

October 2022

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This End User License Agreement (“*EULA*”) is entered into by Vexcel Imaging US, Inc., a Delaware corporation (“*Vexcel*”) and you (“*Licensee*,” and together with Vexcel, the “*Parties*”). As a condition of the rights granted to Licensee in this EULA and any Customer Agreement (collectively, the “*Agreement*”), including the right to access and use the Product, Licensee must agree to the following terms. By signing or otherwise indicating acceptance of this Agreement or downloading, accessing, or using Product, Licensee agrees to be bound by the Agreement as of the date any one of the foregoing activities first occurs. Licensee’s use of the Product is subject to any additions or modifications to the Agreement in effect as of the date of that use.

**If Licensee does not agree with any of these terms or conditions of the Agreement, Licensee may not proceed, and may not access or use the Product. By proceeding Licensee is indicating its agreement to be governed by the Agreement in its entirety.**

### 1. DEFINITIONS.

“*Commercial Purpose*” means redistribution, retransmission, or publication for the benefit of a third party, regardless of whether it is done in exchange for a fee or other consideration, which may include, without limitation (a) advertising; (b) use in marketing and promotional materials and services on behalf of a customer, client, employer, employee, or for Licensee’s benefit; (c) use in any materials or services for sale or for which fees or charges are paid or received; and (d) use in any books, news publication, or journal.

“*Confidential Information*” means all non-public information disclosed to Licensee by Vexcel, including, without limitation, the Product and the terms of the Customer Agreement.

“*Customer Agreement*” means an agreement with an authorized reseller of Vexcel (a “*Reseller Customer Agreement*”), an agreement with an authorized integrator of Vexcel (an “*Integrator Customer Agreement*”) or a quote or purchase order from Vexcel (a “*Vexcel Customer Agreement*”).

“*Derivatives*” means works that are created by analyzing the Product and extracting features and attributes from the Product, specifically excluding any portion of the images or pixels themselves.

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“*Map Services*” means standard protocols used to serve georeferenced map images over the internet that are generated by a map server.

“*PII*” means information that can be used to distinguish or trace an individual’s identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual.

“*Product*” means the digital imagery, metadata, geospatial information, derivatives, and analytics, as more specifically set forth in any Customer Agreement, that is made available to Licensee from the Vexcel Image Library during the Term.

“**Software**” means all code provided by Vexcel used to access the Product, including but not limited to the Vexcel API and the Vexcel Viewer.

“**Term**” means the term specified in the Vexcel Customer Agreement or Reseller Customer Agreement, and in the case of an Integrator Customer Agreement, the shorter of the term specified in the Integrator Customer Agreement or the term specified in the agreement between such integrator and Vexcel.

“**Vexcel API**” means the application programming interface that Vexcel currently provides to its customers that enables a user to access the Vexcel Data Platform programmatically, including Map Services.

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“**Vexcel Image Library**” means the off-the-shelf collection of digital imagery, metadata, and geospatial information generally made available to Vexcel’s customers.

“**Viewer**” means Vexcel’s browser-based viewing application that allows users to interact with the Product.

## 2. LICENSE TERMS.

2.1. License Grant. Vexcel grants to Licensee during the Term a non-exclusive, non-transferable license to use the Product in the manner described in the applicable Customer Agreement, but in any case no broader than the following: to (a) use, reproduce, and modify the Product; (b) resample the Product to a smaller size and/or modify the Product to overlay graphics, text, and/or other content (collectively, “**Modified Product**”); and (c) create Derivatives, *provided* that in all cases of (a)-(c) such use is solely for Licensee’s Internal Use as described in any Customer Agreement, and such use is in compliance with the Agreement (the “**License**”). This License is limited to Licensee and may not be used by any affiliates.

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### 2.3. License Restrictions.

(a) *Limitations on Use.* Licensee shall not, and shall not permit its personnel, Permitted Sublicensees, or any third party to do any of the following, except and solely to the extent expressly permitted by Section 2.1 (License Grant): (i) copy, reproduce, modify, market, grant access to, display,

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(c) *Limitations on Downloading and Storing the Product.* Licensee shall not store Product or Modified Product in its internal database for more than one week after downloading. Upon termination of the Agreement, Licensee and Permitted Sublicensees must destroy all downloaded Product, Modified Product, and Derivatives and provide an officer's certificate certifying compliance with this section. Notwithstanding the foregoing, Licensee and Permitted Sublicensees may retain the Product, Modified Product, and Derivatives as part of regular computer back-ups for the period such records are normally archived so long as Licensee and Permitted Sublicensees do not access such Product, Modified Product, or Derivatives unless required to pursuant to an external audit or legal proceedings.

2.4. Right to Modify the Product. Vexcel may from time to time, in its sole discretion, discontinue developing, producing, licensing, or distributing the Product and may modify or replace the Product.

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### **3. OWNERSHIP AND ATTRIBUTION.**

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3.2. Attribution Requirements. Licensee shall not delete, alter, cover, or distort any copyright, trademark, or other proprietary-rights notice placed by Vexcel on or in the Product. Licensee shall also ensure that all Product, Modified Product, and Derivatives display the following copyright notice: Vexcel Imaging US Inc. © [YEAR].

### **4. LICENSEE RESPONSIBILITIES.**

4.1. Access Security. Licensee must keep its users' login credentials, including, without limitation, usernames and passwords, secure and confidential and must use commercially reasonable efforts to prevent unauthorized access to or use of its account. Licensee must promptly notify Vexcel of any unauthorized access or use of the Product.

4.2. Sublicense Agreements. Licensee shall enforce each Sublicense Agreement with at least the same degree of diligence that Licensee uses to enforce similar agreements for its own products and

services, but in no event less than reasonable efforts. Licensee shall immediately notify Vexcel if Licensee becomes aware of any breach of any Sublicense Agreement. Licensee shall immediately terminate a Permitted Sublicensee's access to the Product following termination of a Sublicense Agreement.

4.3. Record-Keeping. During the Term and for three years following the Term, Licensee shall maintain complete and accurate records with respect to Licensee's access to and use of the Product. Vexcel has the right, during normal business hours and upon at least five-business-day notice, to have a reputable independent accounting firm selected by Vexcel, which is subject to reasonable confidentiality obligations, audit Licensee's records relating to Licensee's use of the Product to verify that Licensee has complied with the terms and conditions of the Agreement. Vexcel shall fund the audit, but if the audit reveals that Licensee failed to comply with the Agreement then Licensee shall reimburse Vexcel for the reasonable costs of such audit. Licensee shall promptly correct any compliance deficiencies identified by the audit and pay Vexcel any amounts shown by any such audit to be owing, plus 1.5% monthly interest.

4.4. Compliance with Laws. Licensee shall comply with all applicable laws and regulations in performing its obligations under the Agreement, including all applicable employment, tax, data-privacy, export control, and environmental laws and regulations. Licensee shall not export, re-export, sell, resell or transfer any third-party data or any export-controlled commodity, technical data or software (a) in violation of any law, regulation, order, policy or other limitation imposed by the United States (including the United States Export Administration regulations) or any other government authority with jurisdiction; (b) to any country in violation of any applicable embargo; or (c) to any country for which an export license or other governmental approval is required at the time of export, without first obtaining all necessary licenses or equivalent. Without limiting the foregoing, Licensee shall comply with the United States Foreign Corrupt Practices Act and any anti-bribery or similar law or regulation in any jurisdiction where business is conducted or services performed in connection with the Agreement.

4.5. Compliance with Terms of Google Maps/Google Earth for Viewer Use. The Viewer (if Licensee is provided access to the Viewer under its Customer Agreement) may use geocoding services accessed from Google Maps/Google Earth. Licensee shall comply with the Google Maps/Google Earth Additional Terms of Service posted at [https://www.google.com/intl/en\\_us/help/terms\\_maps.html](https://www.google.com/intl/en_us/help/terms_maps.html) (the "**Google-Maps Terms**") when using any Google geocoding services. If there is any inconsistency between the Agreement and the Google-Maps Terms, the Google-Maps Terms will control.

4.6. FCRA. Licensee acknowledges and agrees that the Product is not a consumer report (as defined in the Fair Credit Reporting Act ("**FCRA**")) and may not be used for any purpose permitted by the FCRA.

4.7. No PII. Licensee shall not share any PII with Vexcel when accessing or using the Product in any manner. Vexcel does not accept PII associated with Licensee's licensing of the Product and hereby rejects any submissions of PII.

4.8. No Reverse-Engineering. Licensee shall not reverse engineer, decompile, or otherwise attempt to derive the source code, techniques, processes, algorithms, know-how, or other information

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## **6. WARRANTY DISCLAIMER**

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(c) Licensee's unauthorized action or lack of action when required, or unauthorized action or lack of action when required by Licensee's employees, agents, contractors, or vendors, or anyone gaining access to the Vexcel Data Platform by means of Licensee's passwords or equipment, or otherwise resulting from Licensee's failure to follow appropriate security practices;

(d) Licensee's failure to adhere to any required configurations, use supported platforms, follow any policies for acceptable use, or Licensee engaging in excessive use or attempting to use the

Product in a manner inconsistent with the features and functionality of the Product (for example, attempts to perform operations that are not supported) or inconsistent with Vexcel's published guidance;

(e) faulty input, instructions, or arguments (for example, requests to access files that do not exist); or

(f) Licensee's attempts to perform operations that resulted in Vexcel's throttling of suspected abusive behavior.

**7. INDEMNIFICATION.** Licensee shall indemnify, defend, and hold harmless Vexcel, its affiliates, employees, officers, directors, and shareholders from any third-party claim that arises from (a "Vexcel Claim") (a) an allegation that any Derivative or Modified Product, or any products or services provided by Licensee or a third party that are bundled, sold, or used with the Product under this Agreement, infringe any intellectual property rights of a third party; (b) the use of the Product or a Derivative by Licensee or a Permitted Sublicensee or any user allowed to access the Product or Derivative, directly or indirectly by Licensee or a Permitted Sublicensee, except to the extent the claim is based on the Product on a stand-alone basis; or (c) any failure by Licensee or Permitted Sublicensees to comply with all applicable laws and regulations. Licensee shall pay reasonable attorneys' fees incurred by Vexcel in connection with any Vexcel Claim. Licensee's indemnification obligations set forth in this section are subject to the conditions that Vexcel must (x) notify Licensee promptly in writing of such claim, provided that Vexcel's failure to promptly notify Licensee as provided herein shall not relieve Licensee of its obligations except to the extent that Licensee is actually prejudiced by such failure to give prompt notice; and (y) fully cooperate with Licensee, at Licensee's expense, in the defense or settlement of such claim, provided that any settlement will be subject to Vexcel's written approval.

**8. LIMITATION OF LIABILITY.** In no event will Vexcel or its Licensors be liable for any consequential, special, indirect, incidental, exemplary, or punitive damages, whether or not foreseeable and whether or not Vexcel has been advised of the possibility of the damages. In no event will the total liability of Vexcel and its licensors arising out of or in connection with the Product exceed \$1,000. The foregoing limitations apply to all causes of action in the aggregate, to the extent permitted by applicable law.

**9. TERMINATION.** This EULA terminates upon expiration of the Term. In addition, if Licensee breaches any agreement with Vexcel or if Vexcel reasonably suspects that Licensee is using the Product in violation of applicable laws or regulations, Vexcel may immediately suspend Licensee's access to the Product and terminate the Agreement. Licensee may terminate this Agreement at any time. Upon termination of the Agreement, Licensee and Permitted Sublicensees must (a) stop all use of the Product, Modified Product, and Derivatives; (b) permanently delete the Product, Modified Product, and Derivatives from all devices and systems and destroy any copies on disk; and (c) deliver to Vexcel an officer's certificate certifying compliance with this section at 12503 E Euclid Drive, Suite 20, Englewood, CO 80111, Attention: Legal Department. The termination of the Agreement does not relieve either Party of any obligations that have accrued on or before the effective date of termination.

**10. INJUNCTIVE RELIEF; LIQUIDATED DAMAGES.**

10.1. Injunctive Relief. Any material breach of this Agreement by Licensee may cause irreparable injury and monetary damages may not be a sufficient remedy. Vexcel is entitled to equitable relief, including injunctive relief and specific performance, in the event of a breach, and Licensee waives the defense that there is an adequate remedy at law. The above will not be construed to limit the remedies available to Vexcel.

10.2. **Liquidated Damages.** Vexcel may recover, at Vexcel's election, either (a) damages that arise from Licensee's breach of this Agreement; or (b) in the event of a breach of the License only, liquidated damages as contemplated by the statutory damages provision of the Copyright Act, 17 U.S. Code §504(c). For purposes of determining breach of the License and the calculation of liquidated damages, an image is infringed when it is improperly downloaded, improperly distributed, or used in the preparation of derivative works after being improperly downloaded. This liquidated-damages provision applies whether or not Vexcel has filed for a copyright registration in connection with such image. Licensee shall reimburse Vexcel for its reasonable attorneys' fees and expenses and for investigation fees incurred by Vexcel in enforcing its rights under this Agreement. The Parties acknowledge that this calculation of damages is reasonable as proportionate to the potential losses arising from the unauthorized use of the Product in light of the proprietary intellectual property that Vexcel has developed to maintain a competitive business advantage and the complexity of determining the monetary harm caused by misappropriation of that intellectual property through a License breach.

**11. GENERAL TERMS.** The Agreement constitutes the entire agreement between the Parties with respect to access to and use of the Product and supersedes all previous and contemporaneous agreements, understandings, and arrangements, whether oral or written; provided, however, that if there is any conflict between the terms of this EULA and the Customer Agreement, the Customer Agreement controls. The waiver of a breach of any provision of this Agreement shall not be interpreted as a waiver of any other or subsequent breach. The Agreement shall not be construed to establish any form of partnership, agency, or other joint venture between Vexcel and Licensee. If the performance of any obligation under this Agreement is prevented, restricted, or interfered with by reason of tornado, hurricane, storm, fire, flood, earthquake, explosion, pandemic, or other casualty or accident or act of God; strikes or labor disputes; inability to procure or obtain delivery of parts, supplies, power, telecommunication services, equipment, or software from suppliers, war or other violence; any law, order proclamation, regulation, ordinance, demand, or requirement of any governmental authority; or any other act or condition whatsoever beyond the reasonable control of the affected Party, the Party so affected will be excused from such performance to the extent of such prevention, restriction, or interference; *provided*, however, that the Party so affected shall take reasonable steps to avoid or remove such cause of non-performance and shall resume performance hereunder whenever such causes are removed. Any material breach of the Agreement by Licensee may cause irreparable injury and monetary damages may not be a sufficient remedy. Vexcel is entitled to equitable relief, including injunctive relief and specific performance, in the event of a breach, and Licensee waives the defense that there is an adequate remedy at law. In the event Vexcel must seek the services of an attorney to enforce the provisions of the Agreement, Licensee shall pay all reasonable attorneys' fees, costs, and damages incurred by Vexcel, whether such attorneys' fees, costs, and damages are incurred in or out of court. Any disputes arising out of this Agreement shall be governed by the laws of the State of Colorado, without giving effect to its conflict of law rules. Each Party consents to the exclusive jurisdiction and venue of the state and federal courts located in Denver, Colorado. Licensee may not assign (by operation of law or otherwise), rent, sell, sublicense, sub-contract or otherwise transfer the Agreement or any portion thereof to any other person, firm, or entity without Vexcel's written consent. Any attempted assignment or transfer in violation of this section will be null and void. Vexcel may freely assign or otherwise transfer this EULA and any Vexcel Customer Agreement. The Agreement will be binding upon Licensee and Vexcel and inure to the benefit of Licensee and Vexcel and their respective successors and permitted assigns. The headings or captions used in the Agreement are for reference purposes only and are not intended to be used or relied upon in interpreting or enforcing the Agreement. To the extent that any portion of the Agreement is deemed to be unenforceable, such portion shall be severed and deleted or limited to give effect to the intent of the Parties to the extent possible, and the remainder of the Agreement shall remain binding upon the Parties.

**YOU ACKNOWLEDGE THAT YOU HAVE READ THE AGREEMENT, UNDERSTAND IT, AND AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS, AND FURTHER**

**AGREE THAT THE AGREEMENT IS THE COMPLETE AND EXCLUSIVE STATEMENT BETWEEN VEXCEL AND YOU RELATING TO THE SUBJECT MATTER OF THE AGREEMENT.**