

# SkyWatch Platform Terms of Service

Welcome to SkyWatch Space Applications Inc. (“**SkyWatch**”, “**we**”, “**us**” or “**our**” as context dictates). We are happy that you’re here. In order for you to Use (as defined below) the SkyWatch Platform (as defined below) or obtain any assistance from us (collectively, the “**Services**”), you (“**you**” or “**your**”) must be willing to abide by these terms below (these “**Terms of Service**”) along with our Privacy Policy, our [End User Data License Agreement](#) (“**EUDLA**” or “**End User Data License Agreement**”), applicable ODP EULAs, and any additional terms set out in an Order Form (if applicable), which are incorporated by reference (these Terms of Service along with any Order Forms (if applicable), the Privacy Policy, End User Data License Agreement, and other policies we may add from time to time shall be referred to as the “**Terms**”), which govern all the services we provide and all content and products available from the SkyWatch Platform. These Terms are entered into on the earlier of the date you first use any part of the Services and the date you agree to be bound by these Terms (the “**Effective Date**”).

BY USING THE SERVICES, YOU ACKNOWLEDGE THAT YOU HAVE READ, ACCEPT AND AGREE TO BE BOUND BY AND COMPLY WITH THE TERMS AND CONDITIONS SET OUT IN THESE TERMS, AS AMENDED FROM TIME TO TIME IN ACCORDANCE WITH SECTION 13 (m). IF YOU DO NOT ACCEPT AND AGREE TO BE BOUND BY THIS AGREEMENT, YOU WILL IMMEDIATELY CEASE ANY FURTHER USE OF THE SERVICES. BY USING THE SERVICES, YOU REPRESENT AND WARRANT TO SKYWATCH THAT YOU HAVE THE CAPACITY TO ENTER INTO THIS LEGALLY BINDING AGREEMENT. IF YOU ARE USING THE SERVICES ON BEHALF OF ANOTHER PERSON, YOU HEREBY REPRESENT AND WARRANT TO SKYWATCH THAT YOU HAVE THE AUTHORITY TO BIND SUCH PERSON TO THIS AGREEMENT.

THE SERVICES MAY NOT BE ACCESSED FOR PURPOSES OF MONITORING THEIR AVAILABILITY, PERFORMANCE OR FUNCTIONALITY, OR FOR ANY OTHER BENCHMARKING OR COMPETITIVE PURPOSES.

SKYWATCH’S DIRECT COMPETITORS ARE PROHIBITED FROM ACCESSING ANY SERVICES, EXCEPT WITH SKYWATCH’S PRIOR WRITTEN CONSENT.

## ***These Terms of Service are Binding***

Please read the terms carefully, as they contain important information about use rights, liability, your obligations, and matters related to disputes, including the exclusive use of arbitration to resolve disputes. If you do not wish to abide by either the Privacy Policy, End User Data License Agreement, applicable ODP EULA, or these Terms of Service, then you have no right to obtain Services from us or access or use any part of the SkyWatch Platform or information contained therein. Your use of the SkyWatch Platform signifies that you agree to the Terms. If you do not or are unable to agree to the Terms, do not use our SkyWatch Platform.

## **1. Understanding the Role of Each Party**

- (a) **Our Role is Limited.** We are only responsible for providing you with a Subscription and for providing certain types of assistance to you in accessing ODP Data (as defined below). We provide services in our own personal or corporate capacities,

and not as your employee, agent, or representative. SkyWatch will be responsible to support you on specific issues as set out in these Terms of Service.

- (b) **Other Parties' Terms Also Apply.** We have no role and assume no liability with respect to any User act or omission and any issue which arises between you and an Original Data Provider (see Section 15 below). You shall ensure that you access and use and ensure that all Users (including your customers if permissible under the License) access and use ODP Data according to the terms, conditions, and rules set out in the End User Data Licence Agreement and where applicable, the applicable ODP EULA which contain specific obligations with respect to the ODP Data.
- (c) **On Behalf of Others.** Please make sure that you ensure that all Users who utilize the SkyWatch Platform agree to the obligations and restrictions under the Terms, or else you covenant that you shall not allow them to utilize the Services. You are taking on responsibility for both yourself, whether individually or as an organization, as well as anyone who uses the SkyWatch Platform using the rights and licenses granted to you by SkyWatch (see Section 5 below). For any party or Users (including any of your customers) to whom you provide ODP Data, you shall be responsible for any breach or non-compliance of such party or Users (including any of your customer) to the EUDLA, where applicable, any applicable ODP EULA and these Terms.

## 2. Your Account

- (a) **Registration and Account Set-up.** In order to utilize the SkyWatch Platform, you must register and create an account that is uniquely yours (your **"Account"**).
- (b) **Credentials Management and Incidents.** You will: (1) keep your Account Details, password, and application programming interface (**"API"**) key (such items all your **"Credentials"**) strictly confidential and secure; (2) only share your Credentials with those who are authorized to represent you and execute a Transaction on your behalf, but please ensure such person abides by the Terms; and (3) inform us immediately if the confidentiality of any part of your Credentials has been compromised (e.g. you or someone you authorized has shared your Credentials with a third-party or you believe there's a credible chance of the security of your Account being compromised).
- (c) **Suspicious Activity.** If we suspect any unauthorized access to your Account or that there is suspicious activity in relation to your Account, we retain the right, but do not have the obligation, to suspend your Account and take any other related action as we deem reasonable, and you agree to assist in executing such actions, which may involve your resetting of passwords or taking other measures as may be required.

## 3. Transactions, Fees and Payment

- (a) **Budgets for Transactions**

- (i) SkyWatch reserves the right to restrict your Transactions or downloads in relation to any non-commercial ODP Data if your Transactions and downloads exceed reasonable limits. We may take any action as we deem reasonable under the circumstances including suspension of your Request privileges.
  - (ii) If you are an EarthCache Enterprise User, then your Subscription to the SkyWatch Platform and any requests for commercial ODP Data will be subject to the fees set out in an Order Form.
  - (iii) If you are a PAYG User, then any requests for commercial ODP Data will be subject to the fees set out at the SkyWatch Platform (the fees set out in this subsection (iii) and subsection (ii) above, are collectively the “**Fees**”, and the content regarding such fees within the SkyWatch Platform or within an Order Form, as applicable, the “**Fee Schedule**”).
  - (iv) The Fees payable by you will be based upon the plan that you have selected (the “**Account Plan**”). You acknowledge and agree that the Account Plan you have selected may be subject to additional terms and conditions that are more particularly set out on the Fee Schedule.
  - (v) For each Request for commercial ODP Data, SkyWatch will check to confirm that (i) the Request is within the pre-defined credit amount, and (ii) the Request does not exceed the Budget.
  - (vi) Prior to processing any Request for commercial ODP Data, we may request you to provide certain information to us to verify that we are not restricted from providing you with access to the ODP Data. This information will be provided to our third-party service provider to conduct verifications (including watchlist and sanctions screenings, adverse media reports, phone and email intelligence reports) to help us meet obligations imposed on us by the ODPs, as well as requirements imposed by government or international agencies (“**Screening Process**”). Your Request for commercial ODP Data will not be processed unless you have successfully passed the Screening Process.
- (b) **Executing Transactions.** Requests for commercial Archival ODP Data (as defined below) may be modified or cancelled by you within three (3) hours of being requested on the SkyWatch Platform. Requests for commercial Future-Facing ODP Data (as defined below) may be modified or cancelled by you at any point prior to the Interval (as defined below) start date. Any Requests for commercial ODP Data not cancelled within those timelines are subject to the applicable Fees.
- (c) **Payment Frequency and Interest.** Applicable Fees are charged and invoiced in accordance with the payment terms set out on the Fee Schedule for the applicable Account Plan that you have selected. If such payment terms are not set out, then the applicable Fees are charged and invoiced on the first day of each month subsequent to the Transaction date. If payment is not received within thirty (30) days of the subsequent month during which the Transaction occurred, the payable amounts will be subject to an interest rate of half a percent (0.5%), calculated daily, up to a maximum total interest rate of 60%, or until such amounts are paid, whichever comes first. In the event you are delinquent in payment of Fees and your

credit limit is reached, we may suspend your Account until outstanding payments are settled.

- (d) **Refunds.** You are entitled to receive a refund for any defective ODP Data if (1) we have determined, in our sole discretion, that you are entitled to a refund; and (2) the Fees paid for such defective ODP Data are greater than \$100. If we terminate, suspend, or remove your Account within a billing cycle as a result of your violation of the Terms, we are not obliged to refund you any Fees already paid by you, or pay any accrued Fees. While you may discontinue your use of the SkyWatch Platform at any time without incurring a penalty, you may not be entitled to a refund of Fees paid in relation to any ODP Data unless otherwise set out in these Terms of Service.
- (e) **Fee Disputes.** In the event you, in good faith, dispute the Fees payable under these Terms, you must provide us a written notice in accordance with Section 19 within 60 days of the invoice to which your dispute relates. You acknowledge and waive all rights to dispute Fees after 60 days of receipt of an applicable invoice.
- (f) **Currency and Taxes.** All Fees and transactions will be in US dollars and subject to all applicable taxes. The Fees set out in these Terms do not include applicable sales, use, gross receipts, value-added, GST or HST, personal property, or other taxes. You will be responsible for and shall pay all applicable taxes, duties, tariffs, assessments, export and import fees, or similar charges (including interest and penalties imposed thereon) on the transactions contemplated in connection with these Terms, other than taxes based on the net income or profits of SkyWatch.
- (g) **Third-Party Payment Processors.** You acknowledge that all Transactions involving payments must comply with the terms and conditions of the third-party payment service provider, including those that we make available through the SkyWatch Platform, such as Stripe (see: stripe.com). While some third-party payment service providers may be accessible through the SkyWatch Platform, we do not provide those payment services, are not a party to any license or agreement you may have with the applicable third-party payment provider, and will not be liable or responsible for your use of those third-party payment services.
- (h) **Future-Facing ODP Data.** All requests for Future-Facing ODP Data are subject to prevailing weather conditions, availability of satellites, and other factors that may impact an Original Data Provider's ability to capture such Future-Facing ODP Data during the applicable Interval. SkyWatch and its Original Data Providers are not responsible for any failure to deliver any Future-Facing ODP Data as a result of any of the foregoing. You acknowledge that any information or estimates provided by SkyWatch when you are requesting Future-Facing ODP Data (including any results displayed through use of the probability calculator) are based on a limited amount of current information, are general non-binding estimates only, and should not be relied upon when deciding whether to place a request for any data.

#### 4. Handling of Information

- (a) **Third-Parties May Handle Info.** You agree that all information or data on the SkyWatch Platform or processed through the SkyWatch Platform, including User Data, may be, without further required consent by you, Handled (as defined below) by a third-party for either: (1) our business purposes, including transaction processing

and data monitoring or storage; (2) for regulatory or other reasons which are imposed on us in Canada, United States of America, or in any other jurisdiction we provide services; or for (3) the third-party's own legitimate business purposes, provided however, third-parties shall only receive aggregated and non-confidential information. For further information, please consult our [Privacy Policy](#).

- (b) **Confidentiality.** Neither you nor we may Handle each other's Confidential Information (as defined below) except as set out in the Terms. You acknowledge that you will protect any Confidential Information you receive pursuant to the Terms in the same manner that you protect your own Confidential Information of like kind, but in no event using less than a reasonable standard of care. A disclosure by a party of Confidential Information of the other party to the extent required by law shall not be considered a breach of the Terms, but the party so compelled will provide the Disclosing Party (as defined below) with prior notice of such compelled disclosure (to the extent legally permitted) and provide reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest such disclosure. A Receiving Party (as defined below) will notify the other party promptly upon discovery of any unauthorized Handling of Confidential Information or any other breach of the Terms by the notifying party. The Receiving Party will cooperate with the Disclosing Party to help the other party regain possession of such Confidential Information and prevent its further unauthorized use and disclosure.
- (c) **Return and Deletion of ODP Data and User Data.** Following expiration or termination of your Subscription:
  - (i) If you are an EarthCache Enterprise User, we will store your User Data and ODP Data that you have purchased in our systems for a maximum of 90 days. If you request that User Data or such ODP Data be returned to you at any time within such 90 day period, we will return your User Data and such ODP Data to you in a format and delivery mechanism that, at our discretion, is customary for such data transfers. Following such 90 day period, your User Data and ODP Data will be deleted from our systems and we will have no obligation to return such User Data or ODP Data to you.
  - (ii) If you are a PAYG User, we will have no obligation to return or make available any User Data or ODP Data to you.

For clarity, the foregoing Section 4(c) does not limit your ability to download any ODP Data during the Term.

## 5. Representations, Warranties and Covenants

- (a) You represent, covenant, and warrant with SkyWatch that you (and any other User you allow to utilize the SkyWatch Platform): (1) are 16 years old or older; (2) have the authority to bind yourself, or such other party which you may be representing, to the Terms; (3) utilize the SkyWatch Platform solely for purposes that are permitted by the Terms; (4) will not infringe or misappropriate the intellectual property rights of any third-party by use of the SkyWatch Platform; (5) will comply with all Laws and with all applicable SkyWatch policies in your utilization of the SkyWatch Platform; and (6) will only provide User Data which contains Personal Information in respect of which you have provided all notices and disclosures (including to each User), obtained all applicable third-party consents and permissions, and otherwise have all authority, in each case as required by applicable laws, to enable us to

provide the SkyWatch Platform, including with respect to the collection, storage, access, use, disclosure, processing, and transmission of Personal Information, including by or to SkyWatch and to or from all applicable third-parties.

- (b) If you are using the SkyWatch Platform on behalf of an organization, you agree to the Terms on behalf of that organization, and represent you have authority to bind that organization to the terms contained herein. If you allow other Users to utilize the SkyWatch Platform pursuant to rights and access granted to you in these Terms of Service, you will be responsible for the conduct such Users, including any breach by such Users and the associated liabilities which may arise (see Section 14 below).

(c) **Limitations and Restrictions**

- (i) You covenant that you will not:

- A. publish content that violates any party's intellectual property rights or Laws in any form whatsoever, or fail to provide acknowledgments as required upon use of ODP Data as set out in the End User Data License Agreement;
- B. allow other Users to use your Account to obtain Services or share your Account log-in details with any person other than those expressly authorized by you;
- C. rent, lease, distribute, license, sublicense, sell, resell, assign, transfer, timeshare, offer in a service bureau, or otherwise make SkyWatch Platform available to any third-party contrary to the Terms;
- D. register for more than one Account or register for an Account on someone else's behalf;
- E. misrepresent your identity (e.g. represent to anyone on the SkyWatch Platform that you are someone else or you are affiliated with someone that you are not);
- F. with respect to a Transaction, make use of the SkyWatch Platform or the tools and services on the SkyWatch Platform to do anything other than to carry out activities which are normally related to activities conducted on the SkyWatch Platform;
- G. reverse engineer, de-compile, disassemble, or otherwise attempt to discover the source code or underlying ideas or algorithms in the SkyWatch Platform;
- H. damage, disable, overburden, or impair our servers or network, or interfere with any other party's use and enjoyment of the SkyWatch Platform;
- I. copy, or make derivative work, unless approved by SkyWatch, from any part of the SkyWatch Platform in any medium, including use of a frame or border environment around the SkyWatch Platform, or

other framing technique to enclose any portion or aspect of the SkyWatch Platform, using any device including using spiders, data mining, robots, or similar data gathering means;

- J. access the SkyWatch Platform in order to build a commercially available product or service which competes with the SkyWatch Platform;
  - K. copy any features, functions, integrations, interfaces, or graphics which are part of the SkyWatch Platform;
  - L. violate any Laws;
  - M. make statements on any part of the SkyWatch Platform on any topic, particularly regarding ODP Content and the SkyWatch Platform, which could reasonably be considered false or misleading, including taking any action which represents the SkyWatch Platform as your own or as of a third-party;
  - N. wilfully tamper with the security of the SkyWatch Platform, including attempting to probe, scan, or test the vulnerability of the SkyWatch Platform or to breach the security or authentication measures;
  - O. share any sensitive data with us which, in the normal course of events, would demand special Handling and introduce a security burden on SkyWatch that is not agreed upon by us in writing in advance of receipt of such data;
  - P. transmit any information, through the SkyWatch Platform or to Users in any other manner, which may: (1) be unlawful, threatening, abusive, libelous, defamatory; (2) refute or is contrary to what is set out anywhere in the SkyWatch Platform; (3) be considered “spam” (including machine or randomly-generated content, constitutes unauthorized or unsolicited advertising, chain letters, any other form of unauthorized solicitation or any form of lottery or gambling); (4) contain or install any viruses, worms, malware, Trojan horses, or other content that is designed or intended to disrupt, damage, or limit the function of any software, hardware, or telecommunications equipment or to damage or obtain unauthorized access to any data or other information of any third-party; and (5) violate the privacy of any third-party; or
  - Q. attempt to gain unauthorized access to the SkyWatch Platform or our computer systems or networks through hacking, password mining, or any other means.
- (ii) **Reliance on SkyWatch Platform.** Subject to Section 13, you acknowledge that SkyWatch is committed to helping you get the most out of your use of the SkyWatch Platform and as such, we will endeavour to update, revise, and evolve our SkyWatch Platform. To the extent possible, we’ll try and update you in respect of changes we make to the SkyWatch Platform, including functionality changes and interoperability with other software and

platforms.

- (d) **Suspension.** SkyWatch may, from time to time and in its discretion, without limiting any of its other rights or remedies at law or in equity under this Agreement, suspend your access to or use of the SkyWatch Platform or any component thereof: (i) for scheduled maintenance; (ii) upon the occurrence of any event set out in Section 22; (iii) if SkyWatch believes in good faith that you have violated any provision of this Agreement; (iv) to address emergency security concerns; and (v) if required to do so by a regulatory body or as a result of a change in applicable law. SkyWatch will use reasonable efforts to provide prior notice of any such suspension where it is practical to do so.

## 6. License Regarding Comments

In certain circumstances, you may opt to provide Comments on the SkyWatch Platform. Comments can include any details or remarks about an Original Data Provider or ODP Data. In such case, you grant us a worldwide, royalty-free, perpetual, irrevocable, and exclusive right to publish any such Comment, in any manner and at any time, solely at our discretion, and any intellectual property right arising in anything we develop in respect of such Comments shall vest solely in SkyWatch and you waive your right to assert any interest in such intellectual property. Regardless of any modification, except in respect of anything we develop associated with such Comments, you will indemnify SkyWatch with respect to any losses, claims, or action which arise in connection with such Comments.

## 7. Aggregated Information

SkyWatch owns all Aggregated Information (as defined below). Nothing herein will be construed as prohibiting us from using the Aggregated Information for any purpose seen fit by us including publication of, and creation of derivative works from the Aggregated Information, provided that such usage will not reveal to a third-party the identity of a User. For further information, please consult our Privacy Policy.

## 8. Monitoring of User Activity and Privacy

We may, solely at our discretion or at the request of a governmental authority, monitor, record or otherwise process all interactions utilizing the SkyWatch Platform. Further information is available in our Privacy Policy. Even though we are not a party to transactions between you and Original Data Providers and assume no liability for legal or regulatory compliance pertaining to use of ODP Data obtained through the SkyWatch Platform, there may be circumstances where we are nevertheless legally obligated (as we may determine in our sole discretion) to provide information about you or relating to an ODP in order to comply with requests from governmental bodies in relation to investigations, litigation, or administrative proceedings, and we may choose to comply with such obligations in our sole discretion.

## 9. Intellectual Property Rights

- (a) **Our IP is Ours.** We, Original Data Providers (as the case may be in respect of ODP Data), or our licensors (where applicable) retain all ownership and intellectual property rights in and to all Aggregated Information (as outlined in Section 7 above), Services including SkyWatch Platform Content, ODP Data, all applicable copyrights, patents, trademarks, other proprietary rights, and those arising subject



to your Comments (see Section 6) and all modifications, improvements, customizations, patches, bug fixes, updates, enhancements, aggregations, compilations, derivative works, translations, and adaptations to the foregoing. The Terms do not transfer any intellectual property between parties. We reserve all rights that are not expressly granted under the Terms.

- (b) **No Sharing without Permission.** You will not provide us with any material or content which are subject to third-party intellectual property rights without having the right to do so.
- (c) **Your IP is Yours.** You will own all User Data and retain ownership of all intellectual property rights not explicitly granted herein or pursuant to another agreement with us. You agree, however, that Aggregated Information is not User Data.
- (d) **Your License to Us.** You grant to us: (i) a nonexclusive, worldwide, royalty-free, irrevocable, transferable sublicensable, and fully paid-up licence during the Term to access, collect, use, process, store, disclose, transmit, transfer, copy, modify, and display User Data solely to provide the Services (including the SkyWatch Platform); and (ii) a nonexclusive, perpetual, worldwide, royalty-free, irrevocable, transferable, sublicensable, and fully paid-up licence to access, collect, use, process, store, disclose, transmit, transfer, copy, modify, and display User Data to: (A) improve and enhance the Services and SkyWatch's other offerings; and (B) produce or generate Aggregated Information.
- (e) **ODP Data Has Its Own Rules.** All ODP Data provided will be subject to the terms in the End User Data License Agreement and you agree to take the action as requested by us to ensure protection of a party's intellectual property.

## 10. **Permission for Communication**

- (a) **We can contact you and you have freedom to opt out.** We use email and other electronic means to stay in touch with you. You agree that when you provide us your e-mail address or personally identifying information (e.g. name, address) during or prior to access of the SkyWatch Platform or use of any other service or tool provided through or on the SkyWatch Platform, you: (1) consent to receive communications from us in electronic formats, including via the email address you have submitted or other agreed upon contact methods; (2) can opt-out from receiving communication from any such party at any time by informing our Privacy Officer (see Privacy Policy), but we do not take on any liability for any communication to another party to you, particularly if you have provided your contact information to them independently rather than using the communication functions of the SkyWatch Platform; and (3) agree that the Terms, agreements, notices, disclosures, and other communications that we provide you electronically satisfy any legal requirement that such communications would satisfy if they were in writing and physically presented to you.

## 11. **Professional Services and Third-Party Access**

- (a) **Implementation and Configuration of the SkyWatch Platform.** If you are an EarthCache Enterprise User, we may provide certain configuration, implementation, or development services to create and provide deliverables to you on the terms and conditions set out in an Order Form (if applicable). Any such deliverables will form part of the SkyWatch Platform.

- (b) **Third-Party Access on Your Behalf.** You may request and we may agree to access and use the platform of a third-party that you have contracted with on your behalf to transfer third-party data into the SkyWatch Platform. Any such access or use will be subject to the terms and conditions agreed to by us in an Order Form and such third-party data that is transferred will be User Data.

## 12. Term and Termination

- (a) **Term.** The term of these Terms of Service will commence on the Effective Date and will remain in effect until the Subscription is terminated under this Section 12 (“**Term**”).
  - (i) If you are an EarthCache Enterprise User, your Subscription commences on the subscription start date and will continue for the duration of the EarthCache Enterprise Subscription Term. Except as otherwise specified in an Order Form, your Subscription will automatically renew for additional terms equal to the expiring EarthCache Enterprise Subscription Term, unless and until either party gives the other notice of non-renewal at least thirty (30) days prior to the end of the then-current EarthCache Enterprise Subscription Term.
  - (ii) If you are a PAYG User, your Subscription commences on the date you first use the SkyWatch Platform and will continue until the date that your Subscription is terminated in accordance with Section 12(b) below.
- (b) **PAYG User Termination.** If you are a PAYG User: (i) we reserve the right to terminate your Subscription, including your access to all or any part of the SkyWatch Platform at any time and in our sole discretion; and (ii) you may terminate your Subscription at any time, upon providing 10 days prior notice to SkyWatch of your intention to terminate. Except for the provisions set out under Section 27 *Surviving Provisions*, the Terms will no longer be applicable to you if your Subscription is cancelled or terminated.
- (c) **EarthCache-Enterprise User Termination.** If you are an EarthCache Enterprise User, then either party may terminate your Subscription upon providing notice if the other party commits a material breach of this Agreement and such breach is not curable or, if such breach is curable, the breaching party fails to correct such breach within 30 calendar days after receipt of notice of such breach. Except for the provisions set out under Section 27 *Surviving Provisions*, the Terms will no longer be applicable to you if your Subscription is cancelled or terminated.
- (d) **If Your Subscription is Terminated.** Upon termination of your Subscription, (i) all rights, licenses, consents, and authorizations granted to you herein and in the applicable EUDLA will immediately terminate, (ii) you must abide by all termination related obligations applicable to you in each applicable End User Data License Agreement governing ODP Data, (iii) without limiting Section 4(c), we may disable your access to services, including access to ODP Data, on the SkyWatch Platform, (iv) if you are an EarthCache Enterprise User, all Order Forms (where applicable) will terminate, (v) all Fees due and payable and any other amounts due to us are immediately due and are to be immediately paid by you to us, (vi) without limiting Section 4(c), each party will promptly return or destroy any Confidential Information

of the other party in its possession or control in accordance with the other party's written instructions, (vii) if your Subscription is terminated by you under Section 12(c), then we will provide you with a pro-rata refund of any pre-paid and unused Fees, and (viii) if your Subscription is terminated by us under Section 12(c), then we are not obligated to provide any refund of Fees to you.

- (e) Notwithstanding anything to the contrary in the Terms, with respect to information and materials then in our possession or control, (i) we may retain User Data in our backups, archives, and disaster recovery systems until such User Data is deleted in the ordinary course and (ii) all information and materials in our possession or control will remain subject to all confidentiality, security, and other applicable requirements of the Terms.

### 13. Disclaimer of Warranties

- (a) **GENERAL DISCLAIMERS.** SKYWATCH DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR THAT THE SERVICES OR (OR ANY PART THEREOF), WILL BE ERROR FREE OR THAT ALL ERRORS CAN OR WILL BE CORRECTED; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES. EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT, SERVICES (OR ANY PART THEREOF), AND ANY OTHER PRODUCTS AND SERVICES PROVIDED BY SKYWATCH TO YOU ARE PROVIDED "AS IS" AND "AS AVAILABLE". ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY THIRD-PARTY PRODUCTS IS STRICTLY BETWEEN YOU AND THE THIRD-PARTY. YOU ACKNOWLEDGE THAT IF YOU CHOOSE TO SUBMIT ANY USER DATA TO THE SERVICES, YOU DO SO ENTIRELY AT YOUR OWN RISK. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, SKYWATCH HEREBY DISCLAIMS ALL EXPRESS, IMPLIED, COLLATERAL, OR STATUTORY WARRANTIES, REPRESENTATIONS, AND CONDITIONS, WHETHER WRITTEN OR ORAL, INCLUDING ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, MERCHANTABLE QUALITY, COMPATIBILITY, TITLE, NON-INFRINGEMENT, SECURITY, RELIABILITY, COMPLETENESS, QUIET ENJOYMENT, ACCURACY, QUALITY, INTEGRATION, OR FITNESS FOR A PARTICULAR PURPOSE OR USE, OR ANY WARRANTIES OR CONDITIONS ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE. WITHOUT LIMITING THE GENERALITY OF ANY OF THE FOREGOING, SKYWATCH EXPRESSLY DISCLAIMS ANY REPRESENTATION, CONDITION, OR WARRANTY THAT ANY ODP DATA OR OTHER CONTENT PROVIDED TO YOU IN CONNECTION WITH YOUR USE OF SERVICES (OR ANY PART THEREOF) IS ACCURATE, OR CAN OR SHOULD BE RELIED UPON BY YOU OR ANY USER FOR ANY PURPOSE WHATSOEVER. WE DO NOT MAKE ANY WARRANTY, GUARANTEE, OR REPRESENTATION AS TO THE ABILITY, COMPETENCE, QUALITY, OR QUALIFICATION OF AN ORIGINAL DATA PROVIDER AND WE DO NOT REVIEW, CERTIFY, OR OTHERWISE CENSOR OR MANIPULATE ANY INFORMATION PROVIDED BY AN ORIGINAL DATA PROVIDER.
- (b) **NO PROMISE OF SECURITY OR CONFIDENTIALITY OR PROTECTION FROM HARM.** TO THE FULLEST EXTENT OF THE LAW, WE DO NOT REPRESENT THAT ANY INFORMATION EXCHANGED BETWEEN A PARTY UNDER THE TERMS IS SECURE, EVEN IF WE BECOME AWARE OF ANY, OR ARE TOLD ABOUT, A POTENTIAL BREACH. FURTHER, WE EXPRESSLY DISCLAIM ANY EXPRESS OR IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION,

MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, RELIABILITY, OR ACCURACY. WE DO NOT WARRANT THAT THE SKYWATCH PLATFORM OR THE FUNCTIONS THEREIN WILL BE UNINTERRUPTED OR ERROR FREE, OR THAT THE SKYWATCH PLATFORM OR ANY ITEM CONNECTED WITH THE SERVER IS FREE OF VIRUSES OR ANY HARMFUL COMPONENTS. ANY TRANSMISSION TO AND FROM THIS SKYWATCH PLATFORM, COMMUNICATION BETWEEN THE PARTIES OR ANY COMMENTS MADE BY YOU, ARE NOT CONFIDENTIAL. YOU AGREE THAT YOUR USE OF THIS SKYWATCH PLATFORM CREATES NO OBLIGATION UPON US AND THERE IS NO RELATIONSHIP (WHETHER CONTRACTUAL, FIDUCIARY OR OTHERWISE) CREATED BETWEEN YOU AND US OTHER THAN PURSUANT TO THE TERMS.

- (c) **NO INSURANCE.** YOU AGREE THAT YOU DO NOT EXPECT SKYWATCH OR ANY OF ITS AFFILIATES OR ANY SUCH ENTITY'S AGENTS, OFFICERS, AND DIRECTORS TO PROVIDE INSURANCE IN REGARDS TO THE SKYWATCH PLATFORM AND EACH PARTY ACKNOWLEDGES THAT IT DOES NOT RELY ON THE INSURANCE OF ANY OTHER PARTY.

#### 14. **Limitation of Liability**

- (a) **Liability Amount.** SUBJECT TO SECTION 14(c), IN NO EVENT WILL THE TOTAL AGGREGATE LIABILITY OF SKYWATCH, OUR AFFILIATES, ORIGINAL DATA PROVIDERS, AND LICENSORS UNDER THESE TERMS, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE OR GROSS NEGLIGENCE), OR OTHERWISE, EXCEED THE AMOUNT OF FEES PAID BY YOU UNDER THESE TERMS IN THE 12 MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM. FOR GREATER CERTAINTY, THE EXISTENCE OF ONE OR MORE CLAIMS UNDER THESE TERMS WILL NOT INCREASE THIS MAXIMUM LIABILITY AMOUNT. IN NO EVENT WILL SKYWATCH'S THIRD-PARTY SUPPLIERS HAVE ANY LIABILITY ARISING OUT OF OR IN ANY WAY CONNECTED TO THESE TERMS.
- (b) **Liability Types.** SUBJECT TO SECTION 14(c), TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, IN NO EVENT WILL SKYWATCH, OUR AFFILIATES, ORIGINAL DATA PROVIDERS, AND LICENSORS BE LIABLE FOR ANY: (I) SPECIAL, EXEMPLARY, PUNITIVE, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES; (II) LOST OR LOSS OF (I) SAVINGS, (II) PROFIT, (III) DATA, (IV) USE, OR (V) GOODWILL; (III) BUSINESS INTERRUPTION; (IV) COSTS FOR THE PROCUREMENT OF SUBSTITUTE PRODUCTS OR SERVICES; (V) PERSONAL INJURY OR DEATH; OR (VI) PERSONAL OR PROPERTY DAMAGE ARISING OUT OF OR IN ANY WAY CONNECTED TO THESE TERMS, REGARDLESS OF THE CAUSE OF ACTION OR THE THEORY OF LIABILITY, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE OR GROSS NEGLIGENCE), OR OTHERWISE, AND EVEN IF NOTIFIED IN ADVANCE OF THE POSSIBILITIES OF SUCH DAMAGES.
- (c) **Exceptions.** Sections 14(a) and 14(b) will not apply to limit SkyWatch's liability arising from its gross negligence, fraud or wilful misconduct.

## 15. Indemnification

- (a) **You'll Cover Us.** You will indemnify, defend, and hold harmless us, Original Data Providers, our affiliates and licensors, and each of their respective employees, officers, directors, agents, representatives, successors, and permitted assigns from and against any and all claims and associated expenses, including legal fees and disbursements, arising out of (1) use of the SkyWatch Platform, including its integration with any product or technology, (2) improper Handling of ODP Data, (3) allegation of facts that, if true, would constitute breach of the representations, warranties, covenants, or obligations under the Terms, (4) gross negligence, fraud, or wilful misconduct, by you and any other User who uses the SkyWatch Platform pursuant to the rights granted to you herein, (5) your breach or non-compliance with any terms and conditions in the EUDLA, (6) your breach or non-compliance with any terms and conditions and applicable ODP EULA, or (7) any User Data.
- (b) **Your Disputes are Yours.** In the event of any dispute between you and an Original Data Provider in connection with the SkyWatch Platform, you agree to grant SkyWatch and its officers, employees, directors, and agents and related entities a release from all claims, causes of action, demands, and damages (actual and consequential) of every kind and nature whatsoever, known and unknown, arising out of or in any way connected with such dispute now or at any time in the future.
- (c) **For California Residents.** In the event you are a California resident, you waive California Civil Code Section 1542, which says: "a general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which, if known by him must have materially affected his settlement with the debtor."
- (d) **We Will Cover You.** We will indemnify, defend, and hold harmless you and your officers, directors, employees, and agents from and against any and all claims by a third-party and associated expenses, including legal fees and disbursements, arising out of any allegation that the SkyWatch Platform infringes any third-party intellectual property right in Canada. The foregoing obligation does not apply to claims arising out of or relating to any: (1) incorporation of the SkyWatch Platform into, or any combination, operation, or use of the SkyWatch Platform with, any products or services not provided or authorized by SkyWatch, unless such infringement would also have resulted solely from the use of the SkyWatch Platform without their incorporation in, or combination, operation or use, with such other products or services; (2) modification of the SkyWatch Platform other than by SkyWatch or with SkyWatch's express written approval; (3) unauthorized use of the SkyWatch Platform; or (4) of your indemnities in Section 15(a). THIS SECTION 15 (d) REPRESENTS THE SOLE AND EXCLUSIVE LIABILITY OF SKYWATCH FOR THE INFRINGEMENT, VIOLATION, OR MISAPPROPRIATION OF THE INTELLECTUAL PROPERTY RIGHTS OF A THIRD-PARTY UNDER THIS AGREEMENT.
- (e) **IP Remedy.** If the SkyWatch Platform is, or in SkyWatch's opinion is likely to be claimed to infringe, misappropriate, or otherwise violate any third-party intellectual property right, or if your use of any portion of the SkyWatch Platform is enjoined or threatened to be enjoined, SkyWatch may, at its option and sole cost and expense:
  - (i) obtain the right for you to continue to use the affected SkyWatch Platform materially as contemplated by these Terms;

- (ii) modify or replace the SkyWatch Platform, in whole or in part, to seek to make the SkyWatch Platform (as so modified or replaced) non-infringing while providing materially equivalent features and functionality, in which case such modifications or replacements will constitute the SkyWatch Platform under these Terms; or
- (iii) if SkyWatch determines that neither of the foregoing two options are reasonably available, by written notice to you, terminate these Terms, require you to immediately cease all use of the SkyWatch Platform or part or feature thereof, and provide a pro rata refund of any unused prepaid Fees for the terminated SkyWatch Platform, if applicable.

THE FOREGOING IS IN LIEU OF ANY REPRESENTATION, COVENANTS, OR WARRANTIES OF NONINFRINGEMENT, WHICH ARE DISCLAIMED.

- (f) **Indemnification Procedure.** Each party will promptly notify the other party in writing of any claim for which such party believes it is entitled to be indemnified pursuant to this Section 15. The party seeking indemnification (the “**Indemnitee**”) will cooperate with the other party (the “**Indemnitor**”) at the Indemnitor’s sole cost and expense. The Indemnitor will promptly take control of the defense and investigation of such claim (provided the Indemnitor may not settle any claim without the Indemnitee’s written consent unless it unconditionally releases the Indemnitee of all liability) and will employ counsel of its choice to handle and defend the same, at the Indemnitor’s sole cost and expense. The Indemnitee’s failure to perform any obligations under this Section 15(f) will not relieve the Indemnitor of its indemnity obligations under this Section 15 except to the extent that the Indemnitor can demonstrate that it has been materially prejudiced as a result of such failure. The Indemnitee may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing.

## 16. Modifications

- (a) **Modification of Services.** We will provide you a 60-day prior notice of all changes to the SkyWatch Platform which are not backwards compatible.
- (b) **We May Modify Terms.** SkyWatch reserves the right, at our sole discretion, to amend the Terms at any time and will update the Terms in the event of any such amendments.
- (c) **You’re Responsible for Keeping Up-To-Date on Terms.** If the Terms are modified in a way we consider significant, we will post the amended Terms on the SkyWatch Platform and send you a notice pursuant to Section 19 (Notices). Although we will take reasonable steps to notify you of such significant changes made, you are expected to check the Terms periodically for any amendments. Your continued use of the SkyWatch Platform following such notification shall constitute your affirmative acknowledgement of the Terms, the modification and agreement to abide and be bound by the Terms, as amended. If at any time you choose not to accept the Terms, including following receipt of notification of any modifications made hereto, then please do not use the SkyWatch Platform and as applicable, terminate your Account.
- (d) **Ontario Law Rules.** The Terms and any access to or use of the SkyWatch Platform shall be governed by, and construed in accordance with the internal laws of

the province of Ontario and the federal laws of Canada, without giving effect to any choice or conflict of law provision or rule (whether of the province of Ontario or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the province of Ontario. The U.N. Convention on Contracts for the International Sale of Goods will not apply to these Terms.

- (e) **We'll Arbitrate If We Dispute.** Before escalating an issue into a dispute for which we need to utilize external resources, please first try contacting our customer support team ([support@skywatch.com](mailto:support@skywatch.com)) which can resolve most issues in relation to the SkyWatch Platform. If any claim, dispute, or controversy arises between you and us or any other User who obtains Services under the Terms as a result of rights granted to you herein, and such issue cannot be resolved within a commercially reasonable timeframe, the dispute may be referred to arbitration pursuant to the *International Commercial Arbitration Act, 2017*, SO 2017, c 2. There shall be one arbitrator selected in accordance with the Rules. The parties to the dispute shall equally share the fees of the arbitrator and the facility fees and such parties shall each bear their own legal costs and expenses of the arbitration; provided, that the arbitrator shall have the authority to award such fees, costs, and expenses in its own discretion. The arbitration shall be conducted in English. Notwithstanding the foregoing or the choice of law in Section 16(d), each disputing party shall have the right to seek injunctive or other equitable relief that may be related to the breach of confidentiality obligations (see Section 4(b)) or violation of the intellectual property rights set forth in the Terms.
- (f) **No Class Actions.** You hereby waive any right you may have to commence or participate in any class action lawsuit against SkyWatch related to any claim, dispute, or controversy and, where applicable, you hereby agree to opt out of any class proceeding against SkyWatch otherwise commenced.

## 17. Assignment of Terms

- (a) **We Can Assign.** We may unilaterally assign or delegate the Terms, including these Terms of Service and/or our Privacy Policy, in whole or in part, to any person or entity at any time without your consent and without notice to you, provided however that all of our obligations to you, shall be assumed by the assignee and the assignee is deemed substituted for SkyWatch as a party to these Terms and SkyWatch is fully released from all of its obligations and duties to perform under these Terms.
- (b) **You Cannot Assign Without Permission.** You may not assign or delegate any rights or obligations under the Terms without our prior written consent and any unauthorized assignment and delegation by you is void. Subject to the foregoing, these Terms enures to the benefit of and is binding upon the parties and their respective successors and permitted assigns.

## 18. Relationship of the Parties

Nothing contained in these Terms of Service shall be construed as creating any agency, legal partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship

between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

#### **19. Notices**

Except as otherwise stated in the Terms or as expressly required by law, any notice to us shall be given in writing by certified postal mail to 14 Erb St. W, Waterloo, ON, N2L 1S7, Canada or by email to [legal@skywatch.com](mailto:legal@skywatch.com). Any notice to you shall be given to the most current email address in your Account.

#### **20. Other Rules of Interpretation**

Any reference to gender includes all genders; words importing the singular number only shall include the plural and vice versa; the word “or” is not exclusive; and the words “including”, “includes”, and “include” mean “including without limitation”.

#### **21. We Retain Rights Even If We Don't Say or Do Anything**

Failure by any party to insist upon the strict performance of any of the covenants, agreements, terms, provisions, or conditions contained in the Terms or to exercise any election shall not be construed as a waiver or relinquishment of such covenant, agreement, term, provision, or condition but the same shall continue and remain in full force. No waiver shall be deemed to have been made unless expressed in writing.

#### **22. Force Majeure**

No failure, delay, or default in performance of any obligation of a party shall constitute an event of default or breach of these Terms to the extent that such failure to perform, delay, or default arises out of a cause, existing or future, that is beyond the control and without negligence of such party, including action or inaction of governmental, civil, or military authority, fire, strike, lockout, or other labor dispute, flood, terrorist act, war, riot, theft, earthquake, and other natural disaster. The party affected by such cause shall take all reasonable actions to minimize the consequences of any such cause.

#### **23. Severance**

If any provision of the Terms is found to be invalid by a court of competent jurisdiction, the other provisions of the Terms will remain in full force and effect.



## **24. Publicity**

SkyWatch will only disclose your name and logo in a list of those who utilize the Service, and you may use the SkyWatch name and logo in the normal course to inform a party about your usage of the SkyWatch Platform, as applicable. Any additional publicity will require respective party's prior written consent.

## **25. Export Restrictions.**

The Services may not be used in or for the benefit of, exported, or re-exported (a) into any U.S. embargoed countries or (b) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals, any other restricted party lists (existing now or in the future) identified by the Office of Foreign Asset Control, or the U.S. Department of Commerce Denied Persons List or Entity List, or any other restricted party lists. Without limiting the foregoing, you shall not directly or indirectly export, re-export, or import all or any portion of the Services without first obtaining all required licenses, permits, and permissions. We make no representation or warranty that the Services may be exported without your first obtaining appropriate licenses or permits under applicable law, or that any such license or permit has been, will be, or can be obtained.

## **26. Third-Party Beneficiary**

Except for Original Data providers, our licensors and as set forth in Section 15, these Terms do not create any third-party beneficiary rights in any individual or entity that is not a party to these Terms.

## **27. Surviving Provisions**

Only the following provisions of these Terms, together with any other provision of these Terms which expressly or by its nature survives termination or expiration, or which contemplates performance or observance subsequent to termination or expiration of these Terms, will survive expiration or termination of these Terms for any reason: Section 5 (Representations, Warranties and Covenants), 9 (Intellectual Property Rights), 10 (Permission for Communication), Section 13 (Disclaimer of Warranties), 14 (Limitation of Liability), 15 (Indemnification), 16(d) (Governing Law), 16(e) (Arbitration), 16(f) (Waiver of Class Proceedings), Section 26 (Third-Party Beneficiary), Section 28 (Entire Agreement), and this Section 27.

## **28. Entire Agreement**

The Terms, in combination with all SkyWatch policies and guidelines (including any applicable Order Form, Privacy Policy, and End User Data License Agreement), incorporated by reference, constitute the entire agreement between you and SkyWatch and supersede all prior communications, agreements, and understandings, written or oral, with respect to the subject matter of the Terms. In the event that the parties have a validly executed non-disclosure agreement, the confidentiality obligations set out therein shall survive any termination or expiry of these Terms. We will not be bound by, and specifically object to, any term, condition, or other provision that is different from or in addition to the provisions of these Terms (whether or not it would materially alter these Terms) including for example, any term, condition, or other provision (a) submitted by you in any purchase order, order, receipt, acceptance, confirmation, correspondence, or other document, (b) related to any online registration, response to any request for bid, request for proposal, request for information, or other questionnaire, or (c) related to any invoicing process that you submit or require us to complete. If the terms of this document are inconsistent with the terms contained in any applicable Order Form, the terms contained in this document will control, except

that the EUDLA and applicable ODP EULA will control over these Terms of Service and any Order Form (where applicable), in respect of any ODP Data.

## 29. English Language.

It is the express wish of the parties that these Terms and all related documents be drawn up in English. C'est la volonté expresse des parties que la présente convention ainsi que les documents qui s'y rattachent soient rédigés en anglais.

## 30. Definitions

**"Account Details"** means any User information deemed mandatory as part of registering for an Account.

**"Aggregated Information"** means all information derived from your engagement with the SkyWatch Platform, including, usage information, data, and other content and which is sufficiently different from User Data such that User Data cannot be reverse engineered or otherwise identified from the inspection, analysis, or further Handling of such derived information, data, or content.

**"Archival ODP Data"** is ODP Data captured and available through the SkyWatch Platform prior to your Request for that data.

**"Budget"** means the maximum dollar value you are willing to pay for ODP Data, as measured per kilometre square. This value is indicated by you via the 'Budget' or 'Max Cost' parameter in your Requests.

**"Certified"** means being officially recognized as possessing certain qualifications or criteria or meeting certain standards.

**"Comments"** means written statements, submitted by you on the SkyWatch Platform or otherwise to us, which sets out facts, ideas, feedback, or opinions.

**"Confidential Information"** means all non-public information disclosed by either party, its affiliates, or their agents (as applicable, such entities collectively, the **"Disclosing Party"**) to the other party, its affiliates, or their agents (collectively, the **"Receiving Party"**) that is designated as confidential or that, given the nature of the information or the circumstances surrounding its disclosure, reasonably should be considered as confidential. Confidential Information includes, without limitation (i) non-public information relating to the Disclosing Party's technology, products, services, processes, data, customers, business plans and methods, promotional and marketing activities, finances, and other business affairs, (ii) third-party information that the Disclosing Party is obligated to keep confidential, and (iii) the details of the relationship, discussions, or negotiations between the parties, but does not include any information that (i) is or becomes publicly available without breach of these Terms of Service (provided, however, information that is rumored or reported does not become public based only on such rumors or reports), (ii) was known by the Receiving Party prior to its receipt from the Disclosing Party, (iii) is disclosed to the Receiving Party from any third-party, except where the Receiving Party knows, or reasonably should know, that such disclosure constitutes a wrongful or tortious act, (iv) has become known publicly, without fault of the Receiving Party, subsequent to disclosure by the Disclosing Party, (v) is independently developed by the Receiving Party, or (vi) is Aggregated Information.

**"Content"** means any content featured or displayed throughout the SkyWatch Platform, including but not limited to ODP Data, text, documents, information, data, articles, opinions, images, photographs, graphics, software, applications, video recordings, audio recordings, sounds, designs, features, comments or ratings, and other materials that are available on the SkyWatch Platform.

**“EarthCache Enterprise Subscription Term”** means the term of each EarthCache Enterprise User Subscription to the SkyWatch Platform as specified in the Order Form (if applicable).

**“EarthCache Enterprise User”** means an individual or entity that has entered into an Order Form with SkyWatch.

**“EUDLA”** or **“End User Data License Agreement”** has the meaning in the preamble.

**“Future-Facing ODP Data”** is ODP Data scheduled to be imaged at a future date.

**“Handle”** means to process, record, transfer, access, receive, use, disclose, retain, dispose of, destroy, manage, collect, store, or otherwise handle and any variation of “Handle” such as “Handling” has the same meaning depending on the context.

**“Interval”** means the period of time during which the fresh ODP data, for the area specified, is to be collected.

**“Law”** means any statute, ordinance, regulation, rule, code, constitution, treaty, common law, governmental order, or other requirement or rule of law of any governmental authority.

**“License”** has the meaning in the EUDLA.

**“Original Data Provider”** or **“ODP”** has the meaning in the EUDLA.

**“ODP Data”** has the meaning in the EUDLA and may include ODP Data provided by an Original Data Provider.

**“ODP EULA”** has the meaning in our EUDLA.

**“Order Form”** means any order form that references these Terms of Service and that is executed by both parties or otherwise accepted by you.

**“PAYG User”** means an individual or entity that has not entered into an Order Form with SkyWatch and that is accessing and using the SkyWatch Platform or ODP Data on a pay-as-you-go basis.

**“Personal Information”** means any information about an identifiable individual or an individual whose identity may be inferred or determined from the information.

**“Request”** is achieved when making an API (POST/PUT) call. Contains a Budget value in the body.

**“Services”** has the meaning in the preamble and includes each of the services made available by us or our affiliates, including the Subscription to the SkyWatch Platform. Services do not include third-party data or third-party services.

**“SkyWatch EarthCache”** is one of SkyWatch’s products.

**“SkyWatch Platform”** means all of SkyWatch’s software including SkyWatch EarthCache, any SkyWatch Platform, or any services offered offline as part of SkyWatch’s business.

**“Subscription”** means a non-exclusive, non-sublicensable, non transferable, limited, and revocable right to access and use certain features or aspects of the SkyWatch Platform.

**“Term”** has the meaning in Section 12(a).

**“Transaction”** means any downloading, purchase, use, or otherwise handling of ODP Data on the SkyWatch Platform, including the exchange of monies in respect of Content or goods and or services as available through the SkyWatch Platform.

**“Use”** means to utilize the SkyWatch Platform or any other Services subject to the Terms and the terms “use” and “using” will refer to any of the foregoing.

**“User”** means you or any individual or entity that directly or indirectly accesses or uses the SkyWatch Platform or any other Services under your Account.

**“User Data”** means any data, information, content, record, or files (including Personal Information) that you (including any other User that you allow to use the SkyWatch Platform on your behalf) loads or enters into, transmit to, or makes available to SkyWatch Platform or otherwise provides to SkyWatch, including any data, information, content, records, or files that a User has received from a third-party. The term “User Data” does not include any Content.

**“you”** or **“your”** has the meaning in the preamble.