

NEW ZEALAND PRODUCTS AGREEMENT

Recitals

- A. Nearmap is a provider of aerial photography and associated products and services.
 B. Nearmap agrees to supply the Licensee with the Products, subject to the terms of this agreement, the Additional Terms and Conditions and Quote, which together make up the legal agreement between the Licensee and Nearmap (**Agreement**).

Definitions of capitalised words are set out in clause 17 of this Agreement.

1. GRANT OF LICENCE TO USE PRODUCTS

- 1.1 **Grant** Subject to the terms of this Agreement and payment by the Licensee of the Fee, Nearmap grants to the Licensee a limited, non-exclusive, non-transferrable licence for the Term to use the Products in the Coverage Area for the Permitted Purpose (**Licence**).
- 1.2 **Users** The Products available under this Licence are only to be used by the number of users as set out in the Quote (**Seats**). The Licensee shall implement reasonable controls to ensure that it does not exceed the number of Seats. If the Licensee exceeds the total number of Seats, the Licensee will be in breach of this Agreement.
- 1.3 **Renewal** Unless otherwise notified by the Licensee in writing at least 7 days prior to the expiry of the Term and subject to any amendments to this Agreement as agreed in writing between Nearmap and the Licensee, the Term will automatically be renewed for a subsequent 12-month period.
- 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 date of delivery from Nearmap.
- 1.5 **Acknowledge Nearmap source** The Licensee must expressly acknowledge Nearmap, in a reasonably prominent manner (by display of the Nearmap logo or other appropriate attribution), as the source of any Product or Derivative Works that the Licensee use, copy, modify or distribute. 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 **Periodic Data Allowance** Nearmap measures data usage by the Licensee under this Licence. In using the Products, the Licensee's consumption of data in the Period must not exceed the Periodic Data Allowance. The following conditions apply to the Licensee's Periodic Data Allowance:
- (a) the Periodic Data Allowance used by the Licensee will be calculated at the end of every Period based on the total data usage of all users who access and use the Licensee's Nearmap account during that Period;
- (b) if the Licensee elects to download Products available to the Licensee on the Website, this will be applied to the Periodic Data Allowance. The Licensee may have the option to elect to download high resolution images. Downloading these images will use a higher portion of the Periodic Data Allowance than downloading a lower resolution image;
- (c) if the amount of data consumed by the Licensee in any given Period is less than the Periodic Data Allowance, the balance will not be rolled over to a following Period;
- (d) the Licensee agrees that Nearmap may charge the Licensee additional fees, up to a maximum of the Excess Data Rate, for any use by the Licensee of the Products resulting in data consumption in excess of the Periodic Data Allowance;
- (e) Nearmap will provide notice to the Licensee if it exceeds its Periodic Data Allowance for any Period; and
- (f) if the Licensee exceeds the Periodic Data Allowance, Nearmap may, in its absolute discretion, elect to:
- (i) restrict the Licensee's access to the Products until the Periodic Data Allowance is reset or until additional fees are paid; or
- (ii) immediately cease the Licensee's access to the Products for the remainder of the Period.
- 1.7 **Unavailability** Subject to clause 12, if a Product is not available for a period of 3 or more consecutive days the Term will be extended by the period of 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 Licence 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 Licence without Nearmap's prior written consent.
- 2.3 **No third party access** Unless otherwise provided in this Agreement, the Licensee must not make any Products available in any medium or manner to any third party (including the Licensee's Related Companies and Subsidiaries).
- 2.4 **Employees** The Licensee may make Products available to any employee, subject to that person complying with the terms of the Agreement as if they were a party to it. The Licensee is responsible and liable for any person that 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's Periodic Data Allowance is exceeded.
- 2.5 **No machine learning** The Licensee must not conduct machine learning work 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, sub-license 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 **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;
- (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 unsolicited (commercial or otherwise) e-mail or any material for marketing or publicity purposes, or any similar abuse of either;
- (e) publish, post, distribute, disseminate or otherwise transmit, defamatory, offensive, infringing, obscene, indecent or other unlawful or objectionable or 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", "time bombs", "worms", malicious code, or any other harmful software;
- (g) remove any content or information from the Website, other than that permitted under the terms of this Licence;
- (h) falsify the true ownership of a Product or other material or information made available via the Website;
- (i) obtain or attempt to obtain unauthorised access, through whatever means, to the Website;
- (j) use the Website other than in accordance with the 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 which exceeds the total number of Seats in connection with use of the Product.
- 2.8 **Breach** If the Licensee breaches any of clauses 2.1 to 2.7 inclusive, Nearmap reserves its rights to terminate the Agreement in accordance with clause 6.1, restrict the Licensee's access to the Products and/or take any other steps available to it at law.
- ### 3. THE LICENSEE'S ACCESS TO PRODUCTS AND SERVICES
- 3.1 **Password/ID** Any password/ID issued by Nearmap to a Seat user is personal and confidential to that user. If Nearmap suspects that any password/ID is being used by an unauthorised user, by a different Seat user to the person whom it was issued to or the number of Seat users have been exceeded, Nearmap may:
- (a) cancel that password/ID;
- (b) restrict the Licensee's access to the Product including but not limited to low resolution imagery for the remainder of the month;
- (c) immediately cease the Licensee's access to the Product;
- (d) require the Licensee to pay for any additional charges in accordance with Nearmap's then current price list for the applicable Product, in respect of any such unauthorised use; and/or
- (e) exercise any other right available to Nearmap under the terms of this Agreement.
- 3.2 **Downtime** Nearmap will use reasonable endeavours 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. As soon as Nearmap becomes aware of any Fault, Nearmap will use reasonable endeavours 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 minimise any disruption to the Licensee's use of the Products.
- 3.3 **Expiry** The Licensee's Licence will expire at the end of the Term unless renewed in accordance with clause 1.3 and may be suspended or terminated in accordance with clause **Error! Reference source not found.** if the Licensee is in breach of this Agreement.
- 3.4 **Unauthorised Use** The Licensee shall take reasonable steps to prevent unauthorised access to the Licence, including without limitation protect its passwords and other log-in information. The Licensee shall notify Nearmap immediately of any known or suspected unauthorised use of the Licence or breach of its security and shall use best efforts to stop said breach.
- 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 accurate and complete

- records regarding its use of the Products and the Licensee shall permit Nearmap (or its representatives) access to the business location(s), books and records, employees and/or contractors 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 and in which case the audit period can be expanded.
- 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 licence 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 clause **Error! Reference source not found.** Licensee must pay all invoices issued under this clause within thirty (30) days following the date of invoice.
4. **FEES**
- 4.1 **Fees** The Fees payable by the Licensee for the Licence and the use of the Products are specified either in the Quote or in the case of a renewal Term where the terms of the Agreement remain unchanged, as set out in the relevant tax invoice issued by Nearmap or as otherwise notified by Nearmap to the Licensee.
- 4.2 **Payment** The Fees are payable by the Licensee to Nearmap in the manner set out in the Quote or in the Additional Terms and Conditions at the beginning of each Term unless otherwise agreed by Nearmap. The Licensee will provide Nearmap with valid and updated credit information, or with a valid purchase order or alternative document reasonably acceptable to Nearmap. If the Licensee provides credit card information to Nearmap, the Licensee authorises Nearmap to charge such credit card for all purchased Products listed in the Quote for the initial Term and any renewal Term as set out in clause 1.3. The Licensee authorises Nearmap, from time to time, to undertake steps to determine whether the card number provided to Nearmap is a valid card number and authorises Nearmap to automatically update Licensee's credit card information. Such Fees may be made in advance, either annually or in accordance with any different billing frequency stated in the Quote or the Additional Terms and Conditions. If the Quote specifies that payment will be made by a method other than a credit card, Nearmap will invoice the Licensee for the Fees payable.
- 4.3 **No cancellation** Subject to clause 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 clause 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 **GST** All Fees exclude GST and other taxes unless expressly stated otherwise.
- 4.6 **Late Payment** If a scheduled Fee payment is not made in full for any reason, the Licensee gives Nearmap permission to charge a Late Payment Fee and/or immediately limit or terminate access to the Products provided under this Licence.
- 4.7 **Acceleration** In the event of the Licensee failing to pay Nearmap the Fees in full in accordance with the terms of this Agreement, all Fees (whether accrued or not) will become immediately due and payable.
- 4.8 **Amendments** The parties will in good faith discuss prior to the expiration of the Term and each renewal Term any changes to the Fees for any renewal Term.
5. **THE LICENSEE'S WARRANTIES**
- 5.1 **Warranty** The Licensee warrants that:
- 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;
 - 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;
 - the Licensee has the power to enter into this Agreement and to perform the obligations under it;
 - the person signing on behalf of the Licensee is authorized to do so; and
 - the Licensee has and will comply with all relevant laws relating to the Licensee's use of the:
 - Licensee;
 - Products; and
 - 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 clause 1.3.
- 6.2 **Breach** A party may terminate this Agreement for cause (i) upon five (5) Business Days written notice to the other party for a material breach if such breach remains uncured at the expiration of such period, or (ii) if the other party becomes the subject of an Insolvency Event.
- 6.3 **Termination by Nearmap** Regardless of anything else in the Agreement but subject to clause 4.4, Nearmap has the right, in its absolute discretion and upon giving the Licensee 10 Business Days' notice, to terminate the Agreement and the Licence, if:
- any licence, permission or authorisation necessary for the provision of the Products is revoked, altered or varied to the extent that Nearmap can no longer provide the Products in accordance with this Agreement; and
 - Nearmap is prohibited from providing the Product to the Licensee.
- 6.4 **Consequences** If the Agreement is terminated under clauses 6.2, 6.2 or expires under clause 3.3:
- the Licence immediately terminates and the Products will no longer be available to the Licensee;
 - the Licensee must immediately destroy, delete or return to Nearmap all Products; and
 - subject to clause 7.3, the Licensee is 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 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 Licence, clauses 1.5, 2, 3.5, 3.6, 4, 6.4, 6.5, 7, 8, 9, 10, 11, 13, 14, 16 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 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 Licence granted to the Licensee in clause 1.1, no ownership or Intellectual Property Rights in the Website or any Product will pass 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 licence to use Nearmap trade marks to the extent necessary to comply with the Licensee's obligations under the Agreement.
- 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. The Licensee and Nearmap will jointly own all rights in and to any Product embedded in a Derivative Work.
8. **THIRD PARTY PROVIDERS**
- 8.1 Nearmap engages Third Party Providers in order to provide the Products. 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 clause 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 clause 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 agrees to comply with 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.
- 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 (https://www.google.com/enterprise/earthmaps/legal/us/maps_purchase_agreement_apac.html) as they apply to the Licensee.
 - Hometrack**
Nearmap engages Hometrack to supply certain real estate related data. By entering into the Agreement, the Licensee agrees to the Hometrack Terms of Use (<http://www.hometrack.com.au/terms-of-use>) and End User Terms and Conditions (<https://www.hometrack.com/au/end-user-terms-and-conditions>) as they apply to the Licensee.
 - Amazon Web Services (AWS)**
Nearmap engages Amazon Web Service, Inc. to provide services (**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:
 - Privacy Policy (<http://aws.amazon.com/privacy/>);
 - Acceptable Use Policy (<http://aws.amazon.com/aup/>);
 - Terms of Use (<http://aws.amazon.com/terms/>);
 - Service Terms (<http://aws.amazon.com/serviceterms/>); and
 - Trademark Use Guideline (<http://aws.amazon.com/trademark-guidelines/>).
 - NASA/NCAS**
By entering into the Agreement, the Licensee agrees to the following NASA/NCAS terms and conditions: (<https://www.nearmap.com/Legal-Information/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 **Exclusion of Warranties** Subject to clause 9.1, the Website and the Products are provided "as is", and Nearmap and its content providers, agents and affiliates exclude, to the fullest extent permitted by applicable law, any warranty, express or implied, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose, any warranties as to the currency or regularity of the updates of the Products, any warranties as to any files the Licensee downloads from the Website being free from virus or harmful code, and all conditions and warranties which would otherwise be implied into this Agreement whether by law, statute or otherwise, except for guarantees or warranties which cannot be excluded by law including any applicable guarantees under the *Consumer Guarantees Act 1993 (CG Act)* or the *Contract and Commercial Law Act 2017*. The Licensee acknowledges and agrees that the Products are provided in trade and that the CG Act does not apply to their supply.
- 9.3 **No Representations** While Nearmap uses reasonable efforts to ensure the accuracy, correctness and reliability of the Products and the Website, Nearmap makes no representations or warranties 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. The purpose of this clause 9.3 is to expressly contract out of the *Fair Trading Act 1986* to the maximum extent possible and the parties agree that it is fair and reasonable to do so.
- 9.4 **Limit of Liability** Nearmap's liability for:
- a breach of a warranty under clause 9.1; or
 - a breach of a warranty which is implied or imposed in relation to this Licence 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 or affiliates be liable for any Claims of any kind arising from or connected with the use of the Website 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 and whether in contract, tort or otherwise.
- 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), product liability, strict liability or other theory, arising out of or relating to the use of the Products exceed any compensation or Fee the Licensee has paid, if any, to Nearmap for access to or use of the Products over the 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 services. Without limiting any of the above, for the avoidance of doubt, 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** The Licensee agrees to indemnify Nearmap and its directors, officer, employees, agents and subcontractors, from and against any and all direct or indirect claims, damages, losses, liabilities, expenses and costs (including solicitors and own client costs) arising from or out of the Licensee's actual or alleged breach of any provisions of this Agreement, except to the extent caused or contributed to by Nearmap's negligence or breach of this Agreement.
10. **COPYRIGHT COMPLAINTS**
- 10.1 Subject to clause 9, if any third party brings a Claim against the Licensee alleging that the Licensee's use of the Products in accordance with this Licence 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:
- promptly notify Nearmap of any such Infringement Claim;
 - not make any admissions in relation to the Infringement Claim without Nearmap's prior written consent;
 - permit Nearmap to conduct the defence of the Infringement Claim including all negotiations for settlement; and
 - provide Nearmap with any assistance reasonably requested to allow Nearmap to defend the Claim.
- 10.3 Nearmap will have no liability for any Infringement Claim:
- that arises from any:
 - use of the Product in violation of this Agreement;
 - modification of the Product by anyone other than Nearmap or a party authorised by Nearmap in writing by Nearmap to modify the portion of the Product applicable to the Infringement Claim; or
 - third-party products, services, hardware, software or other materials, or a combination of these with the Products would not be infringing without this combination; or
 - if the Licensee fails to comply with clause 10.2.
- 10.4 To the maximum extent permitted by law, this clause 10 sets out Nearmap's sole and exclusive liability, and the Licensee's sole and exclusive remedy, for any third party Claims brought against the Licensee in relation to an infringement of Intellectual Property Rights.
11. **PRIVACY POLICY**
- 11.1 Nearmap will use any data supplied by the Licensee as set out in Nearmap's Privacy Policy, available at <https://au.nearmap.com/legal/privacy>.
- 11.2 By entering into this Agreement, the Licensee expressly consent to receiving 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.
- 11.4 To the extent Nearmap receives any personal information (as that terms is defined in the *Privacy Act 1993*) it will comply with its obligations under that Act.
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 event beyond that party's reasonable control (**Force Majeure Event**):
- that obligation is suspended but only so far and for so long as that party is affected by the Force Majeure Event; and
 - 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:
- promptly give the other party notice of the Force Majeure Event and an estimate of the non-performance and delay;
 - take all reasonable steps to overcome the effects of the Force Majeure Event; and
 - resume compliance as soon as practicable after the Force Majeure Event no longer affects it.
13. **CONFIDENTIALITY**
- 13.1 The Product includes metadata and other confidential and proprietary information of Nearmap (**Confidential Information**). The Licensee must not use any Confidential Information for any purpose not expressly permitted hereunder and 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 unauthorised user, 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 recognised 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 and for Nearmap to Level 4, Tower One, 100 Barangaroo Avenue, Barangaroo NSW 2000 or at another address as a party may designate in writing.
15. **CUSTOMER SUPPORT**
- During the Term the Licensee may contact Nearmap at <http://support.nearmap.com> with the Licensee's support queries. However, Nearmap will only respond to the Licensee's queries during Operational Hours and cannot guarantee that it will be able to resolve any issue raised by the Licensee. Nearmap has no obligation to provide the Licensee with any additional support, but if Nearmap agrees to do so Nearmap may charge the Licensee reasonable additional fees for the additional support provided to the Licensee by Nearmap.
16. **MISCELLANEOUS TERMS**
- 16.1 **Nearmap customer** The Licensee agrees that Nearmap may identify the Licensee as a Nearmap customer in Nearmap business materials.
- 16.2 **Additional Terms and Conditions** The Additional Terms and Conditions form part of, and should be read in conjunction with, this Agreement. If there is any inconsistency between this Agreement and the Additional Terms and Conditions, the Additional Terms and Conditions prevail to the extent of the inconsistency.
- 16.3 **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 no Nearmap employee or contractor will be an employee of the Licensee.
- 16.4 **Construction** The parties agree that the terms of this Agreement result from negotiations between them. This Agreement will not be construed in favour of or against either party by reason for authorship.
- 16.5 **Waiver** Any waiver of any terms of the Agreement will be effective only if in writing and signed by the party granting the waiver, and will be effective only to the extent specifically set out in that waiver. Any rights not expressly granted herein are reserved.
- 16.6 **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.
- 16.7 **Amendments** Other than as expressly specified in this Agreement, this Agreement may only be varied with the written consent of Nearmap and the Licensee.
- 16.8 **Assignment** Except as provided below, neither party may assign or otherwise transfer or attempt to assign all or any part of this Agreement, without the Licensee's consent, in connection with a merger, acquisition, corporate reorganisation, change of control or sale or disposition of substantially all of its assets (or any substantially similar transaction). Additionally, Nearmap may assign all or any part of this Agreement to its Related Companies and Subsidiaries without the Licensee's consent.
- 16.9 **Entire Agreement** The Agreement (including the terms of 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 written agreement connected with that subject matter.
- 16.10 **Governing Law** This Agreement is governed by and construed in accordance with the laws of New Zealand, and each party irrevocably submits to the non-exclusive jurisdiction of the courts of New Zealand.
- 16.11 **Precedence of Documents** In the event of any inconsistencies between the terms of this agreement, the Additional Terms and Conditions and the Quote, the following order of precedence applies, from highest to lowest:
- (a) the Quote;
- (b) the Additional Terms and Conditions; and
- (c) this agreement.
- 16.12 **Joint and Several Liability** If the Licensee consists of more than one person or entity, then each such person or entity shall be jointly and severally liable with respect to its obligations to Nearmap under this Agreement.

17. DEFINITIONS

In this Agreement:

Additional Terms and Conditions means the additional terms and conditions (if any) set out in Schedule 1.

Business Day means any day other than a Saturday, a Sunday or a recognised public holiday in New South Wales, and the location in which the Licensee is incorporated or the jurisdiction where the party performing the relevant obligation under this Agreement resides.

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 the date Nearmap accepts the Licensee's signed Quote, unless otherwise as specified on the Quote.

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

Companies Act means the *Companies Act 1993*.

Content means any content made available to the Licensee in connection with the Licence.

Coverage Area means the area described in the Website 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 includes or embeds all or part of a Nearmap Product.

Excess Data Rate means the rate of additional fees that the Licensee pays per megabyte for its use of the Products beyond the Periodic Data Allowance, being:

- (a) if the Licensee pays its Fees on a monthly basis, the Fees per month divided by the Periodic Data Allowance; or
- (b) if the Licensee pays its Fees on a yearly basis, the Fees per year divided by 12 divided by the Periodic Data Allowance.

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 or agents.

Fees means the fees specified in the Quote payable by the Licensee for the Licence, unless otherwise agreed in writing between Nearmap and the Licensee (and includes the Survey Fee, if applicable) and all other fees payable under the Agreement.

Force Majeure Event has the meaning given in clause 12.1.

GST means Goods and Services Tax as that term is defined in the Goods and Services Tax Act 1985

Inflation means the rate of inflation for the current year, to be calculated using the Reserve Bank of New Zealand's Inflation Calculator at <https://www.rbnz.govt.nz/monetary-policy/inflation-calculator> or such other replacement calculation tool from time to time.

Infringement Claim is defined in clause 10.1

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 similar rights.

Insolvency Event means when (a) a party suspends payment of its debts generally, or is or becomes unable to pay its debts when they are due, or is or becomes unable to pay its debts within the meaning of the Companies Act (or, in the case of Nearmap, the *Corporations Act 2001* (Cth)), (b) any form of voluntary or involuntary insolvency, administration or liquidation of a party, (c) except in the case of Nearmap where reconstruction or amalgamation has taken place while solvent, a party enters into, or resolves to enter into, an arrangement or composition, for the benefit of, all of any its creditors, or it, or anyone on its behalf, proposes a reorganisation, moratorium, deed of company arrangement or other administration involving any of them or the winding up or dissolution of that party, (d) a party ceases, or threatens to cease, to carry on business, or (e) anything having a substantially similar effect to any of the events specified to the relevant party under the law of any jurisdiction.

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.

Licence means the licence granted in clause 1.1.

Licensee means the person or entity specified in the Quote.

Nearmap means Nearmap Australia Pty Ltd NZCN 6603574.

Operational Hours means 9am to 5pm NZST.

Period means the period shown in the "Allowance" section of the Quote unless otherwise agreed in writing between Nearmap and the Licensee.

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

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

- (a) Commercial Purpose; and
- (b) Unlawful Purpose.

Products means any Nearmap products specified in the Quote and, if applicable, the Survey.

Quote means an ordering document or an online order specifying the Products to be provided to the Licensee under this Agreement including any supplements and addendums.

Related Company has the meaning given in the Companies Act.

Schedules means the schedules to this Agreement, which form part of this Agreement.

Seats has the meaning given in clause 1.2.

Subsidiaries has the meaning given in the Companies Act. **Survey Fee** means the fee for the Survey as agreed in writing between Nearmap and the Licensee.

Term means the term specified in the "Subscription Term" section of the Quote, commencing on the Commencement Date unless otherwise notified to the Licensee by Nearmap.

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 webpages and sub-sites available within the Nearmap.com domain (<http://www.nearmap.com/>).