually unless terminated in accordance with this clause 13.

13.2 Termination

Upon any breach by the End User of the terms of this Agreement, GA may terminate the Agreement upon notice to the End User. Delay by GA in providing notice under this clause 13.2 does not constitute a waiver of its right to terminate this Agreement.

14. GST

14.1 Definitions

Words or expressions used in this clause 14, which are defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) have the same meaning in this clause.

14.2 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.

14.3 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.

14.4 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.

14.5 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.

14.6 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.

15. Notice

15.1 Giving of notice

A party giving notice or notifying under this Agreement must do so in writing or by email directed to the other party's representative at the other party's address, as varied by any notice, and such notice must be either:

- (a) hand delivered; or
- (b) sent by pre-paid post, facsimile or email to that address.

The End User's address and facsimile number for the purpose of this clause are as specified in the End User Details.

GA'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: acres@ga.gov.au

15.2 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 email, when the email is received by the addressee's email system and is available to be read by them via that system.

16. General

16.1 Costs

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

16.2 Entire agreement

This Agreement embodies the entire agreement between the parties to this Agreement in respect of the subject matter of the Agreement and replaces any previous agreements that may have been entered into by the parties in respect of the Licensed Data, End User Processed Data or End User Derived Products.

16.3 Relationship

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

16.4 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.

16.5 Assignment

The End User may not assign or novate any of its rights or obligations under this Agreement without the prior consent of GA.

16.6 Governing law

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

16.7 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.