



BY CLICKING ACCEPT, USER AGREES TO BE BOUND BY THE TERMS AND CONDITIONS SET FORTH IN THIS COMMERCIAL USER LICENSE AGREEMENT (“CULA”) TOGETHER WITH ATTACHMENT A FOR ACCESSING DATA AND STREAMS FROM EARTHSCOPE.

Definitions.

“**Access**” means a single connection, along with a redundant connection, to Data, a Data port, or EARTHSCOPE’s translator caster by User.

“**Accesses**” means two or more connections to Data, Data ports, or EARTHSCOPE’s translator caster by User.

“**Calendar Year**” means January 1st through December 31st every year.

“**Day**” means a continuous 24-hour period.

“**Data**” means Real-time GNSS observations or processed products (Positions, TEC, etc.) streaming from a Station or EARTHSCOPE-operated software.

“**Data Stream**” or “**Stream**” means a singular set of all observation Data or processed product generated from Data from a EARTHSCOPE-operated GNSS station.

“**Data Streams**” or “**Streams**” means multiple Data Streams from more than one EARTHSCOPE-operated GNSS stations.

“**Educator**” means a bona fide educator accessing and utilizing Data solely for educational or academic purposes and publishing or distributing results without fee to other parties nor on a for-profit basis.

“**Effective Date**” shall mean the timestamp of the acceptance of the Terms and Conditions by purchasing access to Data Streams.

“**GAGE**” means The Geodetic Facility for the Advancement of Geoscience.

“**Leap Year**” means a Calendar Year that includes 29th day of February.

“**Month**” means 30 continuous days.

“**NSF**” means the National Science Foundation.

“**Real Time**” means Data available to a USER in 24-hours or less from the time of collection.

“**Renewal Date**” means the month and day of the Effective Date of the following calendar year.

“**Researcher**” means any bona fide researcher accessing and utilizing Data for research purposes on behalf of a scientific or academic organization and publishing or distributing results without fee to other parties nor on a for-profit basis.

“**Scientific User**” means an Educator, Researcher, or other user of the Data for scientific, humanitarian, public benefit, or other greater good usage.

“**Seat**” means a single access connection to a Data Stream.

“**Station**” means a geodetic GNSS station EARTHSCOPE operates.

“**User**” means the person/entity accessing the Data through this CULA.

“**User Access Portal**” means the EarthScope connection page through which User creates a login to access Data.

“**Year**” means 365 continuous days, or 366 continuous days during a Leap Year, commencing on the Effective Date.

Grant of License.

- a. Subject to the terms in this CULA, and the terms and conditions of EARTHSCOPE’s NSF award to operate GAGE, EARTHSCOPE hereby grants to USER a non-exclusive, royalty-free license to access Data Streams from one or more Stations operated by EARTHSCOPE. Streams may be delivered in a variety of formats.
- b. This CULA governs any and all Data Streams accessed through EARTHSCOPE. Data Streams may be accessed through a variety of data-handling protocols and software tools.

Title to Data.

- a. EARTHSCOPE represents and warrants that EARTHSCOPE has the legal right to enter into, perform, and uphold its obligations under this CULA.

Duration and Termination.

- a. This CULA is valid for one (1) Year from the Effective Date.
- b. This CULA shall automatically renew on the Renewal Date, subject to any and all updated or revised terms and conditions.
- c. USER shall have the option to terminate this CULA with written notice to EARTHSCOPE at least thirty (30) days prior to the Renewal Date. Such termination shall take effect on the Renewal Date.
- d. The CULA may be terminated immediately for a breach of a material provision by USER.
- e. Should NSF terminate or transfer EARTHSCOPE’s award to operate GAGE, this CULA shall automatically transfer to the new GAGE operator.

Fees.

The fee for access to Data (“Fee”) shall be determined by the total number of Accesses requested for the duration of this CULA.

- a. The cost to USER shall be one thousand United States dollars per Station Data Seat per Year (\$1,000USD/Seat/Year).
- b. The total Fee due under this CULA shall be determined upon checkout in the User Access Portal.
- c. USER agrees to pay this Fee in full upon execution of this CULA.

Maintenance and Support.

- a. USER understands and accepts that EARTHSCOPE offers Data and Streams under this CULA “As Is” and has no obligations to provide support services for the Data or Streams.
- b. EARTHSCOPE does not make any warranty, guarantee, or representation as to the quality, reliability, or availability of Data or Streams from any Station.
- c. USER understands and acknowledges that EARTHSCOPE does not guarantee the availability of Data from any Station at any given time. EARTHSCOPE does not guarantee the completeness or latency of Data from any Station at any given time.

Infringement Acknowledgement.



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- a. USER will bear all responsibility and liability for any copyright infringement that may arise from USER's usage of the Data and Stream where such copyright infringement is caused by any modifications or derivative works of the Data and Stream by User in connection with a User Product

Transferability and Assignability.

- b. USER shall not transfer or assign USER's rights or obligations under this CULA.
- c. EARTHSCOPE may assign and/or transfer EARTHSCOPE's rights or obligations under this CULA to another party without notice to USER.

Jurisdiction.

- a. This CULA shall be governed by the laws of the District of Columbia, without regard to conflicts of laws provisions thereof. Any legal action or proceeding arising from or relating to this CULA shall be brought forth exclusively in the District of Columbia, and USER accepts and consents to the jurisdiction thereof.
- b. In the event that USER is found to have violated such laws or terms of this CULA, resulting in a liability for EARTHSCOPE, including but not limited to defense costs, a settlement, or judgment, USER agrees to reimburse EARTHSCOPE for resulting costs and/or liabilities, and this CULA may be subject to early termination.

Warranty Disclaimer.

EARTHSCOPE EXPRESSLY DISCLAIMS ANY WARRANTY FOR THE DATA, DATA STREAMS, OR ACCESS PROTOCOLS. THE DATA STREAMS ARE PROVIDED TO USER "AS IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO AND WITHOUT LIMITATION, NON-INFRINGEMENT AND DOWN-STREAM VALUE-ADD.

Limitations of Liability.

EARTHSCOPE SHALL NOT BE LIABLE TO USER, OR ANY OTHER PERSON, ENTITY, OR THIRD-PARTY CLAIMING THROUGH USER ANY LOSS OF DATA, STREAMS, PROFITS, INCOME, SAVINGS, OR ANY OTHER CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE, DIRECT, OR INDIRECT DAMAGES, REGARDLESS OF WHETHER ARISING IN CONTRACT, WARRANTY, TORT, OR OTHERWISE. THESE LIMITATIONS SHALL APPLY REGARDLESS OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. UNDER NO CIRCUMSTANCES SHALL EARTHSCOPE'S AGGREGATE LIABILITY TO USER, OR ANY OTHER PERSON, ENTITY OR THIRD-PARTY CLAIMING THROUGH USER, EXCEED THE TOTAL AMOUNT PAID BY USER TO USE DATA AND STREAMS UNDER THIS CULA.

Severability.

- a. Should any clause in this CULA be held illegal, unenforceable, or otherwise unlawful, the remainder of this CULA shall remain in full force and effect.



- b. The exercise or waiver of rights under this CULA shall not preclude further exercise or waiver of rights for any other right hereunder.

Entire Agreement.

This CULA constitutes the entire agreement between EARTHSCOPE and USER, and replaces, terminates, and supersedes all prior understandings, statements, representations, and understandings, written and oral, between EARTHSCOPE and USER. USER agrees to all terms and conditions enumerated herein.

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ATTACHMENT A: **Terms and Conditions**

1. General Definitions.

“**Affiliate**” means an entity which, directly or indirectly, owns or controls, is owned or is controlled by or is under common ownership or control with User. As used herein, “control” means the power to direct the management or affairs of an entity, and “ownership” means the beneficial ownership of 50% (or, if the applicable jurisdiction does not allow majority ownership, the maximum amount permitted under such law) or more of the voting equity securities or other equivalent voting interests of the entity.

“**User Product**” means any or all of User’s or its Affiliates’ hardware, software, SaaS, website, services or other products or offerings of any type, whether presently existing or later developed, that are developed or marketed in whole or in part by or for User or its Affiliates.

“**Contractor**” means any third-party employed by User to perform services on behalf of User.

“**Intellectual Property Rights**” means any and all right, title and interest in and to any and all trade secrets, patents, copyrights, service marks, trademarks, know-how, trade names, rights in trade dress and packaging, moral rights, rights of privacy, publicity, database rights and similar rights of any type, including any applications, continuations or other registrations with respect to any of the foregoing, under the laws or regulations of any foreign or domestic governmental, regulatory or judicial authority.

“**Make Available**” means to copy, distribute, publicly perform or display, or otherwise make available to third parties and to reformat, modify and create derivative works in connection with such activities. Derivatives of “Make Available” have corresponding meanings.

“**Third Party Terms**” means any term of use, terms of service, privacy policy, proprietary license, Open Source Materials license, free software license, free document license or other similar license or terms of any kind which seek to govern access to, use of or distribution of any data, code or service (including, without limitation, the GNU FDL, any Creative Commons License or the terms of use or service of any Internet site). Third Party Terms includes any policies or terms of EARTHSCOPE itself to the extent any element of the Data was collected from its own users, developers or other third parties subject to any such terms.

2. Access to Data.

2.1 Grant. EARTHSCOPE hereby grants to User for the Term a fee bearing, access right to Make Available the Data, in each case directly and indirectly as part of User Correction Services and in connection with or as part of a User Product comprising User GNSS Positioning Service. This includes the right for User to allow users to access, use and modify the Data, to combine the Data with other data and generate derivate data sets thereof.

2.2 Use by Affiliates and Contractors. User Affiliates and Contractors are entitled to use the Data in accordance with this Agreement and have and are entitled to all rights, benefits, and protections granted to User pursuant to this Agreement with respect to such Data.

3. Data Obligations.

3.1 Delivery. EARTHSCOPE will make available the Data to User in the latest available format and per the parameters set forth in this Agreement and otherwise comply with the Data related obligations set forth in this Agreement. EARTHSCOPE shall publish the intent to update Data formats to User no less than thirty (30) days prior to the release of the new format.

4. Intellectual Property Rights.

4.1 EARTHSCOPE’s Rights. To the extent the elements of the Data constitute protectable Intellectual Property Rights under applicable laws EARTHSCOPE grants to User under these rights a license pursuant to this Agreement. Notwithstanding the foregoing, this Agreement does not affect any right that User would have had, or will have, independent of this Agreement, including, but not limited to, fair use rights under applicable copyright and trademark laws in the United States and other jurisdictions.

4.2 User Rights. As between EARTHSCOPE and User, User retains all right, title and interest (including all Intellectual Property Rights) in and to User Products and to any modifications or derivative works of Data made by User hereunder.

5. Payment; Taxes.

User will pay EARTHSCOPE the fees, if any, set forth in Section 4 for access to the Data delivered under this Agreement and no other consideration shall be due. Each party shall be solely responsible for its expenses and costs of performing under this Agreement. Unless otherwise stated, User will pay all properly

issued invoices net thirty (30) days from receipt. User will not be responsible to pay any taxes arising under this Agreement unless such taxes are specified in this Agreement and each applicable invoice and are properly allocable to User under applicable law. User may withhold from payments to EARTHSCOPE any taxes required to be withheld by User under applicable law.

6. Term and Termination.

6.1 Term. This Agreement is effective as of the date of execution and will remain in effect until Renewal Date.

6.2 Termination. EARTHSCOPE may terminate this License if User (i) fails to cure any material breach of this License immediately upon notice of such breach, (ii) ceases operation without a successor; or (iii) seeks protection under any bankruptcy, receivership, trust deed, creditors arrangement, composition or comparable proceeding, or if any such proceeding is instituted against such party (and not dismissed within 60 days thereafter). Termination is not an exclusive remedy and the exercise by either party of any remedy under this Agreement will be without prejudice to any other remedies it may have under this Agreement, at law, or otherwise.

6.3 Survival. Sections 1 (Definitions), 2 (Access to Data), 4 (Intellectual Property Rights), 6 (Term and Termination), 7 (Warranties of EARTHSCOPE), 8 (Warranty Disclaimer), 9 (Limitation of Liability), 10 (Indemnification), 11 (Confidential Information and Publicity) and 12 (General) will survive any termination or expiration of this Agreement. For the avoidance of doubt, irrespective of any expiration or termination of this Agreement, User's rights with respect to any Data in User's possession or otherwise Made Available as of the date of termination will survive.

7. Warranties of EARTHSCOPE. EARTHSCOPE represents and warrants as follows:

7.1 Due Authority. EARTHSCOPE has the requisite power and authority to enter into and carry out the terms of this Agreement and has and will have the right and power to grant the access and rights granted to User, and its performance under this Agreement will not conflict with any other obligation EARTHSCOPE may have to any other party.

7.2 All Necessary Rights. The Data has been and will be independently created by EARTHSCOPE's employees, or EARTHSCOPE has procured all necessary rights and licenses from the owners of such rights to enter into and carry out the terms of this Agreement, and in either case the exercise of User's rights under this Agreement will not require the acquisition of rights from or payment of money to any third party.

7.3 No Third-Party Terms Obligations. The Data is not subject to any Third-Party Terms and was not created, collected or processed in any manner which violates any Third-Party Terms. Furthermore, User's exploitation of the Data in

accordance with its access under this Agreement will not subject User to, nor cause User to violate, any Third-Party Terms. User is not required to provide any copyright, license, or other notice or attribution in connection with its use or distribution of the Data under any Third-Party Terms or otherwise.

7.4 Compliance with Laws. EARTHSCOPE's performance under this Agreement and all Data are and shall be in compliance with all applicable foreign and domestic federal, state and local laws and government rules and regulations (including, without limitation, any laws, directives or regulations relating to databases, data collection, data transfer or rights of publicity or privacy).

7.5 No Disablement. In no event will EARTHSCOPE, its agents or employees or anyone acting on its behalf, disable, throttle, rate limit or otherwise interfere, in whole or in part, with User's use of or access to the Data without the written notice to User, whether or not such activity is in connection with any dispute between the parties or otherwise.

8. Warranty Disclaimer. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, NEITHER PARTY MAKES ANY WARRANTIES, EITHER EXPRESS OR IMPLIED, AND EACH PARTY EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

9. Limitation of Liability.

9.1 NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING LOST PROFITS), REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE.

9.2 NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, USER'S ENTIRE LIABILITY UNDER THIS AGREEMENT SHALL NOT EXCEED THE AMOUNT PAYABLE BY USER TO EARTHSCOPE UNDER THIS AGREEMENT.

9.3 THE PROVISIONS OF THIS SECTION 9 SHALL NOT APPLY TO EARTHSCOPE WITH RESPECT TO ANY CLAIM UNDER SECTION 10 (INDEMNIFICATION) OR SECTION 11 (CONFIDENTIAL INFORMATION AND PUBLICITY).

9.4 The Parties agree that the limitations specified in this Section 9 will survive and apply even if any limited remedy specified in this Agreement is found to have failed of its essential purpose.

10. Indemnification. Each Party hereby agrees to defend, indemnify and hold harmless the other Party, its Affiliates, and

each of their respective officers, directors, employees, representatives, licensees and agents (each, an “**Indemnified Party**”), from and against and in respect of any and all claims, demands, actions, losses, liabilities, costs, expenses and damages of any kind or nature (including, but not limited to, reasonable attorneys’ fees) arising out of: (a) any breach or default of any of the representations, warranties, covenants or obligations of either Party hereunder, or (b) either Party’s gross negligence or willful misconduct. An Indemnified Party may participate in the defense of any such claims by counsel of its own choosing, at its own cost and expense. Either Party shall not settle any claim without an Indemnified Party’s prior written consent if the settlement requires the Indemnified Party to take any action, refrain from taking any action, cease using the Data, or admit any liability.

11. Confidential Information and Publicity.

11.1 Confidential Information. Each party (“**Receiving Party**”) agrees that all code, inventions, know-how, business, technical and financial information it obtains from the disclosing party (“**Disclosing Party**”) constitute the confidential property of the Disclosing Party (“**Confidential Information**”), provided that it is identified in writing as confidential at the time of disclosure or, if disclosed verbally, is identified as confidential in writing within thirty (30) days of the disclosure. The terms of this Agreement, and any not previously publicly disclosed information about User’s business, finances, information systems, products or technology provided User to EARTHSCOPE under this Agreement is hereby deemed to be Confidential Information of User without any further marking or designation. Except as expressly authorized herein, the Receiving Party will hold in confidence and not use or disclose any Confidential Information. The Receiving Party’s nondisclosure obligation will not apply to information which the Receiving Party can document: (a) was rightfully in its possession or known to it prior to receipt of the Confidential Information; (b) is or has become public knowledge through no fault of the Receiving Party; (c) is rightfully obtained by the Receiving Party from a third party without breach of any confidentiality obligation; (d) is independently developed by employees of the Receiving Party who had no access to such information; or (e) is required to be disclosed pursuant to a regulation, law or court order (but only to the minimum extent required to comply with such regulation or order and with advance notice to the Disclosing Party). The Receiving Party acknowledges that any actual or threatened disclosure of Confidential Information may cause substantial harm for which damages alone may not be a sufficient remedy, and therefore that upon any such disclosure by the Receiving Party the Disclosing Party will be entitled to seek appropriate equitable relief in addition to whatever other remedies it might have at law.

11.2 Return of Materials. Upon termination of this Agreement for any reason, or upon earlier request by User, EARTHSCOPE shall promptly destroy or (if specifically

requested) return to User all documents or materials of any nature in EARTHSCOPE’s possession, custody or control (regardless of the media in which such documents or materials are stored) that have been furnished by User to EARTHSCOPE, or reproduced or developed by EARTHSCOPE or its subcontractors based on User’s Confidential Information.

12. General

12.1 Assignment. This Agreement will bind and inure to the benefit of each Party’s permitted successors and assigns. Neither Party shall assign this Agreement (or any part thereof) without the prior written consent of the other Party, except that EARTHSCOPE may assign this Agreement to an Affiliate or in connection with a merger, reorganization, acquisition or other transfer of all or substantially all of its assets and/or voting securities. Any attempt to transfer or assign this Agreement except as expressly authorized under this Section 12.1 will be null and void.

12.2 Severability. If any provision of this Agreement shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited to the minimum extent necessary so that this Agreement shall otherwise remain in effect.

12.3 Governing Law; Jurisdiction and Venue. This Agreement and all related actions and proceedings shall be governed by the laws of the District of Columbia and the United States without regard to conflicts of laws provisions thereof, and without regard to the United Nations Convention on the International Sale of Goods.

12.4 Attorneys’ Fees and Costs. The prevailing party in any action to enforce this Agreement will be entitled to recover its attorneys’ fees and costs in connection with such action.

12.5 Notices. Any notice hereunder shall be in writing to the notice address set forth above and shall be deemed given: (i) upon receipt if by personal delivery; (ii) upon receipt if sent by certified or registered U.S. Mail (return receipt requested); or (iii) one day after it is sent if by next day delivery by a major commercial delivery service.

12.6 Amendments; Waivers. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by a duly authorized representative of each party to this Agreement. No waiver will be implied from conduct or failure to enforce or exercise rights under this Agreement, nor will any waiver be effective unless in a writing signed by a duly authorized representative on behalf of the party claimed to have waived.

12.7 Independent Contractors. The Parties to this Agreement are independent contractors. There is no relationship of partnership, joint venture, employment, franchise or agency



created hereby between the parties. Neither party will have the power to bind the other or incur obligations on the other party's behalf without the other party's prior written consent.

12.8 Force Majeure. Neither party shall be liable to the other for any delay or failure to perform any obligation under this Agreement if the delay or failure is due to unforeseen events, which occur after the signing of this Agreement and which are beyond the reasonable control of the parties, such as strikes, blockade, war, terrorism, riots, natural disasters, government shutdowns, lack of government funding, or refusal of license by the government or other governmental agencies, in so far as such

an event prevents or delays the affected party from fulfilling its obligations and such party is not able to prevent or remove the force majeure at reasonable cost.

12.9 Bankruptcy. The parties acknowledge and agree that, in the event of bankruptcy of EARTHSCOPE, the access granted to User under this Agreement constitute "access to intellectual property" subject to Section 365(n) of the United States Bankruptcy Code, and that User shall be entitled to all rights and benefits of such Section 365(n) in accordance with its terms and conditions.