

TERMS & CONDITIONS

Mission Exploitation Platform PROBA-V

Description of Mission Exploitation Platform PROBA-V

Mission Exploitation Platform (MEP) PROBA-V is powered by VITO NV and complements the PROBA-V user segment by building an operational Exploitation Platform (EP) on these data, complementary data and derived products. The data offering consists of the complete archive from SPOT-VEGETATION, PROBA-V and derived parameters, as well as selected high-resolution data/products.

Access

The Mission Exploitation Platform PROBA-V is accessible from <https://proba-v-mep.esa.int/>.

To be eligible to benefit from Access to the Infrastructure and use of the Services, a customer must satisfy the following conditions:

- Some services are accessible for anonymous users. Only these Terms and Conditions apply.
- Some service are only accessible for authenticated users. Users can register at <https://proba-v-mep.esa.int/padua/register> and need to accept the data policy for the PROBA-V and SPOT-VEGETATION data.

Mission Exploitation Platform PROBA-V terms of service

1. Definitions

The following words have the following meanings:

- 1.1. "Access" means visiting the System to use the applications (via Web clients, via Web Services, via Consoles, ... depending on the application), use the provided tools, access the data and consulting the documentation available on the System.
- 1.2. "Background" means know-how and/or intellectual property rights owned or controlled by either party outside of the Agreement and which are used in the framework of the Agreement.
- 1.3. "Business Day" means any calendar day other than Saturday, Sunday or Belgian or Flemish public holidays.
- 1.4. "Deliverables" means software and data provided on the System.
- 1.5. "Customer" means a person or legal entity who is eligible to benefit eligible to benefit from Access to the System and use of the Services and who submitted an Order Form that is accepted by VITO.
- 1.6. "Customer Equipment" means the equipment, including software, under the supervision of the customer that is intended to be directly or indirectly used or integrated with services on the System and managed by the Customer.
- 1.7. "Order Form" means the form that the Customer has to fill out completely and correctly in order to request Access to the Infrastructure for use of the Services. The Order Form is subject to acceptance by VITO NV and no obligation including an Order Form shall be binding on VITO unless and until such Order Form is accepted by VITO, or, if earlier, Services are provided to Customer.
- 1.8. "Services" means data viewing-analysis-processing-developing-testing services accessible via Web clients, Web services or consoles that VITO supplies to the Customer. Changes to the Services (or the way/place they are provided) may be the results of any mandatory changes in the relevant laws and regulations applicable to VITO and/or the customer, and/or a decision taken by VITO for security reasons, and/or a change that becomes necessary as a consequence of a change in a third party product, a change in the conditions of use of a third party product and/or any other reason not attributable to VITO.
- 1.9. "System" means the complete PROBA-V MEP platform that is used to conduct the Services.
- 1.10. "VITO" means VITO NV, having its registered office situated at Boeretang 200, 2400 Mol, Belgium (company number 0244.195.916).

2. Application

Except as expressly set forth below or as otherwise mutually agreed to by the parties in writing, these Mission Exploitation Platform PROBA-V terms of service together with the terms and conditions in the Order Form the Privacy Policy and any other documents expressly referenced therein (collectively, the "Agreement") set forth the terms and conditions pursuant to which VITO will provide Services to the Customer as well as the rights and obligations of the Customer when using the Services.

3. General principles

- 3.1. The Customer declares having taken cognizance of the technical characteristics of the Services and recognizes that they answer his needs. It is the responsibility of the Customer to ensure that the Customer is allowed to make use of the Services for the aim for which it intends to use the Services.
- 3.2. The parties shall use reasonable efforts and co-operate for the provision of the Services in a reasonable and efficient manner, with all reasonable professional skill and care and complying with the rules and legislation applicable to its own activities and in accordance with good industry practice.
- 3.3. Customer responsibilities
 - 3.3.1. The Customer shall acquire, at its own costs,
 - the Customer Equipment that is necessary for VITO to be able to properly provide the Services and for the Customer to be able to use the Services.
 - the necessary connectivity services from a third party in order to link to the Customer Equipment to the System. The Customer shall at all times and at the first request of VITO fully comply with the security and connectively requirements and advice from VITO.

The Customer shall take all appropriate care and measures in accordance with the latest technology for the maintenance and security of its software, hardware, network, connectivity and other properties.
 - 3.3.2. When the Services are subject to export control regulations, it is the Customer's sole responsibility to obtain the necessary approvals and to observe the export regulations.
 - 3.3.3. Customer is solely responsible for backing up its data. VITO will not under any circumstances have a duty to back-up Customer's data or to restore data that is lost in the courts of the provision of the Services or otherwise. VITO is not liable for the loss of such data, whatever the reason for the loss.
 - 3.3.4. Customer is responsible for the legally and contractually compliant use of the Services. In particular the following are deemed to be illegal and contrary to contract:

- Dishonest mass advertising;
 - Prevention of a third party or other user from using the Services
 - Hacking, spying on other internet users or their data and fraudulent attacks (phishing)
 - Damage to or endangerment of the telecommunications infrastructure or the equipment or infrastructure of VITO or a third party through harmful software
 - Transmission or access provision of illegal contents.
- A breach of one or more of these conditions will be considered by VITO as gross negligence from the Customer
- 3.3.5. Customer is not allowed to:
- Resell the Services and/or Deliverables to any third party or permit any third party to use the Services.
- 3.4. VITO has the right to take all measures to protect the interests of VITO or of any user of the Services.

4. Duration of the Services

- 4.1. The Agreement applies as of the date of acceptance by VITO of the Order Form and remains applicable as long as the Services are supplied to the Customer.
- 4.2. Either party is entitled to immediately suspend or terminate the Agreement in whole or in part by written notice to the other party:
- the other party commits a breach of the Agreement and fails to remedy it within thirty (30) calendar days from sending the written notice by the non-breaching party.
 - If the other party commits a fraud, illegal or unauthorized activity, willful misconduct or gross negligence.
- 4.3. VITO is entitled to immediately suspend or terminate all or part of the Agreement at any time and without prior notice and/or indemnity of any kind in case this suspension or termination is required for Security Reason.
- 4.4. Termination of the Agreement shall not release either party from its obligation to the other party made prior to the end of the Agreement. The rights and condition which by their nature should survive the termination or expiration of the Agreement shall remain in effect after the termination or expiration of the Agreement (such as, but not limited to, confidentiality, data protection, governing law).

5. Fees

In consideration for the Services, VITO shall be entitled to the payment from the Customer of the fees specified in the description of specific services, if applicable for that service as published on this Web portal. All prices are in Euro, VAT and other taxes or levies excluded. Except as otherwise agreed upon in writing between the parties, the fees are due before being able to use the service. Payments have to be made by Customer within thirty (30) calendar days from the invoice date.

6. Continuity of the Services

VITO will use all reasonable efforts to ensure the continuity of the Services. However, VITO cannot guarantee the uninterrupted or faultless operation of its infrastructure, including System, and the Services. VITO will regularly carry out repair works or maintenance on its infrastructure, including without limitation, upgrading or testing of the System. Wherever possible, VITO will use reasonable efforts to inform the Customer of any (un)planned work that is likely to impact the Services, even if no Service disruption whatsoever is to be expected.

7. Disclaimer of warranties – Limitation of liability

- 7.1. VITO warrants for fifteen (15) Business Day from the performance of the Services by VITO that such Services shall be performed in a workmanlike manner consistent with generally accepted industry standards. VITO hereby disclaims any warranty of whatever nature on the Services, Deliverables and Background, including all warranties of uninterrupted functioning, merchantability and/or fitness for a particular purpose and/or non-infringement of third party rights. For the avoidance of doubt, VITO does not guarantee the flawless and uninterrupted functioning of the Services.
- 7.2. VITO can under no circumstance be held liable for any loss that can be attributed to the defective operation of the Customer Equipment, network, connectivity or any products and/or services provided by third parties or interruptions of or defect in the Service caused by circumstances outside VITO's reasonable control. VITO shall not be held liable for damages as a result of illegal use of the Services or if the Services are used in breach of contract.
- 7.3. The liability of each party to the other party under the Agreement shall not, to the extent permitted by law, exceed 250.000 Euro or the sums paid in the aggregate, under the Agreement during the calendar year in which such claims were brought, whichever is the lowest.
- 7.4. Neither party shall be liable for any claim arising under the Agreement, unless it has received written notice of the claim within one (1) year of the other party becoming aware of the circumstances or ought to be aware of the circumstances, giving rise to the claim. In any case, for a claim to be admissible, formal commencement of legal proceedings needs to be brought within two (2) years after cause of action.

- 7.5. VITO is not liable for any claim based on (i) the use of the Services in combination with any any equipment, product, software, data, system or other item not supplied by VITO, (ii) the use of the Services or any part thereof in any manner for which the Customer is not authorized and (iii) any attempt, successful or not, to interfere with, hack into or decipher any transmission to or from the IT environment of VITO and/or of Customer.
- 7.6. The Parties shall not be liable for indirect or consequential damages or loss, such as any loss of profits, contracts, or anticipated savings, loss of business, loss of opportunity, loss of revenue, loss of time, loss of goodwill or injury to reputation, third party claims or losses suffered by third parties. In case of loss of or harm to data, VITO's liability will be limited to reinstating such data based on the back-up provided by the Customer.
- 7.7. Limitations and exclusions of liability as set forth in the Agreement shall not apply with respect to damages caused by fraud or willful misconduct or damages caused by breach of the articles 3.3.4 and 3.3.5.

8. Intellectual property rights

- 8.1. Each party shall retain all right, title and interest in and to, and possession of their respective Background. VITO shall retain all right, title and interest in and to, and possession of, any know-how, technical information, specifications, documents, ideas, concepts, methods, processes, techniques and inventions developed or created by or on behalf of VITO relating to Services performed under the Agreement.
- 8.2. VITO holds title to all rights on the Deliverables provided to the Customer in the framework of the Agreement. VITO hereby grants a non-exclusive, non-sub-licensable, non-assignable, non-transferable and royalty-free licence to the Customer to use, execute, reproduce and display, but only for the Customer's own business purposes, the Deliverables that are submitted by VITO to the Customer in providing the Services, subject to the Customer's compliance with its obligations and only for the duration of the Agreement.
- 8.3. Customer hereby grants a non-exclusive and royalty-free license to use, execute, reproduce and display all its Background necessary for the performance of the services.

9. Confidentiality

- 9.1. Each party (the "Disclosing Party") may from time to time during the term of the Agreement disclose to the other party (the "Recipient") certain information regarding the Disclosing Party's business, including its products, inventions, operations, methodologies, systems, processes, know-how, designs, trade secrets, market opportunities, business or financial affairs, and technical and other confidential or proprietary information ("Confidential Information"). Confidential Information includes information disclosed orally, visually, or through any tangible medium.
- 9.2. Recipient will not use any Confidential Information of the Disclosing Party for any purpose not expressly permitted by the Agreement or to carry out the Services, and will disclose the Confidential Information of the Disclosing Party only to the employees, advisors or contractors of Recipient who have a need to know such Confidential Information for purposes of carrying out the Services and who are under a duty of confidentiality no less restrictive than Recipient's duty hereunder. Recipient will protect the Disclosing Party's Confidential Information from unauthorized use, access, or disclosure in the same manner as Recipient protects its own confidential or proprietary information of a similar nature and with no less than reasonable care.
- 9.3. The Recipient shall be free to use for any purpose the residuals resulting from access to or work with the Confidential Information of the Disclosing Party, provided that the Recipient shall not disclose the Confidential Information except as expressly permitted hereunder. The term "residuals" means information in intangible form, which is retained in memory by persons who have had access to the Confidential Information, including ideas, concepts, know-how or techniques contained therein. The Recipient shall not have any obligation to limit or restrict the assignment of such persons or to pay royalties for any work resulting from the use of residuals. However, this section shall not be deemed to grant to the Recipient a license under the Disclosing Party's copyrights or patents.
- 9.4. Recipient's obligations under this article with respect to any Confidential Information of the Disclosing Party will terminate if and when Recipient can document that such information: (a) was already lawfully known to Recipient at the time of disclosure by the Disclosing Party; (b) was disclosed to Recipient by a third party who had the right to make such disclosure without any confidentiality restrictions; (c) is, or through no fault of Recipient has become, generally available to the public; or (d) was independently developed by Recipient without access to, or use of, the Disclosing Party's Confidential Information. In addition, Recipient will be allowed to disclose Confidential Information of the Disclosing Party to the extent that such disclosure is (i) approved in advance, in writing by the Disclosing Party, (ii) necessary for Recipient to enforce its rights under the Agreement in connection with a legal proceeding; or (iii) required by law or by the order of a court of similar judicial or administrative body, provided that Recipient notifies the Disclosing Party of such required disclosure promptly and in writing and cooperates with the Disclosing Party, at the Disclosing Party's request and expense, in any lawful action to contest or limit the scope of such required disclosure.

- 9.5. Without prejudice to article 10.1, the Recipient's obligations of confidentiality shall remain in force until one (1) of the exceptions detailed above can be invoked by the Recipient with respect to the item of Confidential Information concerned.

10. General provisions

- 10.1. Each Party agrees to comply with its respective obligations under the Belgian data protection laws and any other applicable data protection laws and regulations (together, the "Data Privacy Laws").
- 10.2. Customer acknowledges and agrees that VITO may at any time make changes to the Services, the Background, its applications and infrastructure as it deems necessary in order to reflect technical and/or operation matters.
- 10.3. The parties agree that VITO may at any time make changes to the Agreement. VITO will duly inform the Customer thereof at least thirty (30) calendar days prior to the entry into force of the proposed change if the proposed change has negative implications for the Customer. If the Customer does not accept the proposed change of the Agreement, the Customer may unilaterally terminate the Agreement by giving thirty (30) calendar days" prior written notice and without payment of any penalty or compensation. In the event that the Customer fails to give prior notice in compliance with the provisions of this clause, the Customer will be deemed to have accepted the proposed changes.
- 10.4. The Agreement shall be governed by and construed in accordance with Belgian Law. No effect shall be given to any other choice of law or any conflict-of-law rules or provisions (Belgian, foreign or international) that would result in the application of the laws of any country other than Belgium.
- 10.5. All disputes arising out of or in connection with the Agreement, that the Parties are unable to settle amicably, shall be submitted to the exclusive jurisdiction of the courts of Brussels (Belgium).

TERMS AND CONDITIONS : PROBA-V SATELLITE DATA AND PRODUCTS

All 1 km products are available for free. They are distributed through the ESA Earth Watch programme and yet available on the MEP PROBA-V.

All 1/3 km products, 100 m products and L1C products are available for free, except for products younger than 1 month. More recent products may yet not be available to all users of the platform. However, Belgian & Luxembourgian users, as well as ESA-approved R&D projects can get all 1/3 km products for free and hence this data is available to them on the platform. The same applies for Copernicus users as they can access the data in the frame of (<http://gmesdata.esa.int/web/gsc/home>).

More information on the data policy for the PROBA-V products is described in the [following link](#).

Note that the data policy of PROBA-V is applicable for downloading products. In some applications on the Mission Application Platform PROBA-V, PROBA-V data which cannot be downloaded by all users according the PROBA-V data policy, can be made accessible to be analysed and processed by users of the platform. This does not entitle these users to download the products from the platform, to by pass the PROBA-V data policy.

TERMS AND CONDITIONS: SPOT-VEGETATION SATELLITE DATA AND PRODUCTS

The SPOT-VEGETATION products (being satellite image from the VEGETATION instrument on the SPOT4&5 platform – hereinafter called “the Products”) are made available to user(s) on a reasonable efforts basis whereby no warranty, service level, quality of service or response time guarantees are provided. The Products are accessible on line. In so far as it is authorized by law, the user of the Products is granted the free of charge and non-exclusive right to use the Product.

The Products are made available AS IS without any warranty of any kind, express, implied or statutory, including but not limited to the warranty of non-infringement, accuracy, merchantability or fitness for a particular purpose. Neither VITO nor its providers and/or licensors shall have any liability for any direct, indirect, incidental, special or consequential damages (including without limitation lost profits, loss of data) however caused and on any theory of liability, whether in contract, strict liability or tort (including negligence or otherwise) arising in any way out of the use of the Products.

The user does not obtain any proprietary rights (including ownership of copyright and/or other intellectual property rights) in any to the Products except the user rights expressly detailed herein.

All intellectual property rights in and to the products belong to VITO (and/or its licensors). The French Space Agency (Centre National d'Etudes Spatiales - CNES) is the sole holder of the copyright on the VEGETATION® data. The products are elaborated from this data. Customer acknowledges the copyrightable character of the products under the legislation and conventions concerning copyrights. Consequently, Customer has no proprietary rights (including ownership of copyright and intellectual property rights) in and to the products.