



CAPELLA TERMS AND CONDITIONS

These Terms and Conditions and related exhibits, schedules and attachments together with either a Capella Sales Quotation or order form, as applicable, describing the Capella Products and Services ordered (each, an “Order”), once accepted and signed by both Customer and Capella becomes an accepted Order (each, an “Accepted Order”), together with the End User License Agreement (the “EULA”) applicable to Customer’s license and use of Products, collectively represent the entire agreement between Capella Space Corp., a Delaware corporation, with its principal place of business at 397 S. Taylor Ave. Louisville, CO 80027 (“Capella”), and Customer for the license of Products and/or use of Services (collectively, the “Agreement”). The Agreement constitutes a legally binding contract between Capella and the Customer identified in the relevant Accepted Order. If Customer does not agree to the terms and conditions of the Agreement, do not submit an Order for the access, download or use of any Capella Product or Service.

1. DEFINITIONS.

Capitalized terms used in the Agreement are defined in Exhibit A to these Terms and Conditions.

2. ORDER PROCESSING

- 2.1 **Order Development and Acceptance.** Customer may order Products and/or Services by submitting a Capella Order form via Capella’s ordering process. Neither Customer nor Capella shall be obligated under an Order until both Customer and Capella have signed the Order at which time it becomes an Accepted Order. The Order shall at a minimum describe the Products and/or Services to be licensed or provided to Customer, the Fees payable to Capella for such Products and/or Services and reference these Terms and Conditions as governing the Order. Each unaccepted Order automatically expires on the expiry date in the Order unless extended in writing by Capella. Capella may accept or reject any Customer Order in Capella’s sole discretion.
- 2.2 **Cancellation.** Customer may cancel an Accepted Order, provided, that Customer shall pay Capella the cancellation fees applicable to such Product or Service set forth in the then current Capella Product Guide.
- 2.3 **Regulatory Limitations or Restrictions.** Customer understands that each Accepted Order may be subject to collection or dissemination restrictions imposed by the U.S. Government and Capella reserves the right, in its sole discretion, without liability or penalty, to (a) modify such Accepted Order or the Products and Services quoted therein as necessary to comply with any regulatory requirements with written notice to Customer or (b) terminate such Accepted Order in accordance with Section 12.3 of these Terms and

Conditions.

- 2.4 **Conflicts.** In the event of any conflict or inconsistency, the provisions of these Terms and Conditions shall govern over the EULA and an Accepted Order, unless an Accepted Order expressly references the conflicting or inconsistent provision and provides that the provisions of the Accepted Order shall govern.

3. PRODUCTS; SERVICES

- 3.1 Customer is responsible for determining which Products and Services best meet its needs. Capella reserves the right to (a) provide the Products and Services to Customer using any combination of satellites, ground station and imagery processing infrastructure, hardware, software or delivery systems in Capella’s sole discretion and (b) discontinue collecting, licensing or distributing any Product or Service or to change the Product or Services at its discretion at any time.
- 3.2 **End User License Agreement; Third Party Licensors.** Products and Documentation are licensed and not sold under the Agreement in accordance with the terms, conditions and restrictions of the EULA, whether acquired directly or in connection with a Service. The applicable EULA terms, conditions and restrictions, are available for your review at: <https://www.capellaspace.com/customers/product-documentation/data-licensing/> and are incorporated by reference into the Agreement. For Capella Products or Services incorporating or using third party licensed content or data, Customer is responsible for complying with any

applicable third party licensing terms and conditions including, without limitation, any copyright or ownership attribution or legend requirements.

3.3 **Capella Console and API.** Unless another time period is expressly provided in an Accepted Order for access to the Products or for a Services Subscription Term, Customer shall have ninety (90) days after the Accepted Order Date to access and download or take delivery of the ordered Products or Services via the Capella Console and/or Capella API. Customer is permitted to access and use the Capella Console and/or Capella API on a non-exclusive basis for accessing Products in the archive and/or tasking the Capella satellite system to collect, process and deliver Products via the Capella Console. Customer shall comply with the Terms of Service for accessing and using the Capella Console and/or Capella API web-based sites and services.

4. DELIVERY

4.1 **Time of Delivery.** Any delivery date and/or suggested end collection date set forth in an Accepted Order is an estimate only. Capella will use commercially reasonable efforts to deliver any Product licensed under an Accepted Order. Capella shall not be liable under the Agreement if it fails to deliver such Products in accordance with a delivery date or any Services Subscription Term set forth in an Accepted Order.

4.2 **Method of Delivery.** Products ordered pursuant to an Accepted Order will be deemed delivered to a Customer when Capella notifies such Customer via an email sent to Customer's Capella Console account or otherwise that the Products are available for Customer access and downloading via the Capella Console. All Products are deemed accepted by Customer upon such delivery. All Services are deemed delivered and accepted by Customer when the Customer is granted access to the Services via the Capella Console and/or Capella API. Access means when Capella sends the Customer electronic notification by email or otherwise containing a link the Customer may click on to access the Services via the Capella Console and/or Capella API.

5. FEES; EXPENSES

5.1 **Fees.** Customer shall pay Capella the Fees for the Products and/or Services set forth in an Accepted Order. If Customer accesses Products and/or Services via the Capella Console, Capella API or otherwise beyond the scope of the Products and/or Services ordered in an Accepted Order ("Additional Products and Services"), Customer shall pay Capella the Fees for such Additional Products and/or Services in accordance with these Terms and Conditions. Unless otherwise provided in an Accepted Order, the Fees for Products and/or Additional Products and Services delivered in a month shall be invoiced by Capella at the beginning of the next month and shall be due and payable by Customer within thirty (30) days after the invoice date. The Fees for Services shall be invoiced at the beginning of the Services Subscription Term, and annually at the beginning of any renewal of the Services Subscription Term and shall be due and payable by Customer within thirty (30) days after the invoice date. All Fees paid for Products and Services are non-refundable, except as provided in Section 11.2. Any payments for invoices not being disputed in good faith by Customer and not received by the due date shall be subject to a late interest charge of 1.0% per month from the due date until paid or the maximum rate permitted by Applicable Law, whichever is lower.

5.2 **Payment in U.S. Dollars.** All payments referenced in the Agreement, an Accepted Order or invoice shall be made by Customer in U.S. Dollars unless otherwise expressly provided in an Accepted Order.

5.3 **Taxes.** All Fees do not include any sales, use, value-added, foreign withholding or other taxes, duties, fees, excises or tariffs imposed on the licensing, sale or use of the Products and/or Services (collectively, "Taxes"). Customer is responsible for, and if applicable will reimburse Capella within thirty (30) days of request, all Taxes and any related penalties, except for taxes imposed on Capella's net income. If Customer is required to withhold or deduct Taxes from payments, the amount due and payable to Capella must still equal the Fees that would otherwise be payable had the Taxes not been withheld or deducted. If Customer is tax exempt, Customer must provide Capella with reasonable evidence of its tax exempt status from the applicable taxing authority prior to Customer ordering Products or Services pursuant to an Order.

5.4 **Disputes; Delinquent Accounts.** Customer must notify us of any Fee dispute within fifteen (15) days of the invoice date. No Fee disputes will be permitted after such date. Once resolved, Customer shall pay those Fees within fifteen (15) days. Capella may, on notice to Customer, suspend or terminate the provision of Products or Services if you do not timely pay undisputed Fees.

6. CONFIDENTIALITY

6.1 **Confidential Information.** The term “Confidential Information” means any material or information disclosed by either Party to the other Party either directly or indirectly, in writing or orally, relating to a Party’s products or services, pricing, terms and conditions of the Agreement, marketing, product development plans, finances, or other business information or trade secrets, which is designated as “Confidential,” “Proprietary” or some similar designation, or other information, the confidential or proprietary nature of which is reasonably apparent under the circumstances. A Party’s Pre-Existing IP is Confidential Information whether or not designated as “Confidential,” “Proprietary” or a similar designation.

6.2 **Confidentiality.** Each Party shall treat as confidential all Confidential Information of the other Party, shall not use such Confidential Information except to exercise its rights and perform its obligations under the Agreement herein, and shall not disclose such Confidential Information to any third party. Without limiting the foregoing, each of the Parties shall use at least the same degree of care it uses to prevent the disclosure of its own confidential information of like importance, which care shall be no less than reasonable care, to prevent the disclosure of Confidential Information of the other Party.

6.3 **Exceptions.** Confidential Information excludes information that: (i) was in the public domain at the time it was disclosed or has become in the public domain through no fault of the receiving Party; (ii) was known to the receiving Party, without restriction, at the time of disclosure, as demonstrated by documentation in existence at the time of disclosure; (iii) is disclosed with the prior written approval of the disclosing Party; (iv) was independently developed by the receiving Party without any use of the Confidential Information of the disclosing Party; (v) becomes known to the receiving Party, without restriction, from a third party not bound by an obligation of confidentiality; or (vi) is disclosed generally to third parties by the disclosing Party without restrictions similar to those contained in the Agreement. The receiving Party may disclose the other party's Confidential Information to the extent such disclosure is required by Applicable Laws or requirement of a court, administrative agency, or other governmental body, but only if the receiving Party provides prompt notice thereof to the disclosing Party to enable the disclosing Party to seek a protective order or otherwise prevent or restrict such disclosure.

7. PRIVACY

7.1 **Privacy Policy.** Capella maintains an online privacy policy at <https://www.capellaspace.com/privacy-policy/>, which describes how Capella collects, uses, and shares Personal Information. Customer agrees that Capella’s online privacy policy is incorporated by reference into these Terms and Conditions, consents to the collection, use, and sharing of personal information relating to Customer Personnel as described in Capella’s online privacy policy, and to provide any notice of Capella’s privacy practices that Customer Personnel are entitled to receive as required under Applicable Law pertaining to privacy.

8. INTELLECTUAL PROPERTY; PROPRIETARY MARKS AND LEGENDS

8.1 **Ownership of Intellectual Property and Technology.** Each Party shall be the sole owner of all Intellectual Property Rights owned by it prior to the relevant date of an Accepted Order relating to the Products and Services ordered under an Accepted Order (collectively, “Pre-Existing IP”). Capella owns and shall continue to be the exclusive owner of all right, title and interest in and to (a) the Data, Products, Documentation, Capella Console and Capella API, (b) Capella satellites, ground stations, imagery processing or production hardware and software systems, code, scripts, software programs, documentation, reports, materials, technology and other embodiments of Intellectual Property Rights, and (c) any Intellectual Property Rights owned, developed or created by Capella during the Term of the Agreement, and all derivative works of the subject matter described in clauses (a), (b) and (c) (collectively, “Capella IP”) and nothing set forth herein or in any Accepted Order or EULA is intended to grant to Customer any ownership interest in Capella IP.

8.2 **Customer Feedback or Input.** Capella may utilize for any purpose all ideas, suggestions, improvements, or the like (“Input”) that Customer provides to Capella with respect to any of the Data, Products, Documentation, Services, Capella Console and/or Capella API without any obligation to Customer. Any and all upgrades, updates, developments, modifications, changes, alterations, edits, conversions, improvements or the like made to the Data, Products, Documentation, Services, Capella Console and/or Capella API by Capella based on the Input provided by Customer, whether or not used by Capella, shall become the exclusive property of Capella.

Definitions. “Intellectual Property” or “IP” shall mean, but is not limited to, any and all inventions, discoveries, works of authorship, trade secrets, know-how, trademarks, service marks, Data, Products, Services, Capella Console, Capella API, satellites, ground station and imagery processing infrastructure and hardware and software systems, services, products, processes, and procedures, and all modifications, derivative works and improvements of the foregoing, and all other embodiments of Intellectual Property Rights, including, but not limited to, software (object code, source code and modification thereof), software documentation, technology, designs, plans, ideas, concepts, specifications, algorithms, reports, content (including without limitation, satellite imagery data processing methodologies and processes, rules, code, and terminologies), data, data analytics, and devices. **“Intellectual Property Rights”** shall mean patents, copyrights, trade secrets, trademarks, service marks, and applications for and registrations of the foregoing, and all other proprietary and intellectual property rights, now or hereafter existing anywhere in the world.

9. COMPLIANCE

9.1 **Compliance with Laws.** Each Party shall comply with all Applicable Laws. A Party’s failure to comply with this provision constitutes a material breach of this Agreement and entitles the other Party to terminate this Agreement in accordance with Section 12.2. Customer shall not export or re-export any Product in violation of the U.S. Export Administration Regulations or other Applicable Laws. These Applicable Laws include, but are not limited to, U.S. Treasury Office of Foreign Assets Control (“OFAC”) restrictions regarding Product distribution to individuals or entities in designated sanctioned countries, “Specially Designated Nationals” or “Blocked Persons” “denied parties” as defined by OFAC, persons or entities listed on the U.S. Department of Commerce’s “Entities List” and persons or entities debarred by the U.S. Department of State under the International Traffic and Arms Regulations.

9.2 **Anti-Corruption.** (a) Neither the Customer nor any of its Affiliates nor any director, officer, or employee of the Customer -- nor, to the best of the Customer's knowledge and belief, any partner, intermediary or other person acting or purporting to act on behalf of the Customer or any of its Affiliates -- has knowingly directly or indirectly paid, offered, given, promised to pay or authorized the payment of any money or anything of value to (i) any Government Official,

(ii) any person acting for or on behalf of any Government Official, or (iii) any other person at the suggestion, request, direction or for the benefit of any of the above-described persons to obtain, retain or direct business or to obtain special concessions or pay for favorable treatment for business secured or for special concessions already obtained. The Customer, its Affiliates and its directors, officers, and employees -- and, to the best of the Customer's knowledge and belief, its partners, suppliers and intermediaries -- have conducted their businesses in compliance in all material respects with the anti-bribery provisions of the Foreign Corrupt Practices Act of 1977 (the “FCPA”), 15 U.S.C. § 78dd-2, the UK Bribery Act, and any other applicable Laws relating to bribery or corruption (the “Anti-Corruption Laws”). The Customer assets have not been, are not, and will not be derived from or commingled with proceeds of any activities that are proscribed by the FCPA, the UK Bribery Act, and the Anti-Corruption Laws, and were not procured or obtained through any payments to or for the benefit of Government Officials or to any other person, regardless of the form, whether in money, property or services, to obtain favorable treatment in obtaining, retaining or directing business or to obtain special concessions or to pay for favorable treatment for business secured or for special concessions already obtained. To the best of the Customer’s knowledge, (x) none of the shareholders, beneficial owners, directors, officers and employees of the Customer or of any of its Affiliates, intermediaries or suppliers is or was during any time in which such individual was associated with, or provided services to, the Customer or any of its

Affiliates, a Government Official, and (y) there are no family or other relationships between (i) the shareholder, beneficial owners, directors, officers and employees of the Customer or any of its Affiliates, suppliers or intermediaries, on the one hand, and

(ii) any Government Official, on the other hand.

(b) For the purposes of this Section, a “Government Official” is:

- i. any officer or employee of a government or any department, agency or instrumentality thereof (which includes a government-owned or government-controlled state enterprise) or of a public international organization, such as the World Bank; or
- ii. any person acting in an official capacity for or on behalf of a government or government entity or of a public international organization, any political party or party official or any candidate for political office (including, for example, consultants who hold government positions, employees of companies owned or controlled by governments, civil servants, administrative and judicial officers, political candidates and members of the military; or
- iii. family members and close personal friends of any of the foregoing, even if they are not otherwise associated with a government or public office.

(c) Any breach of any of the representations in subparagraphs (a) and (b) of this Section 8.2 shall constitute a material breach of this Agreement and be grounds for immediate termination.

9.3 **Certification.** From time to time but not less than annually, during the Term and for a period of two (2) years thereafter, upon Capella’s request, Customer shall certify its compliance with Applicable Laws in a form satisfactory to Capella.

10. WARRANTY; WARRANTY DISCLAIMERS

10.1 Capella will correct or replace a Product it determines is defective because the Product does not substantially comply with the specifications for such Product in the then current Capella Product Guide. Capella will use commercially reasonable efforts to remedy a material defect in the Services if the Customer notifies Capella in writing of such defect within 30 days after Capella has delivered access to the Services in accordance with Section 4 of these Terms and Conditions.

10.2 CUSTOMER HEREBY ACKNOWLEDGES AND AGREES THAT:

10.2.1 EXCEPT AS PROVIDED IN SECTION 9.1 ABOVE, CAPELLA HAS NOT MADE NOR SHALL IT BE DEEMED TO HAVE MADE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE DATA, PRODUCTS, DOCUMENTATION, SERVICES AND THE CAPELLA CONSOLE AND CAPELLA API MADE AVAILABLE BY CAPELLA TO CUSTOMER UNDER THE AGREEMENT. TO THE EXTENT PERMITTED BY APPLICABLE LAW, CAPELLA EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, OR REPRESENTATIONS ARISING BY LAW, COURSE OF PERFORMANCE, CUSTOM OR USAGE IN THE TRADE OR OTHERWISE, WITH RESPECT TO ANY DATA, PRODUCTS, DOCUMENTATION, SERVICES AND THE CAPELLA CONSOLE AND CAPELLA API MADE AVAILABLE TO CUSTOMER. THIS WARRANTY DISCLAIMER INCLUDES, BUT IS NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY, DESIGN, FITNESS FOR A PARTICULAR PURPOSE, AGAINST INFRINGEMENT OR THAT THE DATA, PRODUCTS, DOCUMENTATION, SERVICES OR THE CAPELLA CONSOLE AND CAPELLA API WILL BE ERROR FREE OR NON-DEFECTIVE, EVEN IF CAPELLA HAS BEEN INFORMED OF SUCH PURPOSE.

10.2.2 ANY AND ALL PRODUCTS, DOCUMENTATION AND SERVICES ARE MADE AVAILABLE TO CUSTOMER ON AN “AS IS” BASIS AND CAPELLA ASSUMES NO RESPONSIBILITY OR LEGAL LIABILITY FOR THE ACCURACY, COMPLETENESS, RELIABILITY, TIMELINESS OR USEFULNESS OF SUCH PRODUCTS, DOCUMENTATION OR SERVICES OR FOR DELAYS OR INTERRUPTIONS IN PROVIDING OR DELIVERING SUCH PRODUCTS, DOCUMENTATION OR SERVICES. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY CAPELLA OR CAPELLA’S AUTHORIZED REPRESENTATIVES WILL CREATE A WARRANTY OR IN

ANY WAY INCREASE THE SCOPE OF THE WARRANTY FOR THE PRODUCTS, DOCUMENTATION OR SERVICES BEING MADE AVAILABLE PURSUANT TO THE AGREEMENT OR ANY ACCEPTED QUOTE.

11. INDEMNIFICATION

11.1 Indemnification by Capella. Capella shall indemnify, defend and hold harmless Customer against any claim, cost, expense, liability, damage, claim, or any litigation or settlement cost or expense (including, but not limited to, reasonable attorneys' fees and expenses), arising out of any third party claim (a "Third Party Claim") brought against Customer related to or arising from (a) injury to or death of any person or damage to or loss or destruction of any property, resulting in any way from or arising out of any grossly negligent act or omission by Capella or Capella employees or contractors; and (b) any violation of Applicable Laws by Capella.

11.2 Infringement Remedy. If a Product becomes or is likely to become the subject of a Third Party Claim, Capella may, in its sole discretion: (a) procure for you the right to continue using the Product pursuant to an end user license agreement; (b) replace or modify the Product to eliminate any infringement or misappropriation while providing functionally equivalent performance; (c) obtain a license from the third party to continue using the property subject to the infringement claim; or (d) accept the return of the affected Product in exchange for a refund of the amount that you actually paid to us for such Product. In the event none of these alternatives is commercially practicable, Capella shall have the right to terminate this Agreement and Customer's rights hereunder. The obligations set forth in this Section 11.2 shall constitute Capella's entire liability and Customer's sole and exclusive remedies for any actual or alleged Third Party Claims of infringement.

11.3 Indemnification by Customer. Customer shall indemnify, defend and hold harmless Capella from and against any Third Party Claim brought against Customer related to or arising from (a) injury to or death of any person or damage to or loss or destruction of any property, resulting in any way from or arising out of any grossly negligent act or omission by Customer or Customer employees or contractors; (b) Customer's access to or use of the Products or Services, including, without limitation, use of any derivative works of the Products created by Customer employees or contractors; (c) breach of the Agreement; or (d) violation of Applicable Laws.

11.4 Indemnification Procedures. The indemnified Party under this Section 11 shall notify the indemnifying Party promptly of any Third Party Claim for which the Indemnifying Party is responsible and shall reasonably cooperate with the indemnifying Party to facilitate defense of any such claim. An indemnified Party shall at all times have the option to participate in any matter or litigation, including but not limited to participation through counsel of its own selection, if desired, the hiring of such separate counsel being at indemnified Party's own expense.

12. TERM; TERMINATION; REMEDIES

12.1 Term. Unless earlier terminated in accordance with the provisions set forth herein, (a) for the license of Products, the term of the Agreement begins on the Accepted Order Date and ends ninety (90) days thereafter unless another time period is expressly provided in an Accepted Order and (b) for Services, the term of the Agreement equals the Services Subscription Term (the "Term"). The Term of an Accepted Order for the license of Products shall not automatically renew unless otherwise expressly provided in an Accepted Order. The Term of an Accepted Order for Services shall automatically renew for successive one (1) year renewal Terms unless Customer or Capella notifies the other Party in writing at least thirty (30) days prior to the end of the Term or any renewal Term that it is not renewing the Term or as otherwise expressly provided in an Accepted Order.

12.2 Termination for Cause. If a Party materially breaches its obligations under the Agreement and, if the breach is curable, fails to cure such breach within thirty (30) days after receiving written notice of such breach from the other Party, the non-breaching Party may, in its sole discretion, suspend performance under or terminate the Agreement or an individual Accepted Order by providing written notice thereof.

12.3 Termination Due to Loss of License or Regulatory Action. The Agreement or an individual Accepted Order may also be terminated, in whole or in part, without liability or penalty by Capella immediately upon written notice in the event Capella's approval, authorization, certification or license from a government authority necessary to operate a SAR satellite, ground station and processing system or perform its obligations under the Agreement or such Accepted Order is terminated, suspended, limited or restricted.

12.4 Effects of Termination. The termination or expiration of one Accepted Order shall not affect the Agreement with respect to another Accepted Order not terminated by the terminating Party. Upon the termination or expiration of an Accepted Order or the Agreement or upon the request of a Party, the other Party agrees to cease use of, to return to the other Party or destroy the Confidential Information of the other Party and, if requested, to provide a written certification to the other Party of such deletion or destruction. Customer may continue to license and use Products or Documentation licensed to Customer under the Agreement for the term of the applicable EULA so long as Customer is not in breach of the Agreement and the EULA and continues to comply with the terms, conditions and restrictions of the EULA.

12.5 Survival. The terms and conditions of the Agreement that would, by their nature, survive the expiration or termination of the Agreement, including, without limitation, the following Sections and subsections of these Terms and Conditions: 2.4 (Conflicts), 3.2 (End User License Agreement), 5 (Fees), 6 (Confidentiality), 8 (Intellectual Property), 9 (Compliance), 10.2 (Warranty Disclaimers), 11 (Indemnification), 12 (Term and Termination), 12 (Notice), 13 (Independent Contractors; Insurance), 15 (Limitation of Liability) and 16 (General) shall so survive the expiration or termination of the Agreement for any reason.

13. NOTICE

Any notice required or permitted by the Agreement must be in writing and shall be deemed to have been given effective upon receipt if sent by first class mail (postage prepaid), overnight carrier, or personal delivery, addressed: (a) if to Customer, at the Customer's address set forth in the relevant Accepted Order; (b) if to Capella, to the attention of Legal: 397 S. Taylor Ave., Louisville, CO 80027, U.S.A., to Legal@capellaspace.com; or (c) at such other addresses the Party to be notified has designated upon reasonable notice.

14. INDEPENDENT CONTRACTOR; INSURANCE

14.1 Independent Contractors. In connection with Capella's making available the Products, Documentation or Services pursuant to the Agreement, each Party is an independent contractor, is not an agent, employee, joint venturer or partner of the other, and is not authorized to act on behalf of the other.

14.2 Insurance. During the Term of the Agreement, each Party shall maintain, at its sole expense, commercial general liability insurance and professional liability insurance, including errors and omissions, with coverage amounts consistent with industry standards and necessary and reasonable in light of the risks that may arise from the performance of its duties and responsibilities under the Agreement.

15. LIMITATION OF LIABILITY

15.1 IN NO EVENT SHALL A PARTY, BE LIABLE TO THE OTHER PARTY HEREUNDER FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES, INCLUDING, BUT NOT LIMITED TO, ANY LOSS-OF- PROFIT, BUSINESS INTERRUPTION, LOSS OF OPPORTUNITY, LOSS OF GOODWILL, OR OTHER SUCH DAMAGES, UNDER ANY THEORY OF LIABILITY. FURTHER, IN NO EVENT SHALL ANY LIABILITY OF CAPELLA TO THE CUSTOMER UNDER THE AGREEMENT EXCEED IN THE AGGREGATE THE PAYMENTS ACTUALLY RECEIVED BY CAPELLA FROM CUSTOMER FOR THE PRODUCTS AND/OR SERVICES DURING THE PRIOR TWELVE (12) MONTH PERIOD UNDER THE ACCEPTED ORDER GIVING RISE TO THE CUSTOMER'S CLAIM.

15.2 Exceptions. The limitations on liability in Section 14.1 above do not apply to (a) Third Party Claims required to be indemnified pursuant to Section 10 of these Terms and Conditions; or (b) breaches of Sections 3.2 (End User License Agreement), 6 (Confidentiality) or 8 Intellectual Property) of these Terms and Conditions.

15. GENERAL

- 15.1 **Entire Agreement; Amendments.** These Terms and Conditions, Accepted Orders and EULA's, and all exhibits and attachments thereto (all of which are incorporated herein by this reference) constitute the entire agreement between the Parties and supersede any and all prior and contemporaneous agreements and understandings between the Parties, written or oral, not incorporated herein with respect to the subject matter of the Agreement. From time to time, Capella may unilaterally change or modify these Terms and Conditions and the EULA.
- 15.2 **Severability.** In the event any provision of an Accepted Order or these Terms and Conditions is found to be legally unenforceable, such unenforceability shall not prevent enforcement of any other provision of the Accepted Order or Terms and Conditions.
- 15.3 **Governing Law.** This Agreement will be governed by the laws of the state of New York, USA, excluding conflict of laws principles and the United Nations Convention on Contracts for the International Sale of Goods. The state and federal courts located in New York City, New York, will have exclusive jurisdiction over any dispute arising from or relating to this Agreement. Each Party waives all defenses of lack of personal jurisdiction and forum non conveniences.
- 15.4 **Assignment.** Customer shall not assign or transfer, or subcontract or delegate, any of its rights or obligations pursuant to the Agreement without providing Capella with thirty (30) days' prior written notice of such assignment, transfer or delegation. Any attempted assignment, transfer or delegation without such prior written notice shall be null and void.
- 15.5 **Specific Performance; Injunctive Relief.** Each Party recognizes that the other Party would suffer irreparable harm if such Party breached its obligations under the Agreement and that monetary damages might not be adequate to compensate the other Party for any breach hereof. In the event of a breach or attempted breach of any of the provisions herein, the non-breaching Party, in addition to its other remedies, shall be entitled to specific performance and/or injunctive relief in order to enforce performance or prevent any violation of the provisions of the Agreement.
- 15.6 **Waiver.** Waiver by any Party of strict performance of any provision of the Agreement must be in writing and signed by the Party adversely affected thereby.
- 15.7 **Force Majeure.** Excluding Customer's payment obligations to Capella, if a Party is hindered, delayed or prevented from performing its obligations under the Agreement, such Party's non-performance of the affected obligations will be excused to the extent caused by events beyond such Party's reasonable control and for so long as such circumstances apply. Events beyond a Party's reasonable control include, without limitation, casualties, natural disasters, public health emergencies, epidemics or pandemics, Acts of God, civil disturbance or riots, labor disputes, strikes, or shortages, declared or undeclared wars or hostilities, terrorist attacks, disturbances in space or weather impacting the Capella satellites' imaging capabilities, partial or total failure of the Capella satellites, ground system or imagery processing systems, partial or total failure of a national or international Internet network, orders, actions or restrictions imposed by any governmental authority, or any of the foregoing events hindering, delaying or preventing a Party's material suppliers and/or vendors from fulfilling their obligations to such Party. A Party claiming such an event is hindering, delaying or preventing the performance of its obligations under the Agreement shall promptly notify the other Party in writing (hardcopy or by email) and by telephone describing the circumstances beyond its reasonable control causing such non-performance of its obligations under this Agreement.
- 15.8 **Counterparts.** The Agreement and any Order or Accepted Order may be executed by a Party's original signature or electronic signature on such document in any number of counterparts, each of which shall be deemed an original, but all such counterparts together shall constitute one and the same instrument.
- 15.9 **Controlling Language.** The English language version of the Agreement shall be the controlling language and binding on the Parties in all respects.
- 15.10 **Publicity.** Customer authorizes Capella to list Customer's name and logo on Capella's published client list (including on Capella's website or sales presentations).

EXHIBIT A

Definitions

“Accepted Order” has the meaning given to such term in the first paragraph of these Terms and Conditions.

“Accepted Order Date” means the last date the Accepted Order was signed by both Parties.

“Additional Products and Services” has the meaning given to such term in Section 5.1.

“Affiliate” means any legal entity controlling, controlled by or under common control with a party, where “control” means (a) the ownership of at least fifty percent (50%) of the equity or beneficial interest of the entity; (b) the right to vote for or appoint a majority of the board of directors or other governing body of the entity; or (c) the power to direct or cause the direction of the management and policies of such party by any means.

“Agreement” means the agreement between Capella and Customer which is comprised of collectively the Accepted Order, these Terms and Conditions and the EULA, and all exhibits and attachments thereto containing the rights and obligations of the Parties with respect to the ordering and use of the Products, Documentation and/or Services.

“Applicable Laws” means anti-bribery legislation enacted in the United States, including the Foreign Corrupt Practices Act, commercial bribery, domestic bribery, illegal gratuities, mail and wire fraud, and anti-kickback laws, as well as anti-money laundering, anti-terrorism, economic sanctions and export control laws, as well as all other relevant laws, regulations, rules orders and decrees applicable to Customer’s and Capella’s conduct of their businesses. It also includes laws, regulations, rules, orders and decrees related to permits, licenses, and other authorizations the Customer or Capella must obtain in order to exercise its rights and perform its obligations under the Agreement, and any applicable laws governing Personal Information or the privacy thereof, including but not limited to, the California Consumer Privacy Act (Cal. Civ. Code 1798.100 et seq.). Applicable Laws includes any amendments or modifications to such laws, regulations, rules, orders and decrees or permits, licenses or other authorizations enacted or issued from time to time after the date of an Accepted Order.

“Capella Console” means a web portal with simple visual interface to enable a Customer to access Products in the Capella archive and/or task the Capella satellite system to collect new Data for Capella’s processing into Products accessible by Customer in the Capella archive.

“Capella API” means the Capella Application Programming Interface (API), a powerful solution for Product archive access and Capella satellite system tasking that also allows for the development of automated workflows.

“Confidential Information” has the meaning given to such term in Section 6.1 of these Terms and Conditions.

“Customer” means that individual, legal entity or government agency identified as “Customer” on the applicable Accepted Order.

“Customer Personnel” means a Customer’s directors, officers, employees, contractors and consultants.

“Data” means the raw unprocessed source SAR satellite imagery and information used to create Products.

“Documentation” means the user manuals and similar materials licensed to Customer or an end user by Capella pursuant to a EULA.

“End User” means Customer Personnel who are expressly authorized by Customer to use the Products and Documentation on behalf of Customer and who or which is under a written obligation to Customer to maintain the confidentiality of the Products and Documentation under the EULA.

“End User License Agreement” or **“EULA”** means the end user license terms, conditions and restrictions applicable to Customer’s and End Users’ access to and use of the Products and Documentation and is available at: <https://www.capellaspace.com/customers/product-documentation/data-licensing/>.

“Fees” means the fees payable by the Customer to Capella for the Products and/or Services as set forth in an Accepted Order and any additional Fees payable by Customer for Additional Products and Services, exclusive of any Taxes.

“Intellectual Property”, “IP” and “Intellectual Property Rights” has the meanings given to such terms in Section 67 of these Terms and Conditions.

“Order” has the meaning given to such term in the first paragraph of these Terms and Conditions.

“Party” or “Parties” means individually each of Capella and Customer and collectively both Capella and Customer.

“Personal Information” means information that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular consumer or household.

“Pre-Existing IP” has the meaning given to such term in Section 8.1 of these Terms and Conditions.

“Product(s)” means the Data processed into products by Capella and Capella Contractors and licensed by Capella to Customer for the Fees as described in an individual Accepted Order.

“Services” means the services offered by Capella to Customer for the Fees as described in an individual Accepted Order.

“Services Commencement Date” means after Capella has delivered access to the Services to the Customer in accordance with Section 4 of these Terms and Conditions, either the (a) 15th day of the month of such delivery of Services or (b) the 30th day of the month of delivery of such Services, whichever date occurs first.

“Services Subscription Term” means the term or period of performance of Services, which could include the delivery of Products as part of the Services offered on a subscription basis, as described in an Accepted Order. Unless otherwise specifically provided in an Accepted Order, the Services Subscription Term begins on the Services Commencement Date and ends on the one (1) year anniversary of the Services Commencement Date, provided, that the Services Subscription Term shall automatically renew for successive one (1) year renewal Terms thereafter until terminated by the Customer in accordance with Section 12.1 of these Terms and Conditions.

“Taxes” has the meaning set forth in Section 5.4 of these Terms and Conditions. **“Term”** has the meaning set forth in Section 12.1 of these Terms and Conditions.

“Terms of Service” governing access and use of the Capella Console and Capella API are located at: <https://www.capellaspace.com/customers/product-documentation/data-licensing/>.

“Third Party Claim” has the meaning given to such term in Section 11.1 of these Terms and Conditions.

-- END OF TERMS AND CONDITIONS --

EXHIBIT TO EULA

“Affiliate” means any legal entity controlling, controlled by or under common control with a party, where “control” means (a) the ownership of at least fifty percent (50%) of the equity or beneficial interest of the entity; (b) the right to vote for or appoint a majority of the board of directors or other governing body of the entity; or (c) the power to direct or cause the direction of the management and policies of such party by any means.

“Applicable Laws” means anti-bribery legislation enacted in the United States, including the Foreign Corrupt Practices Act, commercial bribery, domestic bribery, illegal gratuities, mail and wire fraud, and anti-kickback laws, as well as anti-money laundering, anti-terrorism, economic sanctions and export control laws, as well as all other relevant laws, regulations, rules orders and decrees that affect how the End User conducts its business. It also includes laws, regulations, rules, orders and decrees related to permits, licenses, and other authorizations necessary for the End User to exercise its rights and perform its obligations under this Agreement. Applicable Laws includes any amendments or modifications to such laws, regulations, rules, orders and decrees or permits, licenses and other authorizations enacted from time to time after the commencement of the Term.

“Authorized Reseller” means a reseller or distributor authorized by Capella pursuant to a written Reseller Agreement or other written agreement to distribute and resell licenses to End Users for use of the Products and Documentation.

“Customer Agreement” means any agreement between an Authorized Reseller and an End User or Capella and an End User pursuant to which the End User obtains a license to use the Products and Documentation and/or create Value Added Products.

“Data” means the (a) raw unprocessed source SAR satellite imagery and information used to create Products; and (b) sensor configuration, sensor geometry and satellite ephemeris information which describes or qualifies such SAR satellite imagery and information.

“Documentation” means the user manuals and similar materials relating to the Products and licensed to End User by Capella or an Authorized Reseller pursuant to a Customer Agreement.

“End User” means a customer properly authorized by an Authorized Reseller pursuant to a Customer Agreement or by Capella to access and use the Products and Documentation for End User’s Internal Use. Examples of End Users include any one (1) of the following:

- one company or corporation, not including Affiliates or representative offices;
- one office or department of a civilian national agency/ministry at the cabinet level;
- one civilian national agency/ministry below the cabinet level;
- one office or department of a branch of a national military,
- one office or department of a national defense agency, national intelligence agency, or unified command;
- one federated state or provincial agency/ministry, county, or local government;
- one nongovernmental organization or nonprofit organization within a single country;
- one educational organization within a country;
- one office or department within an international organization, institution, or agency, including the United Nations or European Union;
- any one entity or equivalent to any of the entities listed above; or
- any entity as mutually agreed with Capella.

“End User’s Internal Use” means use of the Product, Documentation and any Value Added Products solely for the End User’s internal business purposes, subject to the terms, conditions and restrictions of the EULA.

“End User Personnel” includes an End User’s (a) employees and contractors who are part of the End User’s workforce and/or (b) subcontractors of the End User, provided the personnel described in subsections (a) and (b) have (x) obligations of confidentiality to the End User, and (y) a need to access and/or use the Products, Documentation and any Value Added Products solely for the End User’s Internal Use, but excluding Affiliates of an End User.

“End User Proprietary Materials” means End User proprietary materials contributed to Value Added Products under this EULA, but excluding any Pre-Existing IP and other Intellectual Property Rights owned, developed or created by Capella and all derivative works thereof.

“Intellectual Property Rights” shall mean patents, copyrights, trade secrets, trademarks, service marks, and applications for and registrations of the foregoing, and all other proprietary and intellectual property rights, now or hereafter existing anywhere in the world.

“Pre-Existing IP” means (a) all Intellectual Property Rights, and (b) satellites, ground stations, imagery processing or production hardware and software systems, code, scripts, software programs, documentation, reports, materials, technology and other embodiments of Intellectual Property Rights, in each of cases (a) and (b), owned by Capella prior to the license of Products and Documentation under this EULA.

“Products” means Capella’s product offerings, including, without limitation, Data, created by applying formatting or processing techniques to the Data or using the Data or Capella’s products to create other product offerings, licensed to End User by Capella or an Authorized Reseller pursuant to a Customer Agreement.

“SAR” means synthetic aperture radar.

“Term” means that period that Customer is entitled to use the Products, Documentation and Value Added Products as set forth in the Customer Agreement or by Capella and further defined in Section 1 of this EULA.

“Third Party” means any individual, legal entity, corporation, limited liability company, partnership, other organization or government agency that is not a party to this EULA.

“Value Added Products” means (a) any goods or products in tangible, digital, electronic or other form that are created or developed from Products or Documentation; and/or (b) any addition, improvement, update, modification, transformation or derivative work of or to a Product, including, without limitation, reformatting of the Product into a different format or media from which is delivered to End User; any addition or extraction of data, information or other content to or from the Product or Documentation, or any copy or reproduction of the Product or Documentation.

-- END OF END USER INTERNAL USE LICENSE --