



PLEASE READ THIS PRODUCTS AGREEMENT CAREFULLY. BY ACCEPTING THIS AGREEMENT EITHER BY CLICKING A BOX INDICATING YOUR ACCEPTANCE OR 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 (INTEGRATOR DATA RESELLER)

### Recitals

- A. Nearmap is a provider of aerial photography 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 and Quote, which together make up the legal agreement between the Licensee and Nearmap (**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 Fee, Nearmap grants to the Licensee a limited, non-exclusive, non-transferrable license for the Term to use the Products in the United States of America to:
  - (a) through the Developer License; and
  - (b) subject to section 3.3, conduct Transactions through the Production License, (collectively, the "**License**").
- 1.2 **Customer License** Subject to the terms of this Agreement and payments by the Licensee of the Fee, Nearmap grants to the Customers a non-exclusive, non-transferrable license to use internally imagery obtained under the License, and create Derivative Works, in the ordinary course of their business but at all times excluding any resale.
- 1.3 **Renewal** This Agreement may be renewed for a successive twelve (12) month period by mutual written agreement of the parties, which may include any amendments to this Agreement by the parties (**Renewal Term**).
- 1.4 **Acknowledge Nearmap source** The Licensee must acknowledge Nearmap as the source of the Products by displaying and incorporating Nearmap's logo or other appropriate attribution, to be approved by Nearmap in writing, where the Product is integrated or embedded into the Licensee's Platform, Derivative Works, or Transactions. The Licensee and the Customers must not remove or cause to be removed any Nearmap logo or other approved attribution in any Product, where the Product is embedded into the Derivative Works and Transactions without Nearmap's prior written consent.
- 1.5 **Periodic Data Allowance** Nearmap measures data usage by the Licensee under this License. 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 and any access through an API during that Period;
  - (b) if the Licensee elects to download Products available to the Licensee on the Website and API, this will be applied to the Periodic Data Allowance;
  - (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, which includes any additional Increment Blocks purchased;
  - (d) in the case of the Developer License, if the Licensee exceeds its Periodic Data Allowance, Nearmap may, in its absolute discretion, restrict the Licensee's access to the Products until the Periodic Data Allowance is reset. If the Licensee is restricted from accessing the Developer License, the Licensee may still conduct Transactions and Nearmap Customers will still have access to the Products by using their existing Nearmap credentials;
  - (e) in the case of the Production License, subject to section 1.5(f), if the Licensee exceeds or is about to exceed its Periodic Data Allowance and has not purchased Increment Blocks as detailed in section 1.7, Nearmap may, in its absolute discretion, elect to:
    - (i) allow the Licensee to continue conducting Transactions through the Production License where the Licensee agrees it will be charged on a per Increment Block basis at the Bulk Block Rate for excess data usage; or
    - (ii) restrict the Licensee's access to the Products until the Periodic Data Allowance is reset;
  - (f) if the Licensee is about to exceed its Periodic Data Allowance within the last sixty (60) days of the Term (or Renewal Term), the Licensee will be permitted to continue conducting Transactions where it will be liable to pay for the additional data used based off the Single Block Rate or alternatively the Licensee may purchase additional data in increments specified for Increment Blocks at the Bulk Block Rate. If no election is made, the Licensee will automatically be liable to pay for charges based off the Single Block Rate; and
  - (g) any data usage by a Nearmap Customer via the Licensee's Platform using its existing Nearmap credentials will not be counted towards the Licensee's Periodic Data Allowance.
- 1.6 **Single Block Rate** Charges relating to Single Block Rate under section 1.5 will be invoiced on a monthly basis, payable within the Payment Term from invoice date.
- 1.7 **Increment Blocks** Under the Production License only, if the Licensee is about to exceed its Periodic Data Allowance, the Licensee may purchase additional data in increments as specified for Increment Blocks at the Bulk Block Rate. Additional data corresponding to the number of Increment Blocks purchased will only be added to the Licensee's usage account once payment has been made within the Payment Term from invoice date.
- 1.8 **Renewal Fees** The fees payable for any Renewal Term will be the total of Fees payable for the initial Periodic Data Allowance and all fees payable for the

Increment Blocks purchased during the current Term (**Renewal Fees**). The Periodic Data Allowance for any Renewal Term will be recalculated based off the Renewal Fees as shown on the renewal quote.

- 1.9 **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 unavailability.

### 2. RESTRICTIONS ON RIGHT TO USE PRODUCTS

- 2.1 **No right to distribute, transfer, resell, assign or sublicense** Except to the extent expressly permitted under sections 1.1 and 1.2 of this Agreement, the Licensee must not otherwise distribute, transfer, resell, assign, rent, lease or sublicense any Product or any of the Licensee's rights under its License without Nearmap's prior written consent.
- 2.2 **No third party access** Unless otherwise provided in this Agreement, the Licensee must not make any Products and the License available in any medium or manner to any third party (including the Licensee's subsidiaries and Affiliates). The Licensee is not permitted to share any assigned API key or Integration Method with any third party, including but not limited to any Customers.
- 2.3 **No machine learning** The Licensee must not (and must ensure the Customers do 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.
- 2.4 **No caching and creation of database** The Licensee is not permitted to:
  - (a) use its access to the Products and License under this Agreement for the purposes of creating a database of imageries for resale, distribution, sub-license or other commercial purposes (unless expressly permitted under this Agreement) and mass downloads or bulk feeds of any imagery; and
  - (b) pre-fetch, retrieve (unless it relates to access or use of the Product by a Customer), cache (unless permitted under section 2.5 of this Agreement), index, or store any Products, or portion of the Products with the exception being that the Licensee may store up to 100MB of Products solely to improve the performance of the Licensee's Platform or conducting a Transaction due to network latency, and only if the Licensee does so for a maximum of seven (7) days, securely, and in a manner that does not permit use of the Products outside of the License, does not manipulate or aggregate any Products or portion of the Products and does not prevent Nearmap from accurately tracking usage and does not modify attribution in any way.
- 2.5 **Permitted caching** The Licensee is permitted to cache Product that is directly connected with a Transaction, provided that any cached Product is only permitted to be retrieved by the Licensee for the sole purposes of enabling a Customer to use such Product (where the same Product was previously provided to or accessed by the same Customer) as permitted under this Agreement.

### 3. THE LICENSEE'S ACCESS TO PRODUCTS AND SERVICES

- 3.1 **Password/ID** Any password/ID issued by Nearmap to an Authorized User is personal and confidential to that user. If Nearmap suspects that any password/ID is being used by an unauthorized user, by a different Authorized User to the person whom it was issued to, 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 unauthorized use; and/or
  - (e) exercise any other right available to Nearmap under the terms of this Agreement.
- 3.2 **Downtime** Nearmap will use reasonable endeavors 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 endeavors 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 **Integration** The Licensee has three (3) months from the Commencement Date to enable integration of the Products into the Licensee's Platform (**Integration Period**). Nearmap, in its sole discretion, will notify the Licensee within fourteen (14) days from the date the Licensee notifies Nearmap it has enabled integration or the end of the Integration Period that it approves for the Licensee to enable

Customers access to the Products. Where approval has not been obtained, Nearmap will provide feedback to the Licensee and the Licensee must use all commercial reasonable endeavors to meet and/or satisfy Nearmap's feedback before Nearmap provides its approval.

- 3.4 **Integration replacement** Nearmap may, from time to time, retire an Integration Method, or provide updates to an Integration Method or a new Integration Method for the purposes of the License (**Updated Integration Method**). Nearmap will provide up to three (3) months' written notice, prior to the date of the Updated Integration Method. The Licensee (at its cost) will be responsible for updating or integrating the Updated Integration Method into the Licensee's Platform within seven (7) days of Nearmap's written notice. Nearmap shall not be responsible or liable to the Licensee for any failure to meet its obligations under this Agreement if the Licensee fails or otherwise refuses to update or integrate the Updated Integration Method. The Licensee shall not update or interfere with the Integration Method or use its own integration methods without Nearmap's prior written consent.
- 3.5 **Unauthorized use** Licensee shall take reasonable steps to prevent unauthorized access to the License, including without limitation protect its passwords and other log-in information. The Licensee shall immediately notify Nearmap of any known or suspected unauthorized use of the License or breach of its security and shall use best efforts to stop any breaches.
- 3.6 **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 auditors) 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.
- 3.7 **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 section 6.2. Licensee must pay all invoices issued under this section within thirty (30) days following the date of invoice.

#### 4. FEES

- 4.1 **Fees** The Fees payable by the Licensee for the License 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 by credit card 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 section 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. If the Quote specifies that payment will be made by a method other than a credit card, Nearmap will invoice the Licensee in advance and otherwise in accordance with the Quote.
- 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, 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 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 License.
- 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.

#### 5. THE LICENSEE'S WARRANTIES AND ACKNOWLEDGEMENTS

- 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 purposes permitted under this Agreement, 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;
  - (d) that the person signing on behalf of the Licensee is authorized to do so; and
  - (e) 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.
- 5.2 **Licensee's acknowledgements** The Licensee acknowledges and agrees that:

- (a) it is solely responsible (at its cost) for integrating the Products to the Licensee's Platform under the License;
- (b) it is solely responsible (at its cost) for providing all support (including technical support) to Customers who access the Products through the Licensee's Platform;
- (c) Nearmap has no obligation to assist the Licensee with the integration of the Products to the Licensee's Platform and will not be providing any support or assisting Customers who chooses to access the Products through the Licensee's Platform;
- (d) before a Nearmap Customer can access the Nearmap Product through the Licensee's Platform, the Licensee must ensure there is a user interface within the Licensee's Platform that requires the Nearmap Customer to enter credentials, which will be authenticated with their existing Nearmap credentials through an API request;
- (e) it will require Nearmap Customers to acknowledge that accessing and using the Product through the Licensee's Platform will be subject to the terms of their license agreed to with Nearmap and will be counted towards their allocated periodic data allowance except where they have accessed the Product in connection with a Transaction;
- (f) it will notify Customers before they access the Products via the Licensee's Platform that all support will be provided by the Licensee and that they must only contact the Licensee for support and technical issues concerning use of the Product through the Licensee's Platform; and
- (g) it must not engage in any marketing or promotional activities that features, relates to, or is connected to, whether directly or indirectly to Nearmap including but not limited to its branding, entity name (including any of Nearmap group's other entities), logos, trademarks, or Products, unless it has:
  - (i) submitted plans for such activities at least thirty (30) days prior to the proposed launch date of such activities; and
  - (ii) obtained Nearmap's written consent, which Nearmap may withhold in its absolute discretion.

#### 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 **Breach** 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; 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** Regardless of anything else in the Agreement, Nearmap has the right, in its absolute discretion and upon giving the Licensee ten (10) Business Days' notice, to terminate the Agreement and the Licensee if:
- (a) any license, 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
  - (b) Nearmap is prohibited from providing the Products to the Licensee.
- 6.4 **Consequences** If the Agreement is terminated under sections 6.2 or 6.3 or expires:
- (a) the License immediately terminates and the Products will no longer be available to the Licensee and to the Customers (through the Licensee's Platform);
  - (b) the Licensee must immediately destroy, delete or return to Nearmap all Products, but excluding any Products that are contained in Derivative Works within the Licensee's Platform and that was created prior to the termination date or expiry of the Agreement; and
  - (c) subject to section 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 License, sections 1.4, 2, 3.6, 3.7, 4, 6.4, 6.5, 6.6, 7, 8, 9, 10, 11, 13, 14, 15, 17 and 18 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 License granted to the Licensee in section 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 license to use Nearmap trademarks 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 Derivative Works under the Production License in connection with a Transaction. Unless otherwise notified to the Licensee by Nearmap, the Customers may continue using Derivative Works following termination or expiry of this Agreement. Nearmap and the Licensee will jointly own all rights in and to any Product (whether in whole or in part) embedded in any Derivative Work produced by the Licensee.

## 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 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 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.

### (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](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 (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 Use Guideline

(<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/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 **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 AND AFFILIATES EXPRESSLY DISCLAIM ANY AND ALL WARRANTIES, WHETHER EXPRESS, STATUTORY OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES 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 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.

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 WARRANTY 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 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, WHETHER IN CONTRACT, TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE) 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 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), 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 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 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 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 Nearmap will provide the Licensee with notice of any such claim or allegation, 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 Infringement 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 defence 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 by Nearmap 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 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 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 <http://go.nearmap.com/legal/privacy-policy>.

11.2 By entering into this Agreement, the Licensee expressly consents 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.

## 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 acts of war, terrorism, hurricane, earthquakes, other acts of God or of nature, strikes or other labor disputes, riots or other acts of civil disorder, embargoes, or other causes 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 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 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 unauthorized 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 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. law or regulation; or (b) export any software provided by Nearmap or otherwise remove it from the United States except in compliance with all applicable U.S. 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 Commencement Date of this Agreement, Cuba, Iran, North Korea, Sudan, and Syria).

#### 16. CUSTOMER SUPPORT

16.1 During the Term the Licensee may contact Nearmap by sending its support queries to [partner.support@nearmap.com](mailto:partner.support@nearmap.com). Nearmap 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.

#### 17. MISCELLANEOUS TERMS

17.1 **Nearmap customer** The Licensee agrees that Nearmap may identify the Licensee as a Nearmap customer in Nearmap business materials.

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 **Other reporting requirements** The Licensee is required to prepare and provide Nearmap quarterly reports, relating to the Developer License and Production License, as reasonably required by Nearmap in the form specified in documentation provided by Nearmap, as amended from time to time.

17.4 **Developer license to Nearmap** The Licensee grants to Nearmap (at no cost), a limited, non-exclusive, non-transferrable license for the Term to use the Licensee's Platform for Nearmap's internal purposes relating to training, support and administration purposes.

17.5 **Non-solicitation** During the Term of this Agreement and:

(a) for a period of six (6) months after the expiration of the Term, neither party will solicit, interfere with or endeavor to entice away any employees of the other party or any of the other party's Affiliates, or counsel, procure or assist any person to do those things; or

(b) for a period of twelve (12) months after the expiration of the Term, the Licensee must not solicit, interfere with or endeavor to entice away any Nearmap Customer by providing products or services that are the same as, or substantially the same as, or in competition with the Products.

17.6 **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.

17.7 **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.

17.8 **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.

17.9 **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.

17.10 **Amendments** Other than as expressly specified in this Agreement, this Agreement may only be varied with the written consent of Nearmap and the Licensee.

17.11 **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 (a) a parent, subsidiary or Affiliate of Nearmap, (b) a purchaser of all or substantially all assets related to this Agreement, or (c) 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.

17.12 **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 written agreement connected with that subject matter.

17.13 **Governing law** This Agreement will be governed by and construed in accordance with the laws of the State of Utah applicable to agreements made and to be entirely performed within the State of Utah, without resort to its conflict of law provisions.

17.14 **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.

#### 18. DEFINITIONS

In this Agreement:

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

**Affiliates** means, with respect to Nearmap, any entity that controls or is controlled by such party, 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 fifty per cent (50%) of the voting equity of another entity (or other comparable interest for an entity other than a corporation).

**API** means application programming interface.

**Authorized User** means any person who has been granted access to the Products by the Licensee pursuant to the terms and conditions of this Agreement and who either has been assigned a unique Nearmap login credential or whom the Licensee has assigned a user login credential that enables access to the Products.

**Bulk Block Rate** means the corresponding rate specified for the purchase of additional data allowance within the first ten (10) months of each twelve (12) month term as specified in the Quote.

**Business Days** means any day other than a Saturday, a Sunday or a recognized public holiday in the United States of America.

**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** occurs on the date Nearmap accepts the Licensee's signed Quote.

**Confidential Information** means metadata included in the Products, the pricing and arrangement of the Product, and any other confidential and proprietary information of Nearmap.

**Coverage Area** means the area described in the Website for which Nearmap has available Products from time to time, which may cover part or all of that area.

**Customers** means collectively the Nearmap Customers and Licensee Customers.

**Derivative Work** means any new work created under this Agreement that includes or embeds all or part of a Nearmap Product.

**Developer License** as set out in the Quote:

(a) enables integration of the Nearmap Product into the Licensee's Platform and enables the Licensee to provide support to the Customers using a development specific Nearmap account; and

(b) permits the Licensee to enable a Nearmap Customer to access and use internally the Products in the ordinary course of their business but excluding any resale of the Products (in whole or in part) and subject to sections 3.3 and 5.2(e) through the Licensee's Platform.

**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 (including in relation to the Licensee's Platform), the Licensee's employees or agents.

**Fees** means the fees specified in the Quote payable by the Licensee for the License.

**Increment Block** means the increment block specified in the Quote for the purchase of additional data allowance.

**Integration Method** means the method provided by Nearmap to the Licensee from time to time, which allows the Licensee access to the Products under the License, including but not limited to Nearmap supported APIs using Nearmap's documented API key authentication methods.

**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.

**Land Parcel** means a specific parcel of land with a specific address.

**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

**Licensee** means the person or entity specified in the Quote.

**Licensee Customer** means a person or a company who has entered into an agreement with the Licensee to enable its use of and access to the Licensee's Platform.

**Licensee's Platform** means an internal-facing platform accessible by the Licensee's employees that enables distribution of the Products when requested by the Customer, or an external-facing platform that will enable a Customer to access the Products, which includes but is not limited to any web domain operated by the Licensee.

**Nearmap** means Nearmap US, Inc.

**Nearmap Customer** means a person or a company who has entered into an agreement with Nearmap to enable its use of and access to Nearmap's Products.

**Operational Hours** means 9am to 5pm PT.

**Payment Term** means the term as specified in the "Payment Term" section of the Quote.

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

**Production License** enables the Licensee to conduct Transactions through the Licensee's Platform using a production specific Nearmap account.

**Products** means any Nearmap imagery (including Static Imagery) within the Coverage Area, and any related imagery content made available to the Licensee under the License.

**Quote** means an ordering document or an online order specifying the Products to be provided to the Licensee under this Agreement including any amendments or renewal quotes.

**Single Block Rate** means the corresponding rate specified for the purchase of additional data allowance within the last sixty (60) days of each twelve (12) month term as specified in the Quote.

**Static Imagery** means the type(s) of imagery made available to the Licensee as set out in the Quote in the "Product" section, within a fixed bounding box area of a Land Parcel.

**Term** means the term specified in the "Subscription Term" section of the Quote, commencing on the Commencement Date, or the period from the "Start Date" to the "End Date", whichever is specified on the Quote, unless otherwise notified to the Licensee by Nearmap.

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

**Transaction** means each time the Licensee:

(a) enables a Customer to view the Product;

- (b) distributes to a Customer a Static Imagery for a Land Parcel, including all historic imagery and geospatial metadata for that Land Parcel (**Single Imagery**);
- (c) distributes to a Customer a Static Imagery for a Land Parcel, including all historic imagery and geospatial metadata for that Land Parcel incorporated into a Derivative Work (**Transaction Derivative Work**);
- (d) distributes to a Customer an updated Static Imagery for the same customer(s) and for the same Land Parcel for either a Single Imagery or Transaction Derivative Work.

**Website** means all webpages and sub-sites available within the Nearmap.com domain.