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**BY CLICKING ACCEPT, USER AGREES TO BE BOUND BY THE TERMS AND CONDITIONS SET FORTH IN THIS COMMERCIAL USER LICENSE AGREEMENT (“CULA”).**

**1. Definitions.**

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

“**Connection Point**” means the authenticated access point by which EARTHSCOPE provides or facilitates USER’s Connection(s) through a variety of data-handling protocols and software tools.

“**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 by a Station.

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

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

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

“**Station**” means a geodetic GNSS station EARTHSCOPE operates or from which EARTHSCOPE obtains Data.

“**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.

**2. Grant of License.**

a. Subject to and conditioned on USER’s payment of Fees and compliance with all other terms and conditions of this CULA, and the terms and conditions of EARTHSCOPE’s NSF award to operate GAGE, EARTHSCOPE hereby grants to USER a non-exclusive license to use the Connection Point to access Data Streams from one or more Stations. Streams may be delivered in a variety of formats.

b. This CULA governs any and all access to Data or Data Streams accessed through EARTHSCOPE.

c. The license granted under this Section 2 covers User’s authenticated Connection only. The use of the underlying Data is licensed separately as set out in Section 3.

d. The User Access Portal and Connection Point may have technological measures designed to prevent unauthorized or illegal use of the Connection Point or access the Data. USER acknowledges and agrees that: (a) EARTHSCOPE may use these and other lawful measures to verify USER’s compliance with the terms of this CULA and enforce EARTHSCOPE’s rights, including all intellectual property rights, in and to the Connection Point and Data; (b) EARTHSCOPE may deny any individual access to the DATA if EARTHSCOPE, in its sole discretion, believes that person’s access to or use of DATA would violate any provision of this Agreement, regardless of whether USER designated that person as an authorized user; and (c) EARTHSCOPE may collect, maintain, process and use diagnostic, technical, usage and related information, including information about USER’s computers, systems and software, that EARTHSCOPE may gather periodically to improve the performance of the Connection Point. This information will be treated in accordance with EARTHSCOPE’s Privacy Policy, as amended from time to time, which can be viewed at: <https://www.earthscope.org/privacy-policy/>.

**3. License to Data.**

The Data and Streams accessed under this License are compiled and provided to User under a Creative Commons Attribution 4.0 International Public License (“CC BY 4.0”). The terms of the CC BY 4.0 license are hereby incorporated by reference. By accessing Data, USER agrees that the terms of the CC BY 4.0 governs USER’s use of Data and Streams.

#### **4. Term and Termination.**

- a. This CULA is valid for one (1) year from the Effective Date (the “Initial Term”).
- b. After the Initial Term, this CULA shall automatically renew, subject to any and all updated or revised terms and conditions, for successive 1-year periods (each a “Renewal Term”), unless earlier terminated pursuant to this Agreement's express provisions.
- c. USER shall have the option to terminate this CULA with written notice to EARTHSCOPE at least thirty (30) days prior to the expiration of the then-current term.
- 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.

#### **5. Fees.**

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

- a. The cost to USER shall be one thousand United States dollars per Connection per year (\$1,000USD/Connection/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 for the Initial Term in full upon execution of this CULA. The Fee for each Renewal Term will be automatically charged to USER at the commencement of the Renewal Term.
- d. All Fees and other amounts payable by USER under this CULA are exclusive of taxes and similar assessments. USER is responsible for all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, or local governmental or regulatory authority on any amounts payable by USER hereunder, other than any taxes imposed on EARTHSCOPE’s income.

#### **6. 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 Connection, Connection Point, Data, or Streams.
- b. EARTHSCOPE does not make any warranty, guarantee, or representation as to the quality, reliability, or availability of any Connection, Connection Point, Data, or Streams.
- c. USER understands and acknowledges that EARTHSCOPE does not guarantee the availability or accuracy 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.

#### **7. Infringement Acknowledgement.**

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.

**8. Transferability and Assignability.**

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

**9. 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.

**10. Attorneys' Fees and Costs.**

The prevailing party in any action to enforce this CULA is entitled to recover its attorneys' fees and costs in connection with such action.

**11. Attribution.**

Pursuant to CC BY 4.0, which governs USER's use of Data, User is required to properly attribute the Data and compiled Data to EARTHSCOPE in all derivative works used, created, disseminated, distributed, copied, or sold by User. The failure to attribute the Data accessed by User to EARTHSCOPE under this License may constitute a breach of this License and can result in termination of User's account and access to the Data.

**12. Warranty Disclaimer.**

EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, EARTHSCOPE MAKES NO WARRANTIES, EITHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, AND EARTHSCOPE EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. EARTHSCOPE EXPRESSLY DISCLAIMS ANY WARRANTY FOR THE CONNECTION, CONNECTION POINT, DATA, DATA STREAMS, OR ACCESS PROTOCOLS. THE DATA STREAMS ARE PROVIDED TO USER "AS IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO AND WITHOUT LIMITATION, NON-INFRINGEMENT AND DOWN-STREAM VALUE-ADD, OR THAT THE DATA OR STREAMS ARE ACCURATE, COMPLETE, OR ERROR FREE.

**13. Limitations of Liability.**

EARTHSCOPE SHALL NOT 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. 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,



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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 FOR A SINGLE YEAR TO ACCESS DATA AND STREAMS UNDER THIS CULA.

**14. 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.

**15. Severability.**

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.

**16. 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, pandemic, 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.

**17. 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

**18. 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.

**19. Survival.**



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Any rights or obligations of the parties set forth in this CULA, which, by their nature, should survive termination or expiration of this Agreement, including without limitation Sections 1 (Definitions), 3 (License to Data), 4 (Term and Termination), 12 (Warranty Disclaimer), 13 (Limitation of Liability), and 14 (Indemnification), will survive any such termination.

**20. Amendment.**

EARTHSCOPE may amend this CULA from time to time by posting an amended version at its website and sending USER written notice thereof. Such amendment will be deemed accepted and become effective 30 days after such notice (the “Proposed Amendment Date”) unless USER first gives EARTHSCOPE written notice of rejection of the amendment. In case of such rejection, this CULA will continue under its original provisions, and the amendment will become effective at the start of USER’s next Renewal Term following the Proposed Amendment Date (unless USER first terminates this CULA pursuant to Section 4, Term & Termination). USER’s continued use of the Access Portal following the effective date of an amendment will confirm USER’s consent thereto. This CULA may not be amended in any other way except through a written agreement by authorized representatives of each party.

**21. Waiver.**

The exercise or waiver of rights under this CULA shall not preclude further exercise or waiver of rights for any other right hereunder. No waiver will be implied from conduct or failure to enforce or exercise rights under this CULA, 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.

**22. Compliance with Law.**

USER represents and warrants that it is in compliance with and shall comply with all applicable laws, regulations, and ordinances.

**23. 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.

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