

# VirES for Swarm Service Terms and Conditions

"Service Terms"

Version of 06/11/2019 – Draft

## These Service Terms

The *VirES for Swarm* service (the "Service") provides an interactive data manipulation and retrieval interface to *data from the Swarm mission* ("Swarm Data") supplied by the *European Space Agency* ("ESA"). Development and operation are performed by *EOX IT Service GmbH* ("EOX") for ESA. The term "Service Provider" used below refers to EOX.

Access to, and use of, the Service constitutes acceptance of the following Service Terms as well as the [ESA Data Terms](#) which govern the use of ESA's Swarm Data made available on the Service. In the event of conflict or inconsistencies between these Service Terms and the ESA Data Terms, the provisions of the ESA Data Terms prevail.

## Use of the Service

To use the Service the user is required to sign-up to receive an account either through direct registration or by using a social media provider. The user is required to provide his/her real name and warrants that all data provided are accurate and up-to-date. A user may at any point request cancellation of this account by sending an email to [support@vires.services](mailto:support@vires.services).

When using the Service the user shall be obliged to observe the following:

- a. The user does not have any right or entitlement to be registered for the Service. The Service Provider may refuse registration of the user without giving reasons.
- b. The user shall comply with all applicable laws when using the Service and not misuse or in any way interfere with the Service, nor shall the user attempt to circumvent or bypass any access restriction implemented on the Service.
- c. The user shall utilize the Swarm Data provided on the Service exclusively in accordance with the provisions of the ESA Data Terms. All other rights in relation to the Service or any content displayed on the Service, which are not explicitly granted to the user under the ESA Data Terms or hereunder, are reserved by the Service Provider, ESA or their suppliers.
- d. The user shall not delete any author attributions, legal notices, proprietary designations or labels from any file that is downloaded from the Service nor falsify the origin or source of software or other material contained in a file that is downloaded.
- e. The user is solely responsible for keeping the user account and login-data secure and accepts to be fully liable for all activities occurring under that account. The user will promptly notify the Service Provider, if the user becomes aware of any unauthorized use

of, or access to, the Service through the user's account, including any unauthorized use of the user's password or account.

A violation of the foregoing, abuse (in particular through unlawful use), excessively frequent requests of the Service or any other use of the Service that in the Service Provider's judgement threatens the security, integrity or availability of the Service may result in the temporary or permanent suspension of the user account, in individual cases, it may also entitle the Service Provider to claim for damages. The Service Provider, in its sole discretion, will determine unlawful, abusive, excessive or otherwise inappropriate usage.

### **Use of Swarm Virtual Research Environment**

The *Virtual Research Environment* ("VRE") is a cloud service to provide an interactive computational environment to help exploit Swarm Data. The system uses an open source system and is integrated with the Service. In order to use the VRE the user must create an account with the Service.

These Service Terms as well as the ESA Data Terms equally apply to the VRE. Thus, any reference to the "Service" herein shall be understood to also include the VRE. In addition, when using the VRE the user shall be obliged to observe the following:

- a. The use of Swarm Data in the context of the VRE is subject to the ESA Data Terms. Moreover, any use of the VRE outside the scope of application of the ESA Data Terms shall be strictly limited to non-commercial research purposes. In particular, the VRE shall not be used to create and/or provide commercial products or services. In the case of an intended commercial use of the VRE special permission by the Service Provider is required (please contact: [info@vires.services](mailto:info@vires.services)).
- b. The user shall be solely responsible for the content of, and for any harm resulting from, any data posted, uploaded, linked to or otherwise made available via the VRE ("User-Generated Content"). In particular, the user warrants that such user data does not contain harmful components, violate any applicable laws or infringe third-party rights. The Service Provider and ESA disclaim all responsibility and liability for User-Generated Content made available on the VRE.
- c. The Service Provider does not pre-screen User-Generated Content but retains the right to access and review such content at its sole discretion (e.g. for maintenance purposes or in the case of irregularities). The Service Provider reserves the right – though without accepting any obligation – to refuse or remove any User-Generated Content that, in the Service Provider's sole discretion, violates these Terms or otherwise threatens the security, integrity or availability of the VRE.

A violation of the foregoing, abuse (in particular through unlawful use), excessively frequent requests of, or uploads to, the VRE or any other use of the VRE that in the Service Provider's judgement threatens the security, integrity or availability of the VRE may result in the temporary or permanent suspension of the user account, in individual cases, it may also entitle the Service

Provider to claim for damages. The Service Provider, in its sole discretion, will determine unlawful, abusive, excessive or otherwise inappropriate usage.

### **License for User-Generated Content on the VRE**

The user retains ownership of his/her User-Generated Content. The user grants the Service Provider and its legal successors the right to store, parse and display User-Generated Content and make incidental copies as necessary to provide the VRE including storing the content in own data bases, creating backups, parsing it into a search index or otherwise analyzing it on own servers and executing it.

The license does not grant the Service Provider the right to sell User-Generated Content or otherwise distribute it, unsolicitedly display it to or share it with other users, or use it outside of the provision of the Service. The user will not receive any remuneration for any of the rights granted hereunder and the license will end when the user removes the content from the Service Provider's servers.

The user retains all moral rights to the User-Generated Content uploaded, published, or submitted to any part of the Service, including the rights of integrity and attribution. However, the user waives these rights and agrees not to assert them against the Service Provider, to enable the Service Provider to reasonably exercise the rights granted hereunder, but not otherwise. To the extent this agreement is not enforceable by applicable law, the user grants the Service Provider the rights needed to use the User-Generated Content without attribution and to make reasonable adaptations of User-Generated Content as necessary to provide the Service.

By making available User-Generated Content on the VRE the user grants each user of the VRE a nonexclusive, worldwide license to – exclusively for non-commercial research purposes – use, display, and perform the content through the VRE and to reproduce the content solely on the VRE as permitted through VRE's functionality. If the user is uploading content that the user did not create or owns, the user is responsible for ensuring that the content is licensed under terms that grant these permissions to other users of the VRE.

### **User Feedback**

To the extent the user provides any comments, ideas, changes or other feedback to the Service Provider regarding the Service or the VRE, the user grants the Service Provider a perpetual, irrevocable, worldwide, non-exclusive, transferable, sublicensable, royalty-free, fully paid-up right to use and commercially exploit such information in any manner the Service Provider deems fit.

### **Disclaimer of Liability, Warranties and Indemnification**

Please note that users browse and use the Service at their own risk. Neither the Service Provider nor any other party involved in creating, producing or delivering the Service, including ESA, shall be liable for any direct, incidental, consequential, indirect or punitive damages arising out of Users' access to, or use of, the Service. To the extent required by mandatory law, this limitation of liability shall not apply in case of intent or blatant gross negligence of the Service Provider or in the event of personal injury.

Though the Service Provider uses the best technical standards to control its Service, material on this website may inadvertently include technical inaccuracies or other errors. The Service Provider makes no warranties, whether express, implied, statutory or otherwise, as to the uninterrupted or error-free availability of the Service, fitness of the Service for any particular requirements or purposes of the User, merchantability, non-infringement of third party rights or the absence of viruses or other harmful components. Users are obliged to notify the Service Provider of any harmful components, errors or inaccuracies they may find.

The User shall hold the Service Provider harmless from and assist in the defense against any and all claims and demands raised by third parties, including associated expenses (particularly costs of appropriate legal representation and/or experts' fees), insofar as the claims/demands can be attributed to the User's access to, or use of, the Service.

The Service Provider reserves the right to update, modify or reconfigure the Service or change material on the Service at any time without prior notice.

#### **Access and availability of service and links**

The Service may contain links and references to third-party websites. These are provided for the convenience and interest of the user and on the part of the Service Provider this implies neither responsibility for, nor approval of, information contained in these websites. The Service Provider makes no warranty, either express or implied, as to the accuracy, availability or content of information, text or graphics on third-party websites. The Service Provider has not tested any software located on other sites and does not make any representation as to the quality, safety, reliability or suitability of such software.

#### **Severability, Jurisdiction and Applicable Law**

If any part of these Service Terms is held invalid or unenforceable, that portion of the Service Terms will be construed to reflect the parties' original intent. The remaining portions will remain in full force and effect. Any failure on the part of the Service Provider to enforce any provision of these Service Terms will not be considered a waiver of the right to enforce such provision. The rights of the Service Provider under these Service Terms will survive any termination of the contractual relationship or deletion of the user account.

All disputes between the user and the Service Provider including the question of the valid conclusion of these Service Terms as well as its preliminary and subsequent contractual effects, shall be exclusively settled by the court having jurisdiction over the subject matter in Vienna, Austria. The Service Provider however may sue at any other competent court.

Except to the extent applicable law provides otherwise, these Service Terms and any access to or use of the Service shall be governed by, construed and enforced in accordance with the substantive laws of Austria excluding application of its conflict of laws provisions as well of the Convention on International Sales of Goods (CISG).

\*\*\*