

RENEWAL QUOTE

Nearmap US, Inc.
 10897 South River Front Parkway, Suite 150
 South Jordan, UT 84095 USA
Phone: +1 (801) 609 7250

Customer Name	City of Broken Arrow, OK	Quote Number	Q093810
Contract Commencement	Contract commences upon signing of quote.	Quote Expiry	10/19/2023
Subscription Term	36 Month	Account Rep	Jason Theis jason.theis@nearmap.com
Subscription Start Date	10/19/2023	Payment Term	Net 30
		Payment Method	Invoice
Bill To	City of Broken Arrow, OK Heather Leader , Broken Arrow, Oklahoma, 74013 918-259-7000 hleader@brokenarrowok.gov	Ship To	City of Broken Arrow, OK Heather Leader , Broken Arrow, Oklahoma, 74013 918-259-7000 hleader@brokenarrowok.gov

PRODUCT	ALLOWANCE	COVERAGE	SEATS
ArcGIS Integration	NA	NA	NA
Nearmap Oblique for Government	NA	Nationwide	Unlimited
Subtotal			\$77,040.00
Estimated Tax			\$0.00
Total			USD \$77,040.00

ACCEPTANCE OF Q093810 will constitute an Agreement with Nearmap

By selecting “**Yes**” or **signing below**, you acknowledge that (a)(i) the attached terms and conditions will continue to form part of the Agreement with the Licensee, (ii) the Additional Terms and Conditions in the latest signed Quote between the Licensee and Nearmap applies to this Renewal Quote, unless otherwise specified in Schedule 1 of this Renewal Quote, and (iii) the Product-Specific Terms set out in <https://www.nearmap.com/us/en/legal/product-agreements> applies to this Renewal Quote, (b) you have the authority to agree to this Renewal Quote, (c) you agree to pay the fees set forth herein. You acknowledge that the Coverage Area by Nearmap is outlined at <https://www.nearmap.com/us/en/current-aerial-maps-coverage>.

Note: The terms of your Agreement remain the same unless varied by this Renewal Quote. The total in this Renewal Quote is only an estimate of your next invoice. Final credits and amendments to the subscription is dependent upon the date this Renewal Quote is accepted.

Signature / Digital Acceptance:

Date:

Full Name:

Position:

PO Number (if required):

If printed, please sign, scan and email to: orders.us@nearmap.com

Additional Terms and Conditions



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 B.1717 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 only for 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** Unless otherwise notified by the Licensee in writing at least thirty (30) days prior to the expiry of the Term of its intention not to renew this Agreement and subject to any amendments to this Agreement required by Nearmap, the Term will automatically be renewed for successive renewal terms of twelve (12) months each (each a "**Renewal Term**").
- 1.4 **Product Updates** Nearmap may from time to time supply the Licensee with a 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 new 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 **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.
- 2.2 **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 neighboring local government).
- 2.3 **Employees** Subject to sections 1.1 and 1.2, 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. These employees are deemed to be Authorized Users. The Licensee is responsible and liable for all Authorized Users who use the Licensee's account access details or use 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.

- 2.4 **No machine learning** The Licensee must not conduct machine learning work

in connection with this Agreement on any Products, which includes but is not limited to running 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.
- 2.5 **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 imagery for resale, distribution, sublicense, or other commercial purposes, or for mass downloads or bulk feeds of any imagery; and
 - (b) pre-fetch, retrieve, cache, index, or store any Content or portion of the Products.
 - 2.6 **Restriction on integration methods** The Licensee is only permitted to use API integration methods, or other integration methods, as authorized by Nearmap in writing, including but not limited to integration with the Licensee's or other third party platforms or software.
 - 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 (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.
 - 2.8 **Breach** If the Licensee breaches any of sections 2.1 to 2.7 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 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 who is not the person to whom it was issued, or the number of Authorized Users has been exceeded, Nearmap may:
 - (a) cancel that user's access;
 - (b) immediately cease the Licensee's access to the Product;
 - (c) 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
 - (d) 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 and APIs remain 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:
- allocate such resources as may be necessary to remedy the Fault; and
 - 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 usual 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:
- invoice any additional license fees due based on the standard Nearmap Fees in place at the time of the original license grant;
 - recover the reasonable cost of the audit if additional Fees exceed 5% of the Fees paid during the audit period; and
 - terminate this Agreement in accordance with section 6.1. 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 this Agreement.
- 4.4 **Refund of Fees** If the Licensee is not in breach of this Agreement, and Nearmap elects to terminate this 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 immediately limit or terminate access to the Products provided under this License.
- 4.7 **Amendments** Subject to section 1.3, Nearmap may, at its absolute discretion, increase the price, for the Products at the end of the Term by an amount which reflects up to the current rate of Inflation plus 2.5%.
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; and
 - the Licensee has and will comply with all relevant laws relating to the Licensee's use of the:
 - License;
 - 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 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:

- 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;
 - the other party breaches any of its obligations under this Agreement incapable of remedy and Content; or
 - 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 this 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 this Agreement.
- 6.4 **Consequences** If the Agreement is terminated under sections 6.2 or 6.3 or expires at the end of the Term:
- the License 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 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 this Agreement, 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, APIs, 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 this 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 this 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 the 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 The Licensee acknowledges and accepts that Nearmap engages with Third Party Providers in order to provide the Products under this Agreement. The provision of the Products is contingent upon adequate delivery of products and services by those Third Party Providers and are subject to those Third Party Provider terms and conditions (as updated from time to time). By entering into this Agreement, the Licensee agrees that where applicable they must comply with those terms and conditions which are applicable to the use of those Third Party Providers products, where incorporated into Nearmap's Products. Nearmap has set out the type of Third Party product or services incorporated into Nearmap's Products and the relevant Third Party Providers terms and conditions below for reference.
- Google** – https://maps.google.com/help/terms_maps.html in connection with the use of Google Street Maps;
 - NASA/NCAS** – <https://www.nearmap.com/au/en/legal/copyright> in connection with viewing satellite imagery on the Website; and
 - Precisely** – <https://www.precisely.com/legal/licensing/software-and-data-end-user-license-agreement> in connection with viewing property datasets on the Website and/or through an API.
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, THIRD PARTY 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 AND ITS THIRD PARTY PROVIDERS MAKE NO REPRESENTATIONS, WARRANTIES, CONDITIONS, OR GUARANTEES AS TO THE ACCURACY, CORRECTNESS, OR RELIABILITY OF ANY PRODUCT OR CONTENT CONTAINED ON THE WEBSITE AND/OR OBTAINED THROUGH AN API. THE PRODUCTS, THE WEBSITE AND APIS MAY BE 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, THE WEBSITE OR APIS.
- 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 OR APIS, 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, THE WEBSITE OR THE APIS, 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 except to the extent it was caused or contributed by the acts, defaults or omissions of Nearmap.
- 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:
- the Licensee's actual or alleged breach of any provisions of this Agreement;
 - the Licensee's use of the Product for any purpose; and
 - 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 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:
- 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 defense of the Infringement Claim including all negotiations for settlement; and
 - 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:
- 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 authorized by Nearmap, in writing 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, which would not be infringing without this combination; or
- 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.
- 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**"):
 - 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 (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;
 - 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 Subject to any other written agreements between the parties in connection with this Agreement, any information provided in writing or orally or data provided by either party under this Agreement ("**Discloser**") to the other party ("**Recipient**") and marked or identified as proprietary or Confidential Information shall not be disclosed for a period of three (3) years from termination or expiry of this Agreement, unless mutually agreed in writing by the parties. The parties will disclose Confidential Information only to their employees who have a need to know for the purposes of this Agreement and who are under a duty of confidentiality no less restrictive than the Licensee's duty hereunder. The Recipient will protect Confidential Information from unauthorized use, access, or disclosure in the same manner as it would protect their own confidential or proprietary information of similar nature and with no less than reasonable care.
- 13.2 The confidentiality obligations do not apply to the Recipient if:
- the Discloser has first agreed in writing to the particular disclosure, use, or copying;
 - the Confidential Information was generally known by or available to the public through no wrongful act of the Recipient or otherwise than as a consequence of a breach of this Agreement;
 - the Confidential Information was received by the Recipient without breach of this Agreement from a third party without restriction as to the use and disclosure of the Confidential Information; or
 - the disclosure of Confidential Information is legally compelled due to compliance with federal and state laws or an order by a court.
- 13.3 Immediately upon termination or expiry of this Agreement, the Recipient must (at its expense):
 - cease all use of the materials and Confidential Information;
 - destroy or return (at the Discloser's discretion) the Confidential Information to the Discloser together with all copies, reproductions and summaries of the same;
 - destroy all of its notes, memoranda and records (in whatever form) containing, referring to or based on the Confidential Information;
 - ensure that any person who receives the Confidential Information by the Recipient's authority returns the Confidential Information to the Discloser in any form in which it is held or destroys it and gives evidence of its destruction to the Discloser; and
 - provide to the Discloser a written certificate confirming compliance with the requirements under this section.
- 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.
- 14.2 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**
- 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. **MISCELLANEOUS TERMS**
- 16.1 **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 Nearmap's existing or potential customers, subject to Licensee's standard trademark usage guidelines as provided to Nearmap from time to time.
- 16.2 **Additional Terms and Conditions** The Additional Terms and Conditions form part of, and should be read in conjunction with, this Agreement.
- 16.3 **Precedence of Documents** This Agreement is comprised of:
- (a) the Additional Terms and Conditions under Schedule 1;
 - (b) the Quote and attached Schedules;
 - (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. If the Licensee purchases the Products through a reseller, the terms and conditions under this Agreement will apply. This Agreement between Nearmap and the Licensee supersedes all terms and conditions attached to the Licensee's and/or reseller's purchase order.
- 16.4 **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.
- 16.5 **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.
- 16.6 **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.
- 16.7 **Severability** If one or more of the terms of this 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.
- 16.8 **Amendments** Other than as expressly specified in this Agreement, this Agreement may only be varied with the written consent of Nearmap and the Licensee.
- 16.9 **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.
- 16.10 **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.
- 16.11 **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.
- 16.12 **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.
- 16.13 **Governing Law** This Agreement will be governed by and construed in accordance with the laws of the State where the Licensee conducts business (without giving effect to the conflicts of laws provisions thereof).
17. **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 through the Website or API.

Business Days means any day other than a Saturday, a Sunday or a recognized public holiday in the State of 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 a party 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.

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.

Discloser has the meaning given in section 13.1.

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.

Force Majeure Event has the meaning given in section 12.1.

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.

Infringement Claim has the same meaning given in section 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 other similar rights.

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 MT.

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 Products 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".

Recipient has the meaning given in section 13.1.

Renewal Term has the meaning given in section 1.3.

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.

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.

URL means a Uniform Resource Locator.

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

FAIR USE POLICY

General

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.

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 continuing and unreasonably disproportionate use of the Products and Services when compared to other average individual named users.

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.