



Professional Services Agreement

This is an Agreement between Ramsey County, a political subdivision of the State of Minnesota, on behalf of Information Services, 90 W. Plato Blvd., St. Paul, MN 55107 ("County") and Nearmap US, Inc., 10897 S. River Front Parkway, Suite 150, South Jordan, UT 84095, registered as a Corporation in the State of Delaware ("Contractor"). Contractor hereby certifies it is registered in the state of Minnesota, is active and in good standing.

1. Term

1.1.

The original term of this Agreement shall be from July 31, 2022 through July 31, 2027 and may not be renewed.

2. Scope of Service

The County agrees to purchase, and the Contractor agrees to furnish, services described as follows:

2.1.

Aerial imagery products and services consisting of:

Orthophotography Imagery Capture pursuant to the requirements described in Ramsey County RFP ISDP0000009041 which is incorporated by reference into this Agreement.

Order of governance regarding the Terms and Conditions of this Agreement between the parties shall be as follows:

- a. This Professional Services Agreement ("PSA")
- b. Additional Terms and Conditions/Modifications to Nearmap Products Agreement – Attachment A
- c. Product-Specific Terms – Attachment B
- d. Nearmap Products Agreement ("Products Agreement") - Attachment C
- e. Quote – Attachment D
- f. Fair Use Policy – Attachment E
- g. Nearmap's Privacy Policy (as modified from time to time)– Attachment F

If there is any ambiguity or inconsistency between the documents comprising this Agreement, the document appearing higher in the list will have precedence.

2.2.

The Contractor shall make every reasonable effort to provide services in a universally accessible, multi-cultural and/or multi-lingual manner to persons of diverse populations.

2.3.

The Contractor agrees to furnish the County with additional programmatic and financial information it reasonably requires for effective monitoring of services. Such information shall be furnished within a reasonable period, set by the County, upon request.

3. Schedule

The Contractor shall provide services in accordance with the terms of this Agreement.

4. Cost

4.1.

The County shall pay the Contractor the following unit rates:
As shown in Attachment D – Quote.

5. Special Conditions

5.1.

Additional Modules/Products/Services

The County reserves the right throughout the term of the Agreement to add or acquire other modules, products, or services that the Contractor can supply that are similar to, but not specifically called for in the Agreement. All changes, including SOW's or Service Orders, require a written amendment to the contract and work cannot begin until the amendment is electronically approved by those who are authorized by the County and the Contractor.

Any contract amendments for additional modules/features will pertain only to those requested and will not result in further renegotiations of the existing contract terms and conditions. However, the County acknowledges that should there be product-specific terms relating to the purchase of new products, the Contractor shall supply those terms in the contract amendment and the County will comply with those requirements.

6. General Contract/Agreement Terms and Conditions

6.1. Payment

6.1.1.

No payment will be made until the invoice has been approved by the County.

6.1.2.

Payments shall be made when the materials/services have been received in accordance with the provisions of the resulting contract.

6.2. Application for Payments

6.2.1.

The Contractor shall submit an invoice as mutually agreed upon by Contractor and the County.

6.2.2.

Invoices for any goods or services not identified in this Agreement will be disallowed.

6.2.3.

Each application for payment shall contain the order/contract number, an itemized list of goods or services furnished and dates of services provided, cost per item or service, and total invoice amount.

6.2.4.

Payment shall be made within thirty-five (35) calendar days after the date of receipt of a detailed invoice and verification of the charges. At no time will cumulative payments to the Contractor exceed the percentage of project completion, as determined by the County.

6.2.5.

Payment of interest and disputes regarding payment shall be governed by the provisions of Minnesota Statutes §471.425.

6.2.6.

To the extent it applies, the Contractor shall pay any subcontractor within ten days of the Contractor's receipt of payment from the County for undisputed services provided by the subcontractor. The Contractor shall pay interest of 1 1/2 percent per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of \$100.00 or more is \$10.00. For an unpaid balance of less than \$100.00, the Contractor shall pay the actual penalty due to the subcontractor. A subcontractor who prevails in a civil action to collect interest penalties from the Contractor must be awarded its costs and disbursements, including attorney's fees, incurred in bringing the action.

6.3. Independent Contractor

The Contractor is and shall remain an independent contractor throughout the term of this Agreement and nothing herein is intended to create, or shall be construed as creating, the relationship of partners or joint ventures between the parties or as constituting the Contractor as an employee of the County.

6.4. Successors, Subcontracting and Assignment

6.4.1.

The Contractor binds itself, its partners, successors, assigns and legal representatives to the County in respect to all covenants and obligations contained in this Agreement.

6.4.2.

The Contractor shall not assign or transfer any interest in this Agreement without prior written approval of the County and subject to such conditions and provisions as the County may deem necessary.

6.4.3.

The Contractor shall not enter into any subcontract for performance of any services directly provided to the county under this Agreement without the prior written approval of the County. The Contractor shall be responsible for the performance of all subcontractors.

6.5. Compliance With Legal Requirements

6.5.1.

The Contractor shall comply with all applicable federal, state and local laws and the rules and regulations of any regulatory body acting thereunder and all licenses, certifications and other requirements necessary for the execution and completion of the contract.

6.5.2.

Unless otherwise provided in the agreement, the Contractor, at its own expense, shall secure and pay for all permits, fees, charges, duties, licenses, certifications, inspections, and other requirements and approvals necessary for the execution and completion of the contract, including registration to do business in Minnesota with the Secretary of State's Office.

6.6. Data Practices

6.6.1.

All data collected, created, received, maintained or disseminated for any purpose in the course of the Contractor's performance under this Agreement is subject to the provisions of the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, any other applicable state statutes, any state rules adopted to implement the Act and statutes, as well as federal statutes and regulations on data privacy.

6.6.2.

The Contractor designates Sean Kelly, Director of Survey Operations (North America), as its Responsible Designee, pursuant to the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13.02 Subdivision 6, as the individual responsible for any set of data collected to be maintained by Contractor in the execution of this Agreement.

6.6.3. *Intentionally Omitted.*

6.7. *Intentionally Omitted.*

6.7.1. - *Intentionally Omitted.*

6.7.2. - *Intentionally Omitted.*

6.7.3. - *Intentionally Omitted.*

6.7.4. - *Intentionally Omitted.*

6.7.5. - *Intentionally Omitted.*

6.8. Indemnification

The Contractor shall indemnify, hold harmless and defend the County, its officials, agents, and employees against any and all liability, losses, costs, damages, expenses, claims or actions, including reasonable attorney's fees, which the County, its officials, agents, or employees may hereafter sustain, incur or be required to pay, arising out of or by reason of any act or omission of the Contractor, or its subcontractors, and their officers, agents or employees, in the execution or performance of Contractor's obligations pursuant to this Agreement. Contractor's obligation to indemnify is reduced to the extent that such liability was caused by or contributed to by the County, its officials, agents and employees.

6.9. Contractor's Insurance

6.9.1.

The Contractor shall purchase and maintain such insurance as will protect the Contractor from claims which may arise out of, or result from, the Contractor's operations under this Agreement, whether such operations are by the Contractor or by any subcontractor, or by anyone directly employed by them, or by anyone for whose acts or omissions anyone of them may be liable.

6.9.2.

Throughout the term of this Agreement, the Contractor shall secure the following coverages and comply with all provisions noted. Certificates of Insurance shall be issued to the County contracting department evidencing such coverage to the County throughout the term of this Agreement.

6.9.3.

Commercial general liability of no less than \$500,000 per claim, \$1,500,000 per occurrence, \$2,000,000 general aggregate, \$2,000,000 products/completed operations total limit, \$1,500,000 personal injury and advertising liability.

6.9.3.1.

All policies shall be written on an occurrence basis using ISO form CG 00 01 or its equivalent. Coverage shall include contractual liability and XCU.

6.9.3.2

The Contractor is required to add Ramsey County, its officials, employees, volunteers and agents as Additional Insured to the Contractor's Commercial General Liability, Auto Liability, and Umbrella policies with respect to liabilities caused in whole or part by Contractor's acts or omissions, or the acts or omissions of those acting on Contractor's behalf in the performance of the ongoing operations, services and completed operations of the Contractor under this Agreement. The coverage shall be primary and non-contributory.

6.9.4.

Professional liability of no less than \$1,000,000 per claim and \$3,000,000 aggregate limit.

6.9.4.1.

Certificate of Insurance must indicate if the policy is issued on a claims-made or occurrence basis. If coverage is carried on a claims-made basis, then 1) the retroactive date shall be noted on the Certificate and shall be prior to or the day of the inception of the contract; and 2) evidence of coverage shall be provided for three years beyond expiration of the contract.

6.9.4.2.

If the Contractor is flying aircraft on behalf of County as part of the Contractor's services under the Agreement, Contractor shall have aircraft liability insurance coverage for third party liability (including passenger liability, bodily injury and property damage) and non-owned aircraft liability in amounts equivalent to the policy limits carried for each aircraft, but not less than \$5,000,000 combined single limit/each occurrence. Contractor shall also have \$5,000,000 in personal injury and advertising liability, and war risk liability insurance in an amount not less than \$5,000,000 each occurrence and in the aggregate. Each policy required under this section shall contain a severability of interest provision.

6.9.4.3.

Ramsey County, its officials, employees, and agents, shall be added to the policy as additional insured; a separation of insureds endorsement shall be provided to the benefit of the County.

6.9.5.

Workers' Compensation as required by Minnesota Law. Employer's liability with limits of \$500,000/\$500,000/\$500,000.

6.9.6.

An umbrella or excess liability policy over primary liability insurance coverages is an acceptable method to provide the required commercial general liability and employer's liability insurance amounts. If provided to meet coverage requirements, the umbrella or excess liability policy must follow form of underlying coverages and be so noted on the required Certificate(s) of Insurance.

6.9.7.

If the Contractor is driving on behalf of the County as part of the Contractor's services under the Agreement, a minimum of \$1,000,000 combined single limit auto liability, including hired, owned, and non-owned.

6.9.8.

The Contractor waives all rights against Ramsey County, its officials, employees, volunteers or agents for recovery of damages to the extent these damages are covered by the general liability, worker's compensation, and employers liability, automobile liability and umbrella liability insurance required of the Contractor under this Agreement.

6.9.9.

These are minimum insurance requirements. It is the sole responsibility of the Contractor to determine the need for and to procure additional insurance which may be needed in connection with this Agreement. Copies of policies shall be submitted to the County upon written request.

6.9.10.

Certificates shall specifically indicate if the policy is written with an admitted or non-admitted carrier. Best's Rating for the insurer shall be noted on the Certificate, and shall not be less than an A-.

6.9.11.

The Contractor shall not commence work until it has obtained the required insurance and if required by this Agreement, provided an acceptable Certificate of Insurance to the County.

6.9.12.

All Certificates of Insurance shall provide that the insurer give the County prior written notice of cancellation or non-renewal of the policy as required by the policy provisions of Minn. Stat. Ch. 60A, as applicable. Further, all Certificates of Insurance to evidence that insurer will provide at least ten (10) days written notice to County for cancellation due to non-payment of premium.

6.9.13.

Nothing in this Agreement shall constitute a waiver by the County of any statutory or common law immunities, defenses, limits, or exceptions on liability.

6.9.14. *Intentionally Omitted.*

6.10. Audit

Until the expiration of six years after the furnishing of services pursuant to this Agreement, the Contractor, upon request, shall make available to the County, the State Auditor, or the County's ultimate funding source, a copy of the Agreement, and the books, documents, records, and accounting procedures and practices of the Contractor relating to this Agreement.

6.11. Notices

All notices under this Agreement, and any amendments to this Agreement, shall be in writing and shall be deemed given when delivered by email or certified mail, return receipt requested, postage prepaid, when delivered via personal service or when received if sent by overnight courier. All notices shall be directed to the Parties at the respective addresses set forth below. If the name and/or address of the representatives change, notice of such change shall be given to the other Party in accordance with the provisions of this section.

County:

Contract Administration, 90 W. Plato Blvd., St. Paul, MN 55107

Contractor:

Nearmap US, Inc., 10897 S. River Front Parkway, Suite 150, South Jordan, UT 84095

6.12. Non-Conforming Services

The acceptance by the County of any non-conforming goods/services under the terms of this Agreement or the foregoing by the County of any of the rights or remedies arising under the terms of this Agreement shall not constitute a waiver of the County's right to conforming services or any rights and/or remedies in respect to any subsequent breach or default of the terms of this Agreement. The rights and remedies of the County provided or referred to under the terms of this Agreement are cumulative and not mutually exclusive.

6.13. Setoff

Notwithstanding any provision of this Agreement to the contrary, the Contractor shall not be relieved of liability to the County for damages sustained by the County by virtue of any breach of the contract by the Contractor. The County may withhold any payment to the Contractor for the purpose of setoff until such time as the exact amount of damages due the County from the Contractor is determined.

6.14. Conflict of Interest

The Contractor shall comply with all conflict of interest laws, ordinances, and regulations now in effect or hereafter to be enacted during the term of this Agreement. The Contractor warrants that it is not now aware of any facts that create a conflict of interest. If the Contractor hereafter becomes aware of any facts that might reasonably be expected to create a conflict of interest, it shall immediately make full written disclosure of such facts to the County. Full written disclosure shall include, but is not limited to, identification of all persons implicated and a complete description of all relevant circumstances. Failure to comply with the provisions of this subparagraph shall be deemed a material breach of this Agreement.

6.15. Respectful Workplace and Violence Prevention

The Contractor shall make all reasonable efforts to ensure that the Contractor's employees, officers, agents, and subcontractors do not engage in violence while performing under this Agreement. Violence, as defined by the Ramsey County Respectful Workplace and Violence Prevention Policy, is defined as words and actions that hurt or attempt to threaten or hurt people; it is any action involving the use of physical force, harassment, intimidation, disrespect, or misuse of power and authority, where the impact is to cause pain, fear or injury.

6.16. Force Majeure

Neither party shall be liable for any loss or damage incurred by the other party as a result of events outside the control of the party ("Force Majeure Events") including, but not limited to: war, storms, flooding, fires, strikes, legal acts of public authorities, or acts of government in time of war or national emergency.

6.17. Unavailability of Funding - Termination

The purchase of goods and/or labor services or professional and client services from the Contractor under this Agreement is subject to the availability and provision of funding from the United States, the State of Minnesota, or other funding sources, and the appropriation of funds by the Board of County Commissioners. The County may immediately terminate this Agreement if the funding for the purchase is no longer available or is not appropriated by the Board of County Commissioners. Upon receipt of the County's notice of termination of this Agreement the

Contractor shall take all actions necessary to discontinue further commitments of funds to this Agreement. Termination shall be treated as termination without cause and will not result in any penalty or expense to the County.

6.18. Termination

6.18.1.

Either party may immediately terminate this Agreement if any proceeding or other action is filed by or against the other seeking reorganization, liquidation, dissolution, or insolvency under any law relating to bankruptcy, insolvency or relief of debtors. The parties shall notify the other upon the commencement of such proceedings or other action.

6.18.2.

If either party violates any material terms or conditions of this Agreement the other party may, without prejudice to any right or remedy, give the breaching party, and its surety, if any, fourteen (14) calendar days written notice of its intent to terminate this Agreement, specifying the asserted breach. If the breaching party fails to cure the deficiency within the fourteen (14) day cure period, this Agreement shall terminate upon expiration of the cure period.

6.18.3.

Either party may terminate this Agreement without cause upon giving at least thirty (30) calendar days written notice thereof to the other party. In such event, the Contractor shall be entitled to receive compensation for services provided in compliance with the provisions of this Agreement, up to and including the effective date of termination.

6.19. Interpretation of Agreement; Venue

6.19.1.

The Agreement shall be interpreted and construed according to the laws of the State of Minnesota. All litigation regarding this Agreement shall be venued in the appropriate State or Federal District Court in Ramsey County, Minnesota.

6.19.2.

The provisions of this Agreement are severable. If any part of this Agreement is rendered void, invalid or unenforceable, such rendering shall not affect the validity and enforceability of the remainder of this Agreement.

6.20. Warranty

The Contractor, to the best of its knowledge, warrants that it has the legal right to provide the goods and services identified in this Agreement and further warrants that the goods and services provided shall be in compliance with the provisions of this Agreement.

6.21. Infringement

6.21.1.

Complementary to other "hold harmless" provisions included in this Agreement, the Contractor shall, without cost to the County, defend, indemnify, and hold the County, its officials, officers, and employees harmless against any and all claims, suits, liability, losses, judgments, and other expenses arising out of or related to any claim that the County's use or possession of the software, licenses, materials, reports, documents, data, or documentation obtained under the terms of this Agreement, violates or infringes upon any patents, copyrights, trademarks, trade secrets, or other proprietary rights or information, provided that the Contractor is promptly notified in writing of such claim. The Contractor will have the right to control the defense of any such claim, lawsuit, or other proceeding.

The County will in no instance settle any such claim, lawsuit, or proceeding without the Contractor's prior written approval. Contractor's obligation to indemnify is reduced to the extent that such liability was caused or contributed by the County, its officials, agents and employees.

6.21.2.

If, as a result of any claim of infringement of rights, the Contractor or County is enjoined from using, marketing, or supporting any product or service provided under the agreement with the County (or if the Contractor comes to believe such injunction imminent), the Contractor shall either arrange for the County to continue using the software, licenses, materials, reports, documents, data, or documentation and prorated refund any fees and any other costs paid by the County in conjunction with the use thereof from the date of termination of the products.

6.22. Ramsey County Master Contract

This is a Ramsey County Master Contract available to all Ramsey County departments.

6.23. Cooperative Purchasing

Public entities that have a purchasing Joint Powers Agreement with Ramsey County may purchase under this Agreement after having received written permission from the Contractor. Such public entities shall execute their own contract directly with the Contractor. Ordering and payment shall be the sole responsibility of such public entity and in no manner shall be the obligation, liability or responsibility of the County.

6.24. Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

6.24.1.

Contracts and subcontracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, shall address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

6.24.2.

Resulting contracts and subcontracts in excess of \$10,000 shall address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

6.24.3.

Debarment and Suspension (Executive Orders 12549 and 12689)--A contract award at any tier (see 2 CFR 180.220) shall not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

6.24.4.

Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR § 401.2 (a) and the County or the Contractor wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the County or the Contractor shall comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under

Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

6.24.5.

Byrd Anti--Lobbying Amendment (31 U.S.C. 1352)--Contractors that apply or bid for an award exceeding \$100,000 shall provide the required Contractor Certification Regarding Lobbying for Contracts, Grants, Loans and Cooperative Agreement form. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non--Federal funds that takes place in connection with obtaining any Federal award. Such disclosures shall be forwarded from tier to tier up to the non--Federal awardee, Ramsey County.

6.25. Debarment and Suspension

Ramsey County has enacted Ordinance 2013-330 [Ramsey County Debarment Ordinance](#) that prohibits the County from contracting with contractors who have been debarred or suspended by the State of Minnesota and/or Ramsey County.

6.26. Diverse Workforce Inclusion

For information and assistance in increasing the participation of women and minorities, contractors are encouraged to access the web sites below:

1. <http://www.JobConnectmn.com/>
2. <http://www.ConstructionHiringConnection.com/>

Job Connect and the Construction Hiring Connection provide a recruiting source for employers and contractors to post job openings and source diverse candidates.

Ramsey County's Job Connect links job seekers, employers, and workforce professionals together through our website, networking events and community outreach. The network includes over 10,000 subscribed job seekers ranging from entry-level to highly skilled and experienced professionals across a broad spectrum of industries.

Employers participate in the network by posting open jobs, meeting with workforce professionals and attending hiring events. Over 200 Twin Cities community agencies, all working with job seekers, participate in the network.

Ramsey County's Construction Hiring Connection (CHC) is an online and in-person network dedicated to the construction industry. The Construction Hiring Connection connects contractors and job seekers with employment opportunities, community resources and skills training related to the construction industry. Construction Hiring Connection is a tool for contractors to help meet diversity hiring goals. Over 1000 construction workers, representing all trades, ranging from newly graduated to journey level, are subscribed to the Construction Hiring Connection.

Additional assistance is available through jobconnectmn@ramseycounty.us or call 651-266-6042.

6.27. Alteration

Any alteration, variation, modification, or waiver of the provisions of this Agreement shall be valid only after it has been reduced to writing and signed by both parties.

6.28. Entire Agreement

The written Agreement, including all attachments, represent the entire and integrated agreement between the parties hereto and supersede all prior negotiations, representations or contracts, either written or oral. No subsequent agreement between the County and the Contractor to waive or alter

any of the provisions of this Agreement shall be valid unless made in the form of a written Amendment to this Agreement signed by authorized representatives of the parties.

7. Special Contract Terms and Conditions

7.1.

1. [intentionally omitted].
2. A nonconforming System, service or deliverable will be replaced, corrected, or re-performed at the Contractor's expense.
3. The Contractor must warrant that the System will not infringe on any United States patent or copyright or violate any third-party trade secret and will indemnify and defend Ramsey County against any award of damage and costs made against the Contractor by a final judgement of a court of competent jurisdiction. Contractor's obligation to indemnify is reduced to the extent that such liability was caused or contributed by the County, its officials, agents and employees.

ATTACHMENT A

Additional Terms and Conditions/ Modifications to Nearmap Products Agreement

1. Notwithstanding anything to the contrary in the Agreement, the yearly Fees for the Term are as follows:
Year 1: \$51,500.00
Year 2: \$51,500.00
Year 3: \$51,500.00
Year 3: \$51,500.00
Year 4: \$51,500.00
Year 5: \$51,500.00
2. The following section is deleted from the Products Agreement: “PLEASE READ THIS PRODUCTS AGREEMENT CAREFULLY. BY ACCEPTING THIS AGREEMENT BY EXECUTING A QUOTE, YOU AGREE TO BE BOUND BY THIS PRODUCTS AGREEMENT, THE QUOTE AND ALL TERMS INCORPORATED BY REFERENCE. IF YOU DO NOT AGREE TO ALL OF THESE TERMS, DO NOT ACCESS OR USE, YOU MUST NOT ACCEPT THIS PRODUCTS AGREEMENT AND NOT USE ANY NEARMAP PRODUCTS AND SERVICES.”
3. The section “Recitals B.” in the Products Agreement is deleted in its entirety and replaced with the following: “B. Nearmap agrees to supply the Licensee with the Products described in the Professional Services Agreement (“PSA”), subject to the terms of the PSA, this Products Agreement, the Additional Terms and Conditions, Product- Specific Terms, and the Quote which together constitute the legal agreement between the Licensee and Nearmap (the “**Agreement**”).
4. Section 1.3 of the Products Agreement is deleted in its entirety and replaced with the following: “1.3 Intentionally omitted.”
5. Any reference to “Renewal Term” in the Products Agreement is deleted.
6. The words “in accordance with section 6.2” is deleted from section 2.9 of the Products Agreement.
7. Section 3.3 of the Products Agreement is deleted in its entirety and replaced with the following: “3.3 Intentionally omitted.”
8. Section 3.5 of the Products Agreement is deleted in its entirety and replaced with the following: “3.5 “During the Term of this Agreement and for one (1) year after termination or expiry of this Agreement, the Licensee shall maintain records which shall be no more onerous than it is required in accordance with its record keeping policies in connection with its use of the Products (“Records”). The Licensee shall permit Nearmap (or its auditors) access to its Records for the purposes of conducting an audit to determine the Licensee’s compliance with the terms of this Agreement. Nearmap will give at least thirty (30) days prior written notice of an audit and will not conduct an audit more than once per calendar year unless non-compliance findings are noted and in which case the audit period can be expanded.”
9. Section 3.6 of the Products Agreement is deleted in its entirety and replaced with the following: “3.6 **Audit Findings** If an audit results in findings of non-compliance, Nearmap may, at its discretion (a) invoice any additional license fees due based on the standard Nearmap Fees in place at the time of the original license grant, (b) recover the reasonable cost of the audit if additional Fees exceed five (5) per cent of the Fees paid during the audit period and (c) terminate this Agreement in accordance with the PSA. Licensee must pay all

invoices issued under this section within thirty (35) days following the date of invoice or such other period agreed between the parties.”

10. The word “Quote” is replaced with the word “PSA” in section 4.1 of the Products Agreement.
11. Section 4.2 of the Products Agreement is deleted in its entirety and replaced with the following: “4.2 Intentionally omitted.”
12. Section 4.4 of the Products Agreement is deleted in its entirety and replaced with the following: “4.4 Intentionally omitted.”
13. Section 4.6 of the Products Agreement is deleted in its entirety and replaced with the following: “4.6 Intentionally omitted.”
14. Section 6.1 of the Products Agreement is deleted in its entirety and replaced with the following: “6.1 Intentionally omitted.”
15. Section 6.2 of the Products Agreement is deleted in its entirety and replaced with the following: “6.2 Intentionally omitted.”
16. Section 6.3 of the Products Agreement is deleted in its entirety and replaced with the following: “6.3 Intentionally omitted.”
17. Section 6.4 of the Products Agreement is deleted in its entirety and replaced with the following: “6.4 Intentionally omitted.”
18. Section 6.5 of the Products Agreement is deleted in its entirety and replaced with the following: “6.5 **Costs** Nearmap reserves all rights following termination of this Agreement, including any rights available to Nearmap to collect any outstanding Fees which may be owed by the Licensee.”
19. For the avoidance of doubt and notwithstanding anything to the contrary in the Products Agreement, the parties agree that nothing in this Products Agreement, including the applicability of terminology, shall be interpreted to violate the Minnesota Government Data Practices Act, Ch. 13.
20. For the purposes of section 8.1 of the Products Agreement, Nearmap agrees that if the Licensee is in compliance with the Nearmap terms and conditions, it will be deemed to be in compliance with any third-party terms and conditions under section 8.1 of the Products Agreement.

Section 8.1 of the Products Agreement is deleted in its entirety and replaced with the following: “Nearmap engages Third Party Providers in order to provide the Products and comply with its obligations under this Agreement and for the Licensee to receive the intended benefit of this Agreement. The Licensee agrees to comply with all requirements and restrictions that Third Party Providers may impose on the Licensee directly or indirectly by imposition on Nearmap, in relation to their respective products and/or services, at the time of, or subsequent to, the Agreement. The Licensee acknowledges that provision of the Products is subject to, and dependent upon, adequate delivery of products and services by the Third Party Providers. In accordance with section 9 of the Agreement, Nearmap’s liability is reduced to the extent that loss or damage of any kind is caused by Third Party Providers.

21. Section 9.2 of the Products Agreement is deleted in its entirety and replaced with the following: “9.2 **DISCLAIMER OF WARRANTIES** OTHER THAN AS SET FORTH IN the PSA, SECTION 9.1, THE WEBSITE AND THE PRODUCTS ARE PROVIDED ON

AN "AS IS" AND "AS AVAILABLE" BASIS, WITHOUT ANY WARRANTIES OF ANY KIND, TO THE FULLEST EXTENT PERMITTED BY LAW. NEARMAP AND ITS CONTENT PROVIDERS, AGENTS, MANDATARIES, AND AFFILIATES EXPRESSLY DISCLAIM ANY AND ALL REPRESENTATIONS, WARRANTIES, CONDITIONS, AND GUARANTEES, WHETHER EXPRESS, STATUTORY OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED REPRESENTATIONS, WARRANTIES, CONDITIONS, OR GUARANTEES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, AND COURSE OF DEALING OR PERFORMANCE."

22. Section 9.5 of the Products Agreement is deleted in its entirety and replaced with the following: "9.5 **NO LIABILITY FOR CLAIMS** TO THE EXTENT PERMITTED BY LAW, IN NO EVENT WILL NEARMAP, ITS CONTENT PROVIDERS, AGENTS, MANDATARIES OR AFFILIATES BE LIABLE FOR ANY CLAIMS OF ANY KIND ARISING FROM OR CONNECTED WITH THE USE OF THE WEBSITE, THE CONTENT OR THE PRODUCTS, OR THE UNAVAILABILITY OF THE SAME, INCLUDING BUT NOT LIMITED TO LOSS OF USE, LOSS OF PROFITS OR LOSS OF DATA, AND DIRECT, INDIRECT, INCIDENTAL, PUNITIVE AND CONSEQUENTIAL DAMAGES, WHETHER IN CONTRACT, TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE), EXTRACONTRACTUAL LIABILITY, OR OTHERWISE. THE LICENSEE IS RESPONSIBLE FOR THE ENTIRE COST OF ALL SERVICING, REPAIR OR CORRECTION REQUIRED DUE TO THE LICENSEE'S MISUSE OF THIS WEBSITE, THE CONTENT OR THE PRODUCTS IF IN BREACH OF THIS AGREEMENT. THIS EXCLUSION APPLIES, WITHOUT LIMITATION, TO ANY CLAIMS CAUSED BY OR RESULTING FROM RELIANCE BY A USER ON ANY INFORMATION OBTAINED FROM NEARMAP. EXCEPT FOR INFRINGEMENT VIOLATIONS OF INTELLECTUAL PROPERTY RIGHTS OF NEARMAP, IN NO EVENT SHALL LICENSEE, ITS RELATED BODIES CORPORATE, AGENTS OR AFFILIATES BE LIABLE TO NEARMAP, ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS AND SUBCONTRACTORS, FOR ANY INDIRECT, INCIDENTAL, PUNITIVE AND/OR CONSEQUENTIAL LOSSES OR DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF USE, LOSS OF PROFITS OR LOSS OF DATA, AND WHETHER IN CONTRACT OR TORT."

For the avoidance of doubt, this section does not apply to claims by Licensee regarding Contractor's breach of this Agreement for failure to provide the services as purchased.

23. Section 9.7 of the Products Agreement is amended by deleting the words ", or contributed to,".
24. Section 9.8 of the Products Agreement is deleted in its entirety and replaced with the following: "9.8 Intentionally omitted."
25. Section 9.9 of the Products Agreement is deleted in its entirety and replaced with the following: "9.9 Intentionally omitted."
26. Section 10.1 of the Products Agreement is deleted in its entirety and replaced with the following: "10.1 Intentionally omitted."
27. Section 10.2 of the Products Agreement is deleted in its entirety and replaced with the following: "10.2 Intentionally omitted."
28. Section 10.3 of the Products Agreement is deleted in its entirety and replaced with the following: "10.3 Intentionally omitted."

29. Section 10.4 of the Products Agreement is deleted in its entirety and replaced with the following: “10.4 Intentionally omitted.”
30. Notwithstanding anything to the contrary in the Products Agreement, Nearmap’s Privacy Policy is attached to the PSA as Attachment E.
31. Section 12.1 of the Products Agreement is deleted in its entirety and replaced with the following: “12.1 Intentionally omitted.”
32. Section 12.2 of the Products Agreement is deleted in its entirety and replaced with the following: “12.2 Intentionally omitted.”
33. Section 14.1 of the Products Agreement is deleted in its entirety and replaced with the following: “14.1 Intentionally omitted.”
34. Section 16.1 of the Products Agreement is deleted in its entirety and replaced with the following: “16.1 Intentionally omitted.”
35. Section 16.2 of the Products Agreement is deleted in its entirety and replaced with the following: “16.2 Intentionally omitted.”
36. Section 16.3 of the Products Agreement is deleted in its entirety and replaced with the following: “16.3 Intentionally omitted.”
37. Section 16.4 of the Products Agreement is deleted in its entirety and replaced with the following: “16.4 Intentionally omitted.”
38. Section 16.5 of the Products Agreement is deleted in its entirety and replaced with the following: “16.5 Intentionally omitted.”
39. Section 17.1 of the Products Agreement is deleted in its entirety and replaced with the following: “17.1 Intentionally omitted.”
40. Section 17.3 of the Products Agreement is deleted in its entirety and replaced with the following: “17.3 Intentionally omitted.”
41. Section 17.6 of the Products Agreement is deleted in its entirety and replaced with the following: “17.6 Intentionally omitted.”
42. Section 17.7 of the Products Agreement is deleted in its entirety and replaced with the following: “17.7 Intentionally omitted.”
43. Section 17.8 of the Products Agreement is deleted in its entirety and replaced with the following: “17.8 Intentionally omitted.”
44. Section 17.10 of the Products Agreement is deleted in its entirety and replaced with the following: “17.10 Intentionally omitted.”
45. Section 17.13 of the Products Agreement is deleted in its entirety and replaced with the following: “17.13 Intentionally omitted.”
46. Section 18 of the Products Agreement is amended by deleting in its entirety the definitions of “Allowance”, “Commencement Date”, “Late Payment Fee”, “Subscription Start Date”, “Survey”, “Survey Fee”, and “Survey Specification”.

47. The definition of “Business Days” in section 18 of the Products Agreement is amended to mean any day other than a Saturday, a Sunday or a recognized public holiday in the USA.
48. The definition of “Confidential Information” in section 18 of the Products Agreement is deleted in its entirety and replaced with the following: “Confidential Information means information relating to the business, finances, strategy, methods, processes, products, metadata, services or other affairs of the disclosing party, or its representatives or related bodies corporate which is disclosed to, learnt by or accessed by the receiving party in connection with the Agreement, whether before or after the parties entered into the Agreement, whether orally, electronically, in writing or otherwise, but excludes information which:
 - a. is or becomes part of the public domain, otherwise than as a consequence of a breach of the Products Agreement, including an administrative or judicial determination in response to an open/public records request;
 - b. the receiving party has obtained from a source other than the disclosing party, and which source is entitled to disclose it; or the receiving party has developed or acquired independently before the date of the Products Agreement, and can provide reasonable proof.
 - c. For the avoidance of doubt, nothing in the foregoing shall be interpreted to violate the Minnesota Government Data Practices Act, Ch. 13.
49. For the avoidance of doubt and notwithstanding anything to the contrary in the Products Agreement, the Licensee under the Agreement is Ramsey County, MN.
50. The definition of “Periodic Allowance Section” in section 18 of the Products Agreement is deleted in its entirety and replaced with the following: “Periodic Allowance Section means section 1.6.”
51. The definition of “Term” in section 18 of the Products Agreement is amended to mean the term specified in PSA.

ATTACHMENT B

Product-Specific Terms

ARCGIS INTEGRATION TERMS AND CONDITIONS APPLICABLE TO ARCGIS
INTEGRATION

1. The Licensee's usage of the ArcGIS Integration will be counted towards the Licensee's total Periodic Data Allowance. Please ensure that you have sufficient Periodic Data Allowance to meet your requirements with ArcGIS Integration to avoid restrictions being placed with your subscription.

ATTACHMENT C
Nearmap Products Agreement

Included as separate document.

ATTACHMENT D

Quote



RENEWAL QUOTE

Nearmap US, Inc.

10897 South River Front Parkway, Suite 150

South Jordan, UT 84095 USA

Phone: +1 (801) 609 7250

| | | | |
|--------------------------------|--|-----------------------|--|
| Customer Name | Ramsey County, MN | Quote Number | Q073049 |
| Contract Commencement | Contract commences upon signing of quote. | Quote Expiry | 07/31/2022 |
| Subscription Term | 60 Month | Account Rep | Jen Tucker jen.tucker@nearmap.com |
| Subscription Start Date | 07/31/2022 | Payment Term | Net 35 |
| | | Payment Method | Invoice |
| Bill To | Ramsey County, MN Kelly Moch 121 Seventh Place East, St. Paul, Minnesota, 55101 651-266-3463 kelly.moch@co.ramsey.mn.us | Ship To | Ramsey County, MN Geoffrey Maas 121 7th Place East, St. Paul, Minnesota, 55101 geoffrey.maas@co.ramsey.mn.us |

| PRODUCT | ALLOWANCE | COVERAGE | SEATS |
|---------------------------------|-----------|------------|------------------|
| ArcGIS Integration | NA | NA | NA |
| Nearmap Vertical for Government | NA | Nationwide | Unlimited |
| Subtotal | | | \$257,500.00 |
| Estimated Tax | | | \$0.00 |
| Total | | | USD \$257,500.00 |

ATTACHMENT E

Fair Use Policy

1. It is important to Nearmap that all customers are able to access the Products and Services. Accordingly, we have devised a Fair Use Policy that applies to the data usage of the Products and Services.
2. In this Fair Use Policy:
 - a. **Excessive Use** has the meaning given to that term in section 7 of this Fair Use Policy;
 - b. **Fair Use Policy** means this policy;
 - c. **Nearmap, we, us or our** means Nearmap US, Inc.;
 - d. **Products** has the meaning given to that term in Your Nearmap Agreement;
 - e. **Services** has the meaning given to that term in Your Nearmap Agreement;
 - f. **You or Your** means any customer of Nearmap;
 - g. **Your Nearmap Agreement** means the agreement pursuant to which Nearmap provides You with various products and services; and
 - h. **Unreasonable Use** has the meaning given to that term in section 5 of this Fair Use Policy.
3. We reserve the right to vary the terms of this Fair Use Policy from time to time upon reasonable prior notice to Licensee and execution of an Amendment to this Agreement.
4. This Fair Use Policy is in addition to Your Nearmap Agreement and in the event of any inconsistency between the terms of this Fair Use Policy and the terms and conditions of Your Nearmap Agreement, Your Nearmap Agreement prevails.

Unreasonable Use

5. We consider Your use of the Products and Services unreasonable where You use it in a manner which is reasonably considered by Nearmap to be fraudulent use, to be contrary to Your Nearmap Agreement or to adversely affect other Nearmap customers' use of or access to the Products and Services.
6. Among other things, "fraudulent use" includes resupply of the Products and Services without Nearmap's consent so that someone else may access or use the Products and Services or take advantage of the Products and Services.

Excessive Use

7. Excessive Use is a 30% increase during a single month's use of the Products and Services when compared to the prior usage history of Licensee.

Nearmap's Rights

8. Where Your use of the Products and Services constitutes Unreasonable Use and/or Excessive Use, Nearmap may contact You to discuss changing Your usage pattern so that it conforms with this Fair Use Policy, or to upgrade to a more suitable Product or Service (if applicable).
9. If, after Nearmap has contacted You, Your Unreasonable Use and/or Excessive Use continues, Nearmap may, without further notice to You:
 - a. restrict Your access to low resolution imagery for the remainder of the month; and/or
 - b. restrict Your access to low resolution imagery for the remainder of the month until Your data allowance is reset at the beginning of the next month (if applicable); and/or
 - c. restrict Your access for the remainder of the month; and/or
 - d. restrict Your access to Nearmap until Your data allowance is reset at the beginning of the next month (if applicable); and/or

- e. immediately cease Your access to Nearmap; and/or
- f. exercise any other right available to Nearmap under the terms of Your Nearmap Agreement.

ATTACHMENT F

Nearmap Privacy Policy This Privacy Policy explains how information about you is collected, used and disclosed by Nearmap US, Inc. ("Nearmap", "we", "us" or "our"). This Privacy Policy applies to information we collect when you use our website and other online products and services, or when you otherwise interact with us.

1. CHANGES TO THIS PRIVACY POLICY

This policy was last updated on 1 February 2016. We might change this Privacy Policy from time to time. For significant changes in our personal information practices, we will post a notice on our website homepage and make a new copy of the updated Privacy Policy available there. We encourage you to review the Privacy Policy whenever you access our website or otherwise interact with us to stay informed about our information practices and the ways you can help protect your privacy.

If you disagree with any changes to this Privacy Policy after any concerns are not adequately addressed, you will need to stop using the Nearmap website and our other products and services.

2. INFORMATION WE COLLECT

2.1 Information You Provide to Us

We collect information you provide directly to us. For example, we collect information when you create an account, send us an email to enquire about our website or license terms, participate in any interactive features of our website or other services, fill out a form, make a purchase, apply for a job, communicate with us via third party social media sites, request customer support or otherwise provide us with information about yourself. The types of information we may collect includes personal information, which is information or an opinion about you, from which you are, or may reasonably be, identified. This information may include (but is not limited to) your name, date of birth, phone number, email address, address, payment card information (such as your payment card number, expiration date, authorization number or security code), employment history and any other information you choose to provide.

Due to the nature of the services provided by us, we do not collect sensitive information (such as information about your religion, trade union membership, political opinion, health, sexual preference or criminal record) or credit information (information about loans that may have been provided to you) about you.

If you provide information (including personal information) to us about someone else, you must ensure that you are entitled to disclose that information to us and that, without us taking any further steps required by privacy laws, we may collect, use and disclose such information for the purposes described in this Privacy Policy. For example, you should take reasonable steps to ensure the individual concerned is aware of the various matters detailed in this Privacy Policy. The individual must also provide the consents set out in this Privacy Policy in respect of how we will deal with their information.

2.2 Information We Collect Automatically When You Use Our Website or Services

Our server automatically collects information about your use of the website ("Navigational Data"). Navigational Data includes (a) the type of browser you are using, (b) your domain type and server, (c) your IP address, (d) the URL you have come from, (e) the pages of our website that you have visited, date/time stamp and the time spent on those pages, (f) the approximate location of where you accessed our services (if you have opted in to this function), (g) cookies, and (h) other statistics.

This kind of information is collected by many sites. We perform statistical and other analysis on the Navigational Data to (i) analyze and measure user behavior and trends, (ii) to understand how people use our services, and (iii) to monitor, troubleshoot and improve our services, including to help us evaluate or devise new features. We may also use Navigational Data for internal purposes designed to keep our services secure and operational, such as troubleshooting and testing purposes, and for service improvement, marketing, research and development purposes and to monitor your use of our website and your compliance with our license terms. In addition, we may use third party services to help Nearmap collect, monitor and analyze the Navigational Data. Occasionally, we may connect personal information to Navigational Data to improve our services for individual customers, where necessary. If we do this, we will treat the combined information in accordance with this Privacy Policy.

When you use our website, cookies will be placed on your computer to keep track of your use of our website. For example, cookies allow us to remember which Nearmap image you were viewing when you last visited our website. Cookies do not capture or track any personal information. You may elect to set your computer so that cookies are not placed on your computer. However, if you do not provide the information requested by us, we may not be able to provide you with our services.

2.3 Information We Collect from Other Sources

We may also collect personal information about you from third parties that you have authorized to provide us with such information and combine it with information we collect through our website and other services. For example, we may be provided with your information by LinkedIn or other similar service providers. From time to time we may also purchase lists containing information

including personal information) about individuals from organizations offering such lists for marketing purposes.

3. HOW WE USE INFORMATION WE COLLECT

We use the information we collect about you (including personal information to the extent applicable) for various purposes, including to:

- provide, maintain and improve our website and services;
- provide you with the products and services you have requested;
- verify your identity;
- send you technical notices, updates, security alerts and support and administrative messages;
- assess, process and manage your application to work with us;
- respond to comments, questions, complaints, requests and provide customer service;
- obtain analytic data;
- communicate with you about products, services, offers, promotions, rewards, and events offered by Nearmap and others, and provide news and information we think will be of interest to you;
- carry out any reasonably related secondary purposes; or
- carry out any other purpose for which the information was collected.

4. INFORMATION SHARING AND DISCLOSURE

In the circumstances described below, information may be disclosed outside of our organization.

4.1 Third party contractors

Information collected by us (including personal information) may be disclosed to third parties to whom we contract out specialized functions (such as our website hosts). If we do disclose personal information to third party contractors under outsourcing or contracting arrangements, we take steps

to ensure that those contractors are authorized only to use personal information in order to provide the services or to perform the functions required by us.

4.2 Disclosures required by law

For legal reasons, other disclosures may need to be made to law enforcement agencies, government agencies, courts or external advisors or in accordance with other laws.

4.3 Other disclosures

We do not sell, rent or trade personal information to or with third parties for their own uses.

By providing us with your information (including personal information), you consent to us disclosing your information to the entities set out in clause 4.1 or 4.2 without obtaining your consent on a case-by-case basis.

We may from time to time transfer information to countries whose privacy laws do not provide the same level of protection as your own. For example, we may transfer your information (including personal information) to the Asia-Pacific, European Union, or Australia. We may also use cloud storage and IT servers that are located offshore. By accessing or using our website or services or providing us with your information, you consent to the processing and transfer of information in and to the United States and other countries.

5. THIRD-PARTY WEBSITES

Sometimes our website contains links to other websites, for your convenience and information. When you access a website other than us.nearmap.com, please understand that we are not responsible for the privacy practices of that site. We recommend that you review the privacy policies of each site you visit.

6. ADVERTISING AND ANALYTICS SERVICES PROVIDED BY OTHERS

We may allow others to provide advertising and analytics services. These entities may use cookies, web beacons and other technologies to collect information about your use of our website, products and services, including your IP address, web browser, pages viewed, time spent on pages, links clicked and conversion information. This information may be used by Nearmap to, among other things, analyze and track data, determine the popularity of certain content, deliver advertising and content targeted to your interests and better understand your online activity.

7. DIRECT MARKETING

From time to time we may use your information (including personal information) to provide you with current information about our products and services, special offers you may find of interest, changes to our organization, or new products or services being offered by us or any company we are associated with. By providing us with information, you consent to us using your information to contact you on an ongoing basis for this purpose, including by mail, email, SMS, social media and telephone.

If you do not wish to receive marketing information, you may at any time decline to receive such information by contacting our Privacy Contacts using the contact details below. We will not charge

you for giving effect to your request and will take all reasonable steps to meet your request at the earliest possible opportunity.

8. UPDATING YOUR INFORMATION

It is important to our relationship that the information we hold about you is accurate and up to date. If at any time you are of the view that information about you is not accurate, complete or up to date, please write to us with your request for correction. Our policy is to consider any requests for correction in a timely manner. You may also update or correct your online account information at any time by logging into your account and navigating to the "Accounts" page if this function is enabled as part of your subscription. You can also contact us if you wish to deactivate your online account, but note that we may retain certain information as required by law or for legitimate business purposes. We may also retain cached or archived copies of information about you for a certain period of time.

9. ACCESSING YOUR INFORMATION

If you wish to access the information that we hold about you, we ask that you write to us and we will explain how we handle your access request. We may charge you for the cost of providing access to these records.

There may be situations where we are not required to provide you with access to your information. For example, such a situation would be information relating to an existing or anticipated legal proceeding with you, or if your request is vexatious.

An explanation will be provided to you if we deny you access to your information we hold.

10. SECURITY

We take reasonable measures to help protect information held by us from loss, theft, misuse and unauthorized access, destruction, modification or disclosure. Our systems are password protected and comply with our security standards, and if personal information is held on paper files, it is stored in premises that are locked when unattended.

11. FURTHER INFORMATION AND COMPLAINTS

You may request further information about the way we manage your information or lodge a complaint by contacting us using the contact details below.

We will deal with any complaint by investigating the complaint, and providing a response to the complainant within a reasonable time, provided that we have all necessary information and have

completed any investigation required. In cases where further information, assessment or investigation is required, we will seek to agree alternative time frames with you.

12. YOUR RIGHTS UNDER THE CALIFORNIA CONSUMER PRIVACY ACT ("CCPA")

The CCPA provides for certain disclosures about your rights and the personal information we collect, disclose for a business purposes, and sell. To view this information or exercise your rights under the CCPA, visit our Additional California Privacy Disclosures.

13. CONTACTING US

You can contact us by:

sending an e-mail to us at: privacy.officer@nearmap.com; or

writing to us at:

Nearmap US, Inc.

10897 South River Front Parkway, Suite 150

South Jordan, UT 84095

PLEASE READ THIS PRODUCTS AGREEMENT CAREFULLY. BY ACCEPTING THIS AGREEMENT BY EXECUTING A QUOTE, YOU AGREE TO BE BOUND BY THIS PRODUCTS AGREEMENT, THE QUOTE AND ALL TERMS INCORPORATED BY REFERENCE. IF YOU DO NOT AGREE TO ALL OF THESE TERMS, DO NOT ACCESS OR USE, YOU MUST NOT ACCEPT THIS PRODUCTS AGREEMENT AND NOT USE ANY NEARMAP PRODUCTS AND SERVICES.

PRODUCTS AGREEMENT

Recitals

- A. Nearmap is a provider of aerial imagery and location data and associated products and services.
- B. Nearmap agrees to supply the Licensee with the Products described in the Quote, subject to the terms of this agreement, the Additional Terms and Conditions, Product-Specific Terms, any Schedules and the Quote which together constitute the legal agreement between the Licensee and Nearmap (the "**Agreement**").

Definitions of capitalized words are set out in section 18 of the Agreement.

1. GRANT OF LICENSE TO USE PRODUCTS

- 1.1 **Grant** Subject to the terms of this Agreement and payment by the Licensee of the Fees, Nearmap grants to the Licensee a limited, non-exclusive, non-transferrable license for the Term to use the Products for and to the extent of the Permitted Purpose (the "**License**").
- 1.2 **Authorized Users** The Products available under this License are only to be used by the total number of Authorized Users. The Licensee shall implement reasonable controls to ensure that it does not exceed the number of Authorized Users. If the number of users exceeds the total number of Authorized Users, the Licensee will be in breach of this Agreement.
- 1.3 **Renewal** Upon the expiration of the initial Term, this Agreement, subject to any amendments to this Agreement required by Nearmap, shall be renewed automatically for successive renewal terms of twelve (12) months each (each a "**Renewal Term**") unless terminated by either party by providing at least thirty (30) days written notice of its intention not to renew this Agreement prior to the expiry of the initial Term or any current Renewal Term.
- 1.4 **Replacement Product** Nearmap may from time to time supply the Licensee with a replacement Product of no lesser quality than the previously supplied Product at its absolute discretion. If requested by Nearmap, the Licensee must stop using any previously supplied Product and use the replacement Product from the date of delivery from Nearmap.
- 1.5 **Acknowledge Nearmap source** The Licensee must expressly acknowledge Nearmap, in a reasonably prominent manner (by displaying the Nearmap logo or other appropriate attribution), as the source of any Product or Derivative Works that the Licensee uses, copies, modifies, or distributes. Unless otherwise permitted in writing, the Licensee must not remove or cause to be removed any Nearmap logo, watermark, or other Nearmap attribution in any Product or Derivative Works.
- 1.6 **Data Use for Government Products** Nearmap measures data usage by the Licensee under this License for Government Products. When using Government Products, Nearmap's Fair Use Policy regulates the Licensee's consumption of data during the Term (or Renewal Term). The following conditions also apply to the Licensee's use of Government Products:
- (a) the amount of data used by the Licensee on the Government Products will be monitored and then calculated at the end of every Term or Renewal Term based on the total data of all users who access and use the Licensee's Nearmap account during that Period; and
- (b) if the Licensee elects to download and/or export Government Products available to the Licensee on the Website, this will be applied to the calculation of the Licensee's use of the Government Products.
- 1.7 **Allowance for Non-Government Products** Non-Government Products licensed to the Licensee may be subject to additional Allowance, Periodic Allowance, or Periodic Data Allowance terms that are published in the Product-Specific Terms, and if applicable, the Periodic Allowance Section.
- 1.8 **Unavailability** Subject to section 12, if a Product is not available for a period of three (3) consecutive days, the Term will be extended by the period of such unavailability.

2. RESTRICTIONS ON RIGHT TO USE PRODUCTS

- 2.1 **Permitted Purpose** The Products must only be used for the Permitted Purpose.
- 2.2 **No right to distribute, transfer, resell, assign or sublicense** This License is granted only to the Licensee. The Licensee must not distribute, transfer, resell, assign, rent, lease, or sublicense any Product or any of the Licensee's rights under this License without Nearmap's prior written consent.
- 2.3 **No third party access** Unless otherwise provided in this Agreement, the Licensee must not make any Product available in any medium or manner to any third party (including but not limited to the Licensee's subsidiaries, affiliates, any lower or higher tiered governments and any neighbouring local government).
- 2.4 **Employees** The Licensee may make Products available to any employee of the Licensee, subject to that person complying with the terms of the Agreement as if they were a party to it and the total number of Authorized Users has not been exceeded. Such employees are deemed to be Authorized Users. The Licensee is responsible and liable for any person who uses the Licensee's account access details or uses Products made available to the Licensee in breach of this Agreement, including, without limitation, for any additional fees that become payable if the Licensee exceeds the number of Authorized Users.

- 2.5 **No machine learning** The Licensee must not conduct machine learning work in connection with this Agreement or any Products, which includes but is not limited to any:
- (a) machine learning models (including the model form and model parameters);
- (b) outputs of machine learning models;
- (c) software that processes or transforms input data for training a machine learning model or getting a prediction from a machine learning model into a format suitable for training or making such prediction; or
- (d) software used to train a machine learning model or compute outputs of a machine learning model for a given set of input data.
- 2.6 **No caching and creation of database** Except as expressly permitted under this Agreement, the Licensee is not permitted to:
- (a) use its access to the Products under this Agreement for the purposes of creating a database of imageries for resale, distribution, sublicense, or other commercial purposes and mass downloads or bulk feeds of any imagery; and
- (b) pre-fetch, retrieve, cache, index, or store any Content or portion of the Products.
- 2.7 **Restriction on integration methods** The Licensee is only permitted to use API integration methods, or other integration methods, as authorised by Nearmap in writing, including but not limited to integration with the Licensee's or other third party platforms or software.
- 2.8 **Limits on use of Website** In the Licensee's use of the Website, the Licensee must not (without the prior written consent of Nearmap):
- (a) provide a link to another URL;
- (b) upload content or other information to the Website (except as necessary to use the Products);
- (c) do anything to damage, interfere or disrupt access to the Website or do anything which might impair its functionality;
- (d) use the Website in any way to send any unsolicited email (commercial or otherwise) or any other material for marketing or publicity purposes;
- (e) publish, post, distribute, disseminate, or otherwise transmit, defamatory, offensive, infringing, obscene, indecent, or other unlawful or objectionable confidential material or information;
- (f) make available, upload, or distribute by any means any material or files that contain any viruses, bugs, corrupt data, "trojan horses", "worms", or any other harmful software;
- (g) remove any content or information from the Website, other than that permitted under the terms of this License;
- (h) falsify the true ownership of a Product or other material or information made available via the Website;
- (i) obtain or attempt to obtain unauthorized access, through whatever means, to the Website;
- (j) use the Website other than in accordance with this Agreement;
- (k) attempt any of the above acts or engage, encourage or permit another person to do any of the above acts; or
- (l) provide or allow access to the Website which exceeds the total number of Authorized Users in connection with use of the Product.
- 2.9 **Breach** If the Licensee breaches any of sections 2.1 to 2.8 inclusive, Nearmap reserves its rights to terminate the Agreement in accordance with section 6.2, restrict the Licensee's access to the Products, and take any other steps available to it at law.

3. THE LICENSEE'S ACCESS TO PRODUCTS AND SERVICES

- 3.1 **Authorized Users** Any password/ID issued by Nearmap to an Authorized User is personal and confidential to that Authorized User. If Nearmap suspects that any password/ID is being used by an unauthorized person, by a different Authorized User to the person to whom it was issued, or the number of Authorized Users has been exceeded, Nearmap may:
- (a) cancel that password/ID;
- (b) restrict the Licensee's access to the Product to low resolution imagery, or apply any other restrictions on access that Nearmap determines in its absolute discretion;
- (c) immediately cease the Licensee's access to the Product;
- (d) require the Licensee to pay for any additional fees due based on the standard Nearmap Fees for the applicable Product, in respect of any such unauthorized use; and/or

- (e) exercise any other right available to Nearmap under the terms of this Agreement or at law.
- 3.2 **Downtime** Nearmap will use reasonable efforts to ensure that the Website remains available but cannot guarantee that this will be the case at all times. Nearmap agrees that, wherever possible, all planned maintenance will be done out of normal Operational Hours to ensure optimal uptime of the Website. The Licensee may elect to subscribe to the Nearmap status page at <https://status.nearmap.com/> to receive notifications and updates relating to planned maintenance and uptime/downtime of the Website and APIs. When Nearmap becomes aware of any Fault, Nearmap will use reasonable efforts to:
- (a) allocate such resources as may be necessary to remedy the Fault; and
- (b) otherwise take all reasonable steps to remedy the Fault so as to minimize any disruption to the Licensee's use of the Products.
- 3.3 **Expiry** The Licensee's License will expire at the end of the Term unless renewed in accordance with section 1.3 and may be suspended or terminated, in accordance with section 6.2, if the Licensee is in breach of this Agreement.
- 3.4 **Unauthorized Use** Licensee shall take reasonable steps to prevent unauthorized access to the Products, including without limitation, protecting its passwords and other log-in information. The Licensee shall notify Nearmap immediately of any known or suspected unauthorized use of the Products, or breach of its security, and shall use best efforts to stop said breach and minimize the adverse impact of said breach on Nearmap.
- 3.5 **Audit** During the Term of this Agreement, and for two (2) years after termination or expiry of this Agreement, the Licensee shall maintain records regarding its use of the Products according to its record keeping policies and procedures. The Licensee shall permit Nearmap (or its auditors) access to the Licensee's records pertaining to the Licensee's use of the Products. Nearmap will give at least thirty (30) days prior written notice of an audit and will not conduct an audit more than once per calendar year unless non-compliance findings are noted, in which case the audit period may be extended.
- 3.6 **Audit Findings** If an audit results in findings of non-compliance, Nearmap may, at its discretion:
- (a) invoice any additional license fees due based on the standard Nearmap Fees in place at the time of the original license grant;
- (b) recover the reasonable cost of the audit if additional Fees exceed 5% of the Fees paid during the audit period; and
- (c) terminate this Agreement in accordance with section 6.3. Licensee must pay all invoices issued under this section within thirty (30) days following the date of invoice or such other period agreed between the parties.
4. **FEES**

- 4.1 **Fees** The Fees payable by the Licensee are set out in the Quote.
- 4.2 **Payment** The Fees are payable by the Licensee to Nearmap in the manner and by the due date, as set out in the Quote, at the beginning of each Term unless otherwise agreed by Nearmap. Where the Fees are payable by credit card, the Licensee authorizes Nearmap to charge the Licensee's credit card for all purchased Products listed in the Quote for the initial Term and any Renewal Term.
- 4.3 **No cancellation** Subject to section 4.4, all Fees are non-cancellable and non-refundable, except as expressly set out in the Agreement.
- 4.4 **Refund of Fees** If the Licensee is not in breach of the Agreement, and Nearmap elects to terminate the Agreement under section 6.3, Nearmap will refund the Licensee any pre-paid fees relating to the portion of Term remaining as at the date of termination.
- 4.5 **Taxes** Unless otherwise stated, Fees and Late Payment Fee do not include any direct or indirect local, state, provincial, federal, or foreign taxes, levies, duties, or similar governmental assessments of any nature, including value-added, excise, use or withholding taxes (collectively, "**Taxes**"). Licensee is responsible for paying all Taxes, except those assessable against Nearmap based on its income. Nearmap will invoice Licensee for such Taxes if Nearmap believes it has a legal obligation to do so and Licensee agrees to pay such Taxes if so invoiced.
- 4.6 **Late Payment** If a scheduled Fee payment is still overdue after seven (7) days notice from Nearmap, to remedy the payment default, the Licensee agrees that Nearmap may charge the Licensee a Late Payment Fee and/or immediately limit or terminate access to the Products provided under this License.
- 4.7 **Amendments** Fees of the relevant Product may only be increased at the end of the Term (including any Renewal Term) subject to Nearmap and the Licensee agreeing in writing.

5. THE LICENSEE'S WARRANTIES

- 5.1 **Warranty** The Licensee warrants that:
- (a) any information the Licensee supplies to Nearmap in respect of the Agreement is complete and correct. The Licensee must keep Nearmap informed of any change to the Licensee's information provided to Nearmap, including any change to the Licensee's contact details, or the details of a credit card used for payment;
- (b) the Licensee will immediately notify Nearmap of any usage of any Product outside the Permitted Purpose, and provide any other information reasonably requested by Nearmap;
- (c) the Licensee has the power to enter into this Agreement and to perform the obligations under it; and
- (d) the Licensee has and will comply with all relevant laws relating to the Licensee's use of the:
- (i) License;
- (ii) Products; and
- (iii) Website.
6. **TERMINATION AND EXPIRY**

- 6.1 **Initial Term** This Agreement commences on the Commencement Date and continues until expiry of the Term unless terminated earlier in accordance with the terms of this Agreement or renewed under section 1.3.

- 6.2 **Termination by Either Party** Either party may terminate this Agreement with immediate effect by giving notice to the other party if:
- (a) the other party breaches any of its obligation under this Agreement capable of remedy and fails to remedy that breach within fourteen (14) days after receiving notice requiring it to do so;
- (b) the other party breaches any of its obligations under this Agreement incapable of remedy and Content; or
- (c) the other party files for protection under bankruptcy laws, makes an assignment for the benefit of creditors, appoints, or suffers appointment of a receiver or trustee over its property, files a petition under any bankruptcy or insolvency act, or has any such petition filed against it which is not discharged within sixty (60) days of the filing thereof, or admits in writing its inability to pay its debt generally as they become due.
- 6.3 **Termination by Nearmap** Notwithstanding anything else in the Agreement, but subject to section 4.4, Nearmap has the right, in its absolute discretion and upon giving the Licensee ten (10) Business Days' notice, to terminate the Agreement and the License.
- 6.4 **Consequences** If the Agreement is terminated under sections 6.2 or 6.3 or expires at the end of the Term:
- (a) the License immediately terminates and the Products will no longer be available to the Licensee;
- (b) the Licensee must immediately destroy, delete, or return to Nearmap all Products; and
- (c) subject to section 7.3, the Licensee and the Authorized Users are not permitted to use any Products for any purpose.
- 6.5 **Costs** Nearmap reserves all rights following termination of this Agreement, including any rights available to Nearmap to collect any outstanding Fees which may be owed by the Licensee. The Licensee will be liable for any reasonable legal costs incurred by Nearmap in enforcing its rights following termination of this Agreement.
- 6.6 **Continuing obligations** After expiry or termination of the Agreement, or a License, sections 1.5, 2, 4, 6.5, 7, 8, 9, 10, 13, 14, 15, and 17 will still be binding on the Licensee in relation to Products licensed or obtained during the Term.

7. INTELLECTUAL PROPERTY

- 7.1 **Ownership** Unless otherwise indicated, the Website, the Products, the Content, and all associated Intellectual Property Rights, data, information, and software are owned by Nearmap and are protected by copyright, moral rights, trademark, and other laws relating to the protection of intellectual property. Nearmap reserves all of its Intellectual Property Rights. Except for the limited License granted to the Licensee in section 1.1, no ownership or Intellectual Property Rights in the Website, any Product, or Content will pass or be licensed to the Licensee.
- 7.2 **Trademarks** The Nearmap trademarks and all associated Intellectual Property Rights are owned by Nearmap. Nothing in the Agreement confers upon the Licensee any rights to use or modify any of Nearmap's trademarks, except that Nearmap grants the Licensee a royalty free, limited, non-exclusive, non-transferrable, non-sublicensable license to reproduce and display Nearmap trademarks only to the extent necessary to comply with the Licensee's obligations under the Agreement. Any such reproduction and display of those marks must comply with the policies and rules Nearmap makes available to the Licensee from time to time.
- 7.3 **Derivative Works** Subject to compliance with all other terms of this Agreement, the Licensee is granted a non-exclusive right to produce and use Derivative Works for a Permitted Purpose. Unless otherwise notified to the Licensee by Nearmap, the Licensee may continue using Derivative Works following termination or expiry of this Agreement. For the avoidance of doubt, Nearmap will continue to own all rights in and to any Products and Content embedded in a Derivative Work, but all other rights in and to the Derivative Work will belong to the Licensee.

8. THIRD PARTY PROVIDERS

- 8.1 Nearmap engages Third Party Providers in order to provide the Products and comply with its obligations under this Agreement and for the Licensee to receive the intended benefit of this Agreement. The Licensee agrees to comply with all requirements and restrictions that Third Party Providers may impose on the Licensee directly or indirectly by imposition on Nearmap, in relation to their respective products and/or services, at the time of, or subsequent to, the Agreement. The Licensee acknowledges that provision of the Products is subject to, and dependent upon, adequate delivery of products and services by the Third Party Providers. In accordance with section 9 of the Agreement, Nearmap's liability is reduced to the extent that loss or damage of any kind is caused or contributed to, by Third Party Providers. For the Licensee's convenience, Nearmap has set out in this section 8 links to the terms and conditions of these Third Party Providers with which the Licensee is required to comply. The Licensee further acknowledges that by entering into the Agreement, the Licensee is deemed to accept the respective terms and conditions of Third Party Providers, which currently include the Third Party Providers set out below. Third Party Providers and their terms of supply may change from time to time during the Term of the Agreement.
- (a) **Google** Nearmap engages Google to supply navigation and geo-location data, and related content. By entering into the Agreement, the Licensee agrees to the Google Terms of Service as they apply to the Licensee. https://www.google.com/enterprise/earthmaps/legal/us/maps_purchase_agreement_apac.html;
- (b) **Amazon Web Services (AWS)** Nearmap engages Amazon Web Service, Inc. to provide services (the "**AWS Services**") which enables delivery of the Products. By entering into the Agreement, the Licensee agrees to comply with the AWS Customer Agreement (<http://aws.amazon.com/agreement/>) as it

applies to the Licensee. Use of the Products is also subject to the Licensee's compliance with the following AWS policies:

- (i) Privacy Policy
(<http://aws.amazon.com/privacy/>)
- (ii) Acceptable Use Policy
(<http://aws.amazon.com/aup/>)
- (iii) Terms of Use
(<http://aws.amazon.com/terms/>)
- (iv) Service Terms
(<http://aws.amazon.com/serviceterms/>)
- (v) Trademark Guidelines
(<http://aws.amazon.com/trademark-guidelines/>)

- (c) **NASA/NCAS** By entering into the Agreement, the Licensee agrees to the following NASA/NCAS terms and conditions: (<https://www.nearmap.com/us/en/legal/copyright>).

9. WARRANTY AND LIABILITY

- 9.1 **Warranty** Nearmap agrees to use industry standard GPS to ensure captured imagery has accurate geographical positioning.
- 9.2 **DISCLAIMER OF WARRANTIES** OTHER THAN AS SET FORTH IN SECTION 9.1, THE WEBSITE AND THE PRODUCTS ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITHOUT ANY WARRANTIES OF ANY KIND, TO THE FULLEST EXTENT PERMITTED BY LAW. NEARMAP AND ITS CONTENT PROVIDERS, AGENTS, MANDATARIES, AND AFFILIATES EXPRESSLY DISCLAIM ANY AND ALL REPRESENTATIONS, WARRANTIES, CONDITIONS, AND GUARANTEES, WHETHER EXPRESS, STATUTORY OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED REPRESENTATIONS, WARRANTIES, CONDITIONS, OR GUARANTEES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND COURSE OF DEALING OR PERFORMANCE.
- 9.3 **NO REPRESENTATIONS** WHILE NEARMAP USES REASONABLE EFFORTS TO ENSURE THE ACCURACY, CORRECTNESS AND RELIABILITY OF THE CONTENT, THE PRODUCTS, AND THE WEBSITE, NEARMAP MAKES NO REPRESENTATIONS, WARRANTIES, CONDITIONS, OR GUARANTEES AS TO THE ACCURACY, CORRECTNESS, OR RELIABILITY OF ANY PRODUCT OR CONTENT CONTAINED ON THE WEBSITE. THE PRODUCTS AND THE WEBSITE ARE SUBJECT TO ERRORS, OMISSIONS, INACCURACIES, AND DISTORTIONS, AND NEARMAP WILL NOT BE RESPONSIBLE FOR, OR LIABLE FOR ANY CLAIMS MADE BY OR ARISING OUT OF, ANY PERSON OR ENTITY SEEKING TO RELY ON ANY OF THE PRODUCTS OR THE WEBSITE.
- 9.4 **LIMIT OF LIABILITY** NEARMAP'S LIABILITY FOR: (A) A BREACH OF A WARRANTY UNDER SECTION 9.1; OR (B) A BREACH OF A REPRESENTATION, WARRANTY, CONDITION, OR GUARANTEE WHICH IS IMPLIED OR IMPOSED IN RELATION TO THIS LICENSE UNDER LEGISLATION AND CANNOT BE EXCLUDED, WILL BE LIMITED TO, AT NEARMAP'S OPTION, REPLACING OR REPAIRING THE PRODUCTS OR SUPPLYING PRODUCTS EQUIVALENT TO THE RELEVANT PRODUCTS, OR PAYING THE COST OF REPLACING OR REPAIRING THE PRODUCTS.
- 9.5 **NO LIABILITY FOR CLAIMS** TO THE EXTENT PERMITTED BY LAW, IN NO EVENT WILL NEARMAP, ITS CONTENT PROVIDERS, AGENTS, MANDATARIES, OR AFFILIATES BE LIABLE FOR ANY CLAIMS OF ANY KIND ARISING FROM OR CONNECTED WITH THE USE OF THE WEBSITE, THE CONTENT OR THE PRODUCTS, OR THE UNAVAILABILITY OF THE SAME, INCLUDING BUT NOT LIMITED TO, LOSS OF USE, LOSS OF PROFITS, OR LOSS OF DATA, AND DIRECT, INDIRECT, INCIDENTAL, PUNITIVE, AND CONSEQUENTIAL DAMAGES, WHETHER IN CONTRACT, TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE), EXTRACONTRACTUAL LIABILITY, OR OTHERWISE. THE LICENSEE IS RESPONSIBLE FOR THE ENTIRE COST OF ALL SERVICING, REPAIR, OR CORRECTION REQUIRED DUE TO THE LICENSEE'S USE OF THIS WEBSITE, THE CONTENT OR THE PRODUCTS. THIS EXCLUSION APPLIES, WITHOUT LIMITATION, TO ANY CLAIMS CAUSED BY OR RESULTING FROM RELIANCE BY A USER ON ANY INFORMATION OBTAINED FROM NEARMAP.
- 9.6 **AGGREGATE LIMIT** IN NO EVENT WILL THE AGGREGATE LIABILITY OF NEARMAP, WHETHER IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE, WHETHER ACTIVE, PASSIVE OR IMPUTED), EXTRACONTRACTUAL LIABILITY, PRODUCT LIABILITY, STRICT LIABILITY OR OTHER THEORY, ARISING OUT OF OR RELATING TO THE USE OF THE PRODUCTS, THE CONTENT, OR THE WEBSITE EXCEED ANY COMPENSATION OR FEE THE LICENSEE HAS PAID, IF ANY, TO NEARMAP FOR ACCESS TO OR USE OF THE PRODUCTS OVER THE TWELVE (12) MONTH PERIOD PRIOR TO THE ALLEGED DEFAULT, BREACH, OR EVENT GIVING RISE TO THE LIABILITY.
- 9.7 **Third Party Providers** The Licensee acknowledges that Nearmap relies on the services of Third Party Providers in order to supply the Products and related services. Without limiting any of the above, to the fullest extent permitted by applicable law, Nearmap will not be liable for any loss, damage, or cost of any kind, which is caused, or contributed to, by a third party service provider.
- 9.8 **Indemnity** To the extent permitted by law, the Licensee agrees to indemnify Nearmap and its directors, officers, employees, agents, mandataries, and subcontractors, from and against any and all direct or indirect claims, damages, losses, liabilities, expenses, and costs (including reasonable attorney's fees and costs) arising from or out of:
- (a) the Licensee's actual or alleged breach of any provisions of this Agreement;
 - (b) the Licensee's use of the Product for any purpose; and

- (c) the Licensee's use of, or any third party's use of, or inability to use, any Derivative Works, including without limitation, any output from the Derivative Works.

- 9.9 **Notice of claim** Nearmap will provide the Licensee with notice of any claim or allegation, under section 9.8, and Nearmap has the right to participate in the defense of any such claim at its expense.

10. COPYRIGHT COMPLAINTS

- 10.1 Subject to section 9, if any third party brings a Claim against the Licensee alleging that the Licensee's use of the Products, in accordance with this License, infringes their copyright ("**Infringement Claim**"), Nearmap will defend the Licensee against the Claim and pay any settlement to which Nearmap consents or final court-awarded damages for which the Licensee is liable.
- 10.2 The Licensee must:
- (a) promptly notify Nearmap of any such Infringement Claim;
 - (b) not make any admissions in relation to the Infringement Claim without Nearmap's prior written consent;
 - (c) permit Nearmap to conduct the defense of the Infringement Claim including all negotiations for settlement; and
 - (d) provide Nearmap with any assistance reasonably requested to allow Nearmap to defend the Infringement Claim.
- 10.3 Nearmap will have no liability for any Infringement Claim:
- (a) that arises from any:
 - (i) use of the Product in violation of this Agreement;
 - (ii) modification of the Product by anyone other than Nearmap, or a party authorized by Nearmap, in writing to modify the portion of the Product applicable to the Infringement Claim; or
 - (iii) third-party products, services, hardware, software, or other materials, or a combination of these with the Products, which would not be infringing without this combination; or
 - (b) if the Licensee fails to comply with section 10.2.
- 10.4 To the maximum extent permitted by law, this section 10 sets out Nearmap's sole and exclusive liability, and the Licensee's sole and exclusive remedy, for any third party Infringement Claims brought against the Licensee in relation to an infringement of Intellectual Property Rights.

11. PRIVACY POLICY

- 11.1 Nearmap will collect, use, and disclose any personal information supplied by the Licensee as set out in Nearmap's Privacy Policy, as amended from time to time, and currently available at <https://www.nearmap.com/us/en/legal/privacy-policy>. The Licensee hereby consents to those collections, uses, and disclosures.
- 11.2 To the maximum extent permitted by law, by entering into this Agreement, the Licensee expressly consents to receiving general emails relating to product updates, new products, or anything related to the usage of the product from Nearmap, but prior written consent is required to receive by email direct marketing communications from Nearmap.
- 11.3 By entering into this Agreement, the Licensee acknowledges that personal information provided by the Licensee in the course of accessing Products (including, without limitation, credit or debit card details provided by the Licensee for the purpose of paying Nearmap) may be disclosed to and held by one or more of Nearmap's third party suppliers and partners (including, without limitation, providers of payment processing services), and used by those third parties in connection with the supply of Products. Nearmap will have no liability whatsoever with respect to any personal information held by a third party in connection with the supply of Products.

12. FORCE MAJEURE

- 12.1 **Force Majeure Event** If a party is unable to perform or is delayed in performing an obligation under this Agreement (except for any obligation to pay money, including Fees) because of an act of war, terrorism, hurricane, earthquake, other act of God or of nature, strike or other labor dispute, riot or other act of civil disorder, embargo, or other cause beyond the performing party's reasonable control ("**Force Majeure Event**"):
- (a) that obligation is suspended but only so far and for so long as that party is affected by the Force Majeure Event; and
 - (b) the affected party will not be responsible for any loss or expense suffered or incurred by the other party, as a result of, and to the extent that, the affected party is unable to perform, or is delayed in performing, its obligations under this Agreement because of the Force Majeure Event.
- 12.2 **Notice of Force Majeure Event** If a Force Majeure Event occurs, the party affected by the Force Majeure Event must:
- (a) Promptly (when reasonably possible to do so) give the other party notice of the Force Majeure Event and an estimate of the non-performance and delay;
 - (b) take all reasonable steps to overcome the effects of the Force Majeure Event; and
 - (c) resume compliance as soon as practicable after the Force Majeure Event no longer affects it.

13. CONFIDENTIALITY

- 13.1 The Licensee must not use any Confidential Information for any purpose not expressly permitted hereunder. The Licensee will disclose Confidential Information only to its employees who have a need to know, for purposes of this Agreement, and who are under a duty of confidentiality no less restrictive than the Licensee's duty hereunder. The Licensee will protect Confidential Information from unauthorized use, access, or disclosure in the same manner as it would protect its own confidential or proprietary information of similar nature and with no less than reasonable care.

14. NOTICES

- 14.1 All notices and consents will be in writing and will be considered delivered and effective upon receipt (or when delivery is refused) when (a) personally delivered; (b) sent by registered or certified mail (postage prepaid, return receipt requested); (c) sent by nationally recognized private courier (with signature required and all fees prepaid); or (d) sent by email with confirmation of transmission. Notices must be sent to the Licensee at the address set forth in the Quote (or if none is specified, the address to which Nearmap sends invoices) and for Nearmap to 10897 South River Front Parkway, Suite 150, South Jordan, UT 84095, USA, or at another address as a party may designate in writing.

15. TECHNOLOGY EXPORT

- 15.1 The Licensee shall not: (a) permit any third party to access or use the Product in violation of any U.S. or Canadian law or regulation; or (b) export any software provided by Nearmap, or otherwise remove it from the United States or Canada, except in compliance with all applicable U.S. and Canadian laws and regulations. Without limiting the generality of the foregoing, the Licensee shall not permit any third party to access or use the Product in, or export such software to, a country subject to a United States embargo (as of the Effective Date, Cuba, Iran, North Korea, Sudan, and Syria) or a Canadian embargo.

16. NEARMAP NOW

- 16.1 **Survey** During the Term, the Licensee may request a survey of an area which is not covered (in its entirety or in part) by the Coverage Area ("Survey"). The Licensee must provide a detailed description of the area that is to be covered by the Survey and which is to be included in the Survey Specification. Upon receipt of such a request in writing, Nearmap may, in its absolute discretion, agree to provide the Survey to the Licensee for a Survey Fee.
- 16.2 **Delivery of Survey** Subject to sections 12 and 16.1, Nearmap will deliver the Survey to the Licensee by uploading the Survey to the Website within six (6) months of the date on which Nearmap receives payment of the Survey Fee in full from the Licensee. Nearmap will notify the Licensee in writing once the Survey has been uploaded to the Website.
- 16.3 **Availability to other Nearmap customers** Nearmap may, at its absolute discretion, allow other customers of Nearmap to access the Survey on the Website.
- 16.4 **Refund of Survey Fee** If the Licensee is not in breach of the Agreement, and Nearmap elects to terminate the Agreement under section 6.3 prior to delivery of the Survey, Nearmap will refund the Survey Fee to the Licensee.
- 16.5 **Other Products** This Section 16 will not be applicable to the Licensee if the Licensee has not purchased a Survey.

17. MISCELLANEOUS TERMS

- 17.1 **Nearmap customer** Licensee grants Nearmap the right to use Licensee's name and logo to identify as a Nearmap customer for marketing or promotional purposes in public or private communications with our existing or potential customers, subject to Licensee's standard trademark usage guidelines as provided to us from time to time.
- 17.2 **Additional Terms and Conditions** The Additional Terms and Conditions form part of, and should be read in conjunction with, this Agreement.
- 17.3 **Precedence of Documents** This Agreement is comprised of:
(a) the Additional Terms and Conditions;
(b) the Quote;
(c) any Product-Specific Terms; and
(d) this products agreement.
If there is any ambiguity or inconsistency between the documents comprising the Agreement, the document appearing higher in the list will have precedence. This Agreement between Nearmap and the Licensee supersedes all terms and conditions attached to the Licensee's purchase order.
- 17.4 **Independent Contractors** The parties are independent contractors and will so represent themselves in all regards. Neither party is the agent of the other, and neither may make commitments on the other's behalf. The parties agree that neither party's employee or contractor is an employee of the other party.
- 17.5 **Construction** The parties agree that the terms of this Agreement result from negotiations between them. This Agreement will not be construed in favor of or against either party by reason for authorship.
- 17.6 **Waiver** Neither party will be deemed to have waived any of its rights under this Agreement by lapse of time or by any statement or representation other than by an authorized representative in an explicit written waiver. No waiver of a breach of this Agreement will constitute a waiver of any other breach of this Agreement.
- 17.7 **Severability** If one or more of the terms of the Agreement are found to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining terms will not be affected.
- 17.8 **Amendments** Other than as expressly specified in this Agreement, this Agreement may only be varied with the written consent of Nearmap and the Licensee.
- 17.9 **Assignment** This Agreement shall not be assigned by either party without the prior written consent of the other party which shall not be unreasonably withheld; provided, however, that Nearmap may, upon written notice to the Licensee, assign all of its rights under this Agreement to (i) a parent, subsidiary or Affiliate of Nearmap, (ii) a purchaser of all or substantially all assets related to this Agreement, or (iii) a third party participating in a merger, acquisition, sale of assets or other corporate reorganization in which Nearmap is participating. Any attempt to assign this Agreement in violation of this provision shall be void and of no effect. This Agreement shall bind and inure to the benefit of the parties and their respective successors and permitted assigns.
- 17.10 **Entire Agreement** This Agreement:
(a) comprises the entire agreement and understanding between the parties on everything connected with the subject matter of this Agreement; and

- (b) supersedes any prior agreement or understanding on anything connected with that subject matter.
- 17.11 **Counterparts** This Agreement may consist of a number of counterparts and, if so, the counterparts taken together constitute one and the same instrument. This Agreement is not binding on any party unless one or more counterparts have been duly executed by, or on behalf of, Nearmap and the Licensee.
- 17.12 **Language** The parties have expressly agreed that this Agreement, and all ancillary agreements, documents, or notices relating to the Agreement, be drafted solely in the English language. Les parties aux présentes ont expressément convenu que cet accord et toute autre convention, document ou avis y afférent soient rédigés en anglais seulement.
- 17.13 **Governing Law** This Agreement will be governed by and construed in accordance with the laws of the State where the Licensee is carrying on business (without giving effect to the conflicts of laws provisions thereof).

18. DEFINITIONS

In this Agreement:

Additional Terms and Conditions means the additional terms and conditions (if any) set out in the Quote.

Affiliate means, with respect to Nearmap, any entity that controls or is controlled by Nearmap, or is under common control with Nearmap. For purposes of this definition, an entity shall be deemed to control another entity if it owns or controls, directly or indirectly, at least 50% of the voting equity of another entity (or other comparable interest for an entity other than a corporation).

Allowance means any usage allowance the Licensee is permitted to use and/or drawn down against for any Licensed Non-Government Products as specified the Quote.

API means application programming interface.

Authorized User means the number of persons specified in the "Seats" section of the Quote, who have been granted access to the Product by the Licensee pursuant to the term and conditions of this Agreement, and who either has been assigned a unique Nearmap user login credential or whom the Licensee has assigned a user login credential that enables access to the Product.

Business Days means any day other than a Saturday, a Sunday or a recognised public holiday in Utah, USA.

Claim means any claim, cost (including legal costs on a solicitor and client basis), damages, debt, expense, tax, liability, loss, obligation, allegation, suit, action, demand, cause of action, proceeding, or judgment of any kind, however calculated or caused, and whether direct or indirect, consequential, incidental or economic.

Commencement Date means (a) for New Subscription Quotes, the date as specified in the "Contract Commencement" section or the "Subscription Start Date" section of the Quote, whichever is later, or (b) for Renewal Quotes or Amendment Quotes, the date as specified in the "Subscription Start Date" section of the Quote.

Commercial Purpose means to distribute, transfer, sell, sublicense, or pass possession of any Products (in whole or in part) for the purpose of direct commercial benefit or gain by the Licensee.

Confidential Information means the terms of this Agreement, the pricing, and any other information relating to the business, finances, strategy, methods, processes, products, metadata, services or other affairs of Nearmap or its representatives or related bodies corporate which is disclosed to, learnt by or accessed by the Licensee in connection with the Agreement, whether before or after the Licensee entered into the Agreement, whether orally, electronically, in writing or otherwise, but excludes information which:

- (a) is or becomes part of the public domain otherwise than as a consequence of a breach of the Agreement;
- (b) the Licensee has obtained from a source other than Nearmap which source is entitled to disclose it; or
- (c) the Licensee has developed or acquired independently before the date of the Agreement, and can provide reasonable proof.

Content means any content made available by or on behalf of Nearmap to the Licensee in connection with the License, whether or not through the Website or an API.

Coverage Area means the area specified in the "Coverage" section of the Quote for which Nearmap has available Products, which may cover part or all of that area and which may cover part (but not all) of the area covered by the Survey.

Derivative Work means any new work created by or for the Licensee that incorporates, embeds, or includes all or part of a Nearmap Product or Content.

Fair Use Policy means the policy as attached to the Quote.

Fault means any fault, failure, error, or defect which prevents the Licensee from accessing the Products, other than where access is prevented due to a planned outage, because of an unforeseeable event beyond Nearmap's reasonable control or any conduct or activity undertaken by the Licensee, the Licensee's employees, agents, or mandataries.

Fees means the fees specified in the Quote, payable by the Licensee for the License, or as otherwise agreed in writing between Nearmap and the Licensee.

Government Products means any Products specified in the Quote that are described as "Nearmap Vertical for Government" and "Nearmap Oblique for Government" and includes any other Products offered by Nearmap for government customers only where use of its License is connected to the Fair Use policy.

Intellectual Property Rights includes all industrial and intellectual property rights throughout the world, including copyright, moral rights, trademarks, patents, rights to protect confidential information, and any other similar rights.

Late Payment Fee means a fee, as notified by Nearmap to the Licensee, corresponding to the costs incurred by Nearmap (including, without limitation, administrative and other costs) in recovering any payment not made by the Licensee on the due or scheduled date for payment. Late fees incur interest at the rate of 1.5% per month (being 18% per year).

License means the license granted in section 1.1.

Licensee means the person or entity specified in the "Customer Name" section of the Quote.

Nearmap means Nearmap US, Inc.

Non-Government Products means all Products specified in the Quote that do not fall under the definition of Government Products.

Operational Hours means 9am to 5pm PT.

Periodic Allowance or **Periodic Data Allowance** means the data allowance specified in the "Allowance" section of the Quote unless otherwise agreed in writing between Nearmap and the Licensee.

Periodic Allowance Section means section 1.6 (or its equivalent) in the most current version of the products agreement currently located at [here](#).

Permitted Purpose means the use of Products by the Licensee for internal purposes in the Licensee's ordinary business, and at all times excludes any:

- (a) Commercial Purpose;
- (b) Unlawful Purpose;
- (c) Integration, or attempt to integrate, the Product in an internal system of the Licensee or of a third party; and
- (d) Redistribution or copying of files, images, or photographs, or making such files, images, or photographs available in any medium or manner that is contained in the Products to any third party (except as expressly permitted under this Agreement).

Products means any Nearmap products specified in the Quote (and further described on the Website) and, if applicable, the Survey. For the avoidance of doubt, Products include Content.

Product-Specific Terms means additional terms and conditions that apply to certain Products, currently located [here](#).

Quote the document produced after the Licensee places an initial order for the Product(s), requests any changes to its' License, or renews its License, which may be titled "New Subscription Quote", "Renewal Quote" or "Amendment Quote".

Schedule means a schedule to this Agreement, where such schedule has been incorporated by reference to form part of this Agreement.

Subscription Period means the period stated in the "Subscription Period" column of the Quote.

Subscription Start Date means the date specified in the "Subscription Start Date" section of the Quote.

Survey has the meaning (if any) given to that section 16.1.

Survey Fee means the fee for the Survey as agreed in writing between Nearmap and the Licensee.

Survey Specification means the survey specification referred to in the Quote. **Term** means the term specified in the "Subscription Term" section of the Quote, commencing on the Commencement Date. Where a Subscription Period is stated on the Quote, "Term" means the Subscription Period.

Third Party Providers means third party providers of products and services to Nearmap.

Unlawful Purpose means any unlawful purpose, including but not limited to stalking, harassing or intimidating any person or engaging in misleading or deceptive conduct.

Website means all pages and sub-sites available within the nearmap.com domain.