



ERS and JERS End-User Licence Agreement

"Licence Conditions Covering ERS and JERS Data and Data Products supplied by Geoscience Australia"

Sale to the Purchaser

The Licensed Data and/or the Licensed Data Products are provided to you ("The Licensee") either by or on behalf of Geoscience Australia, Department of Resources, Energy and Tourism, or by a Distributor as an authorised agent of Geoscience Australia (GA).

The Licence Conditions constitute the whole agreement between the Commonwealth of Australia (represented by Geoscience Australia) and you, the Licensee, with respect to the licensing, of the Data or Data Products, and supersede any prior negotiations, agreement or understanding in relation to such licensing. No variation of the Licence Conditions shall be of any force or effect unless it is in writing signed by both parties.

Definitions

In these Conditions, unless the contrary intention appears:

- "Commonwealth" means the Commonwealth of Australia as represented by Geoscience Australia (GA).
- "Data" means signals transmitted by the ERS Satellite(s) or JERS Satellite(s) which have been converted into a digital form.
- "Data Products" means products created by processing Data.
- "Enhanced Data" means, for GA products only, "Derived Product" or "Value-added Product", the reproduction and sale of which is not restricted, data that has been processed to modify the information so that it can not be restored to its original form. The modification of the data can either be through the addition of information or through manipulation to significantly change the data. This does not include simple geometric and radiometric corrections provided that in the event of any doubt as to whether any Data has become Enhanced Data it shall be determined by the Commonwealth whose decision shall be final.
- "Licensed Data" means the particular satellite Data the subject of the agreement incorporating these Conditions.
- "Licensed Data Products" means the particular Data Products the subject of the agreement incorporating these Conditions.
- "Satellite Operator" means:
 - a. in the case of ERS Data: the European Space Agency ("ESA");
 - b. in the case of JERS Data: the Japan Aerospace Exploration Agency ("JAXA");

Licence for ERS AND JERS Data

Where the agreement incorporating these Conditions involves the purchase of ERS, JERS Data, the following licence conditions shall apply in respect of those items.

- The Commonwealth or the Distributor as authorised sub-licensor from the Commonwealth, as the case may be, grants to the Purchaser a non-exclusive, non-transferable licence to use, display, reproduce and adapt the Licensed Data or Licensed Data Product, and to make a Derived

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Product, subject to these licence conditions.

- The Purchaser acknowledges that the Licensed Data or Licensed Data Product is a special, unique and valuable product in which the copyright and other applicable intellectual property rights vest in the Satellite Operator and/or the Commonwealth of Australia.
- The Purchaser shall not remove, obscure or interfere with any copyright notice or trademark notice affixed to, incorporated in or otherwise applied, in connection with the Licensed Data or Licensed Data Product as supplied to it. In addition, the Purchaser undertakes to reproduce, in similar fashion, any such notice in connection with any copy of the Licensed Data or a Derived Product made by the Purchaser.
- The Purchaser undertakes not to permit access to, disclose or otherwise make available, the Licensed Data or a Derived Product to any person except as allowed under these Licence Conditions.
- The Purchaser shall not publish, distribute or otherwise exploit commercially the Licensed Data, without the prior approval of the Commonwealth. For permission to publish or otherwise distribute the Licensed Data, contact the Manager, Remote Sensing Information Services, Geospatial & Earth Monitoring Division, Geoscience Australia, PO Box 378, Canberra, ACT, 2601.
- This Licence may be terminated immediately by notice in writing to the Purchaser for breach of any of these Licence Conditions.
- In the event of termination, the Purchaser undertakes to return to GA on behalf of the Commonwealth, all copies of the Licensed Data, and any Derived Products made by the Purchaser.

Warranty

If the Licensed Data or the Licensed Data Product is found significantly defective, and is returned to the Commonwealth with proof of purchase, specifying details of the defect, within thirty days of delivery to the Purchaser, the Commonwealth may either:

- a. replace the Licensed Data or the Licensed Data Product, or
- b. refund the price paid by the Purchaser for the Licensed Data or the Licensed Data Product.

The Commonwealth does not provide this warranty where the Licensed Data or Licensed Data Products are provided through a Distributor from the Distributor's archive or the GA archive created and maintained by the Distributor.

Liability under Statute

No conditions or warranties, either express or implied, are given or offered for the Licensed Data or the Licensed Data Products except as follows, or as otherwise set out in these Licence Conditions. 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 shall be deemed to be included in this agreement, but the Commonwealth's liability for any breach of such condition or warranty shall be limited, at its option, to any one or more of the following:

- i. the replacement of the goods or the supply of equivalent goods/services (as the case may be);
- ii. the repair of such goods;
- iii. the payment of the cost of replacing the goods or of acquiring equivalent goods/services (as the case may be).

The Commonwealth does not warrant the suitability of the Licensed Data or the Licensed Data Products for any purpose. The Purchaser releases the Commonwealth and the Satellite Operator from any and all liability for loss, damage or injury which may be suffered by it arising from use of the Licensed Data or Licensed Data Products, or the negligent provision of the Licensed Data and Licensed Data Products by the Providers, and the Purchaser indemnifies the Commonwealth and Japan Aerospace Exploration Agency (JAXA) in respect of any liability for loss, damage or injury which may be suffered by any person arising from use of the Licensed Data or Licensed Data Products, or negligent provision of the Licensed Data or Licensed Data Products by the Providers.

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Applicable Law

These Licence Conditions shall be construed in accordance with the law of the Australian Capital Territory and the parties submit to the jurisdiction of courts of that Territory.

Force Majeure

The Commonwealth shall be under no liability whatsoever to the Purchaser for any failure to deliver the Data or any delay in delivery of the Data by reason of any event outside the reasonable control of the Commonwealth including, but not limited to, the expiry of agreements with satellite owners or the failure for any reason to conclude agreements or memoranda of understanding with satellite owners.