

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**



ITEM: 3.8
(ID # 18545)

MEETING DATE:
Tuesday, March 22, 2022

FROM : ASSESSOR-COUNTY-CLERK-RECORDER:

SUBJECT: ASSESSOR-COUNTY-CLERK-RECORDER: Approval of the Professional Services Agreement with Nearmap US, Inc., for Aerial Image Capture for Twelve (12) months, in the annual amount of \$575,000, with the option to renew for two (2) additional, one (1) year periods; All Districts: [Total cost \$1,725,000; up to \$172,500 in additional compensation]; 100% General Fund.

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the Professional Services Agreement with Nearmap US, Inc., for Aerial Image Capture for twelve (12) months, for the annual amount of \$575,000, with the option to renew for two (2) additional one (1) year periods for a total amount of \$1,725,000, through April 1, 2025, and authorize the Chair of the Board of Supervisors to execute the agreement on behalf of the County of Riverside; and
2. Authorize the Purchasing Agent, in accordance with Ordinance No. 459, based on the availability of fiscal funding and as approved by County Counsel, to sign amendments that exercise the options of the agreement including modifications of the statement of work that stay within the intent of the Agreement and sign amendments to the compensation provisions that do not exceed the sum total of ten percent (10%) annually of the total annual cost of the contract.

ACTION:

Douglas Cady
Douglas Cady, Assistant Assessor County Clerk Recorder

3/9/2022

Aaron Gettis
Aaron Gettis, Deputy County Counsel

3/16/2022

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Spiegel, seconded by Supervisor Perez and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Spiegel, Washington, Perez and Hewitt
Nays: None
Absent: None
Date: March 22, 2022
xc: Assessor-County Clerk-Recorder

Kecia R. Harper
Clerk of the Board
By: *[Signature]*
Deputy

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STATE OF CALIFORNIA**

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost
COST	\$ 575,000	\$ 575,000	\$ 1,725,000	\$
NET COUNTY COST	\$	\$	\$	\$
SOURCE OF FUNDS: General Funds 100%			Budget Adjustment:	No
			For Fiscal Year: 21/22 – 24/25	

C.E.O. RECOMMENDATION: Approve.

BACKGROUND:

Summary

The Assessor-County Clerk-Recorder’s property tax system utilizes aerial imagery to assist in the property valuation process. Updated aerial imagery fulfills the Assessor's goal to provide its appraisal staff the ability to perform accurate and efficient desktop appraisals and to support property valuations as mandated. Aerial imagery enables appraisal staff to perform virtual field visits, and quickly determine property characteristics, property condition, and locational attributes from the desk.

Additional benefits to the County include:

- Reduction in time and expense of field assessments
- Allocate staff resources more efficiently
- Ability to view properties with restricted or difficult access
- Ability to capture previously undetected taxable property changes in a region
- The improvement of communication during the appeal process using images

Impact on Residents and Businesses

This service provided by NearMap US, Inc. will further assist appraisers with accurate appraisals of residential, commercial, and industrial properties and to support property valuations as mandated. Other County departments, such as RCIT and TLMA-Survey, are discussing the opportunity to leverage the updated aerial imagery as a service to the public.

Contract History and Price Reasonableness

The Purchasing Department on behalf of Assessor/County Clerk/Recorder, issued a Request for Quote (RFQ) #ASARC-RFQ-90505-0000418 for Aerial Image Capture Services. The RFQ notification was viewed by eight (8) vendors, with three (3) vendors responding and a total of two (2) bidders submitting bid responses. Each bid response was evaluated based on the criteria set forth in the RFQ requirements, discount offered and overall cost to the County.

Pricing ranged from \$650,000 to \$924,200. The lowest, most responsive, and responsible bidder is Nearmap US, Inc. The proposed contract has a term of twelve (12) months

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STATE OF CALIFORNIA

effective upon the signature of both parties and contains the option to renew for two (2) additional one (1) year periods. Therefore, it is recommended that the contract be awarded to Nearmap US, Inc.

SUPPLEMENTAL

ATTACHMENT A: Agreement with Nearmap US, Inc., for Aerial Image Capture Services


Vanessa Manuel, Procurement Services Manager

3/16/2022



Suzanna Hockley, Assistant Director of Purchasing and Fleet Service

3/16/2022

PROFESSIONAL SERVICE AGREEMENT

for

AERIAL IMAGE CAPTURE

between

COUNTY OF RIVERSIDE

and

NEARMAP US, INC.



MAR 22 2022 3.8

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This Agreement made and entered into, by and between NEARMAP US, INC., a Delaware corporation (herein referred to as "CONTRACTOR"), and the COUNTY OF RIVERSIDE, a political subdivision of the State of California, (herein referred to as "COUNTY/ACR"). The parties agree as follows:

1. Description of Services

1.1 CONTRACTOR shall provide all services as outlined and specified in Exhibit A, Scope of Services, at the prices stated in Exhibit B, Payment Provisions. Exhibit C is incorporated herein and in the event of any inconsistency between this Agreement and any Exhibits, this Agreement shall prevail.

1.2 CONTRACTOR represents that it has the skills, experience, and knowledge necessary to perform under this Agreement and the COUNTY relies upon this representation. CONTRACTOR shall perform to the satisfaction of the COUNTY and in conformance to and consistent with the highest standards of firms/professionals in the same discipline in the State of California.

1.3 CONTRACTOR affirms this it is fully apprised of all the work to be performed under this Agreement; and the CONTRACTOR agrees it can properly perform this work at the prices stated in Exhibit B. CONTRACTOR is not to perform services or provide products outside of the Agreement.

1.4 Acceptance by the COUNTY of the CONTRACTOR's performance under this Agreement does not operate as a release of CONTRACTOR's responsibility for full compliance with the terms of this Agreement.

2. Period of Performance

2.1 This Agreement shall be effective upon signature of both parties, for twelve (12) months, with the option to renew annually for an additional two (2) years, unless terminated earlier. CONTRACTOR shall commence performance upon the effective date and shall diligently and continuously perform thereafter. The Riverside County Board of Supervisors is the only authority that may obligate the County for a non-cancelable multi-year agreement. In the event of any inconsistency between this Section 2.1 and any Exhibits, this Section 2.1 shall prevail.

3. Compensation

3.1 The COUNTY shall pay the CONTRACTOR for services performed, products provided, and expenses incurred in accordance with the terms of Exhibit B, Payment Provisions. Maximum payments by COUNTY to CONTRACTOR shall not exceed five-hundred seventy-five thousand dollars (\$575,000), including all expenses. The COUNTY is not responsible for any fees or costs incurred

above or beyond the contracted amount and shall have no obligation to purchase any specified amount of services or products. Unless otherwise specifically stated in Exhibit B, COUNTY shall not be responsible for payment of any of CONTRACTOR's expenses related to this Agreement.

3.2 No price increases will be permitted during the first year of this Agreement. All price decreases (for example, if CONTRACTOR offers lower prices to another governmental entity) will automatically be extended to the COUNTY. The COUNTY requires written proof satisfactory to COUNTY of cost increases prior to any approved price adjustment. After the first year of the award, a minimum of 30-days advance notice in writing is required to be considered and approved by COUNTY. No retroactive price adjustments will be considered. Any price increases must be stated in a written amendment to this Agreement. The net dollar amount of profit will remain firm during the period of the Agreement. Annual increases shall not exceed the Consumer Price Index- All Consumers, All Items - Greater Los Angeles, Riverside and Orange County areas and be subject to satisfactory performance review by the COUNTY and approved (if needed) for budget funding by the Board of Supervisors.

3.3 CONTRACTOR shall be paid only in accordance with an invoice submitted to COUNTY by CONTRACTOR within fifteen (15) working days from the beginning of the performance period, and COUNTY shall pay the invoice within thirty (30) working days from the date of receipt of the invoice. Payment shall be made to CONTRACTOR only after services have been rendered or delivery of materials or products, and acceptance has been made by COUNTY. Prepare invoices in duplicate. For this Agreement, send the original and duplicate copies of invoices via email to:

RIVERSIDE COUNTY
ASSESSOR – COUNTY CLERK – RECORDER'S OFFICE
ATTN: ACCOUNTS PAYABLE
ACR-ACCOUNTSPAYABLE@ASRCLKREC.COM

- a) Each invoice shall contain a minimum of the following information: invoice number and date; remittance address; bill-to and ship-to addresses of ordering department/division; Agreement number (ASARC-PSA-90505-0003767-01/22); quantities; item descriptions, unit prices, extensions, sales/use tax if applicable, and an invoice total.
- b) Invoices shall be rendered annually.

3.4 The COUNTY obligation for payment of this Agreement beyond the current fiscal year end is contingent upon and limited by the availability of COUNTY funding from which payment can be made, and invoices shall be rendered "monthly" in arrears. In the State of

California, Government agencies are not allowed to pay excess interest and late charges, per government code, section 926.10. No legal liability on the part of the COUNTY shall arise for payment beyond June 30 of each calendar year unless funds are made available for such payment. In the event that such funds are not forthcoming for any reason, COUNTY shall immediately notify CONTRACTOR in writing, and in accordance with 5.1 of this Agreement, the Agreement may be deemed terminated.

4. Alteration or Changes to the Agreement

4.1 The Board of Supervisors and the COUNTY Purchasing Agent and/or his designee is the only authorized COUNTY representatives who may at any time, by written order, alter this Agreement. If any such alteration causes an increase or decrease in the cost of, or the time required for the performance under this Agreement, an equitable adjustment shall be made in the Agreement price or delivery schedule, or both, and the Agreement shall be modified by written amendment accordingly.

4.2 Any claim by the CONTRACTOR for additional payment related to this Agreement shall be made in writing by the CONTRACTOR within 30 days of when the CONTRACTOR has or should have notice of any actual or claimed change in the work, which results in additional and unanticipated cost to the CONTRACTOR. If the COUNTY Purchasing Agent decides that the facts provide sufficient justification, he may authorize additional payment to the CONTRACTOR pursuant to the claim. Nothing in this section shall excuse the CONTRACTOR from proceeding with performance of the Agreement even if there has been a change.

5. Termination

5.1 COUNTY may, upon fourteen (14) days written notice terminate this Agreement for CONTRACTOR's default, if CONTRACTOR refuses or fails to comply with the terms of this Agreement or fails to make progress that may endanger performance and does not cure such failure within fourteen (14) business days. In the event of such termination, the COUNTY may proceed with the work in any manner deemed proper by COUNTY.

5.2 After receipt of the notice of termination, CONTRACTOR shall:

- (a) Stop all work under this Agreement on the date specified in the notice of termination; and

- (b) Transfer to COUNTY and deliver in the manner as directed by COUNTY any materials, reports or other products, which, if the Agreement had been completed or continued, would have been required to be furnished to COUNTY.

5.3 If termination is due to section 5.1 of this Agreement, COUNTY shall receive a prorated refund of any pre-paid fees paid to the CONTRACTOR from the date of termination in accordance with this Agreement.

5.4 If the Agreement is federally or State funded, CONTRACTOR cannot be debarred from the System for Award Management (SAM). CONTRACTOR must notify the COUNTY immediately of a debarment. Reference: System for Award Management (SAM) at <https://www.sam.gov> for Central Contractor Registry (CCR), Federal Agency Registration (Fedreg), Online Representations and Certifications Application, and Excluded Parties List System (EPLS)). Excluded Parties Listing System (EPLS) (<http://www.epls.gov>) (Executive Order 12549, 7 CFR Part 3017, 45 CFR Part 76, and 44 CFR Part 17). The System for Award Management (SAM) is the Official U.S. Government system that consolidated the capabilities of CCR/FedReg, ORCA, and EPLS.

5.5 The rights and remedies of COUNTY provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or this Agreement.

6. Conduct of Contractor

6.1 The CONTRACTOR covenants, to the best of its knowledge, that it presently has no interest, including, but not limited to, other projects or contracts, and shall not acquire any such interest, direct or indirect, which would conflict in any manner or degree with CONTRACTOR's performance under this Agreement. The CONTRACTOR further covenants, to the best of its knowledge, that no person or subcontractor having any such interest shall be employed or retained by CONTRACTOR under this Agreement. The CONTRACTOR agrees to inform the COUNTY of all the CONTRACTOR's interests, if any, which are or may be perceived as incompatible with the COUNTY's interests.

6.2 The CONTRACTOR shall not, under circumstances which could be interpreted as an attempt to influence the recipient in the conduct of his/her duties, accept any gratuity or special favor from individuals or firms with whom the CONTRACTOR is doing business or proposing to do business, in accomplishing the work under this Agreement.

6.3 The CONTRACTOR or its employees shall not offer gifts, gratuity, favors, and entertainment directly or indirectly to COUNTY employees.

7. Inspection of Service; Quality Control/Assurance

CONTRACTOR shall establish adequate procedures for self-monitoring and quality control and assurance to ensure proper performance under this Agreement; and shall permit a COUNTY representative or other regulatory official to monitor, assess, or evaluate CONTRACTOR's performance under this Agreement at any time, upon reasonable notice to the CONTRACTOR.

8. Independent Contractor/Employment Eligibility

8.1 The CONTRACTOR is, for purposes relating to this Agreement, an independent contractor and shall not be deemed an employee of the COUNTY. It is expressly understood and agreed that the CONTRACTOR (including its employees, agents, and subcontractors) shall in no event be entitled to any benefits to which COUNTY employees are entitled, including but not limited to overtime, any retirement benefits, worker's compensation benefits, and injury leave or other leave benefits. There shall be no employer-employee relationship between the parties; and CONTRACTOR shall hold COUNTY harmless from any and all claims that may be made against COUNTY based upon any contention by a third party that an employer-employee relationship exists by reason of this Agreement. It is further understood and agreed by the parties that CONTRACTOR in the performance of this Agreement is subject to the control or direction of COUNTY merely as to the results to be accomplished and not as to the means and methods for accomplishing the results.

8.2 CONTRACTOR warrants that it shall make its best effort to fully comply with all federal and state statutes and regulations regarding the employment of aliens and others and to ensure that employees performing work under this Agreement meet the citizenship or alien status requirement set forth in federal statutes and regulations. CONTRACTOR shall obtain from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by federal or state statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. CONTRACTOR shall retain all such documentation for all covered employees, for the period prescribed by the law.

9. Subcontract for Work or Services

Except for aerial survey contracts that CONTRACTOR may have with any aerial operators, no contract shall be made by the CONTRACTOR with any other party for furnishing any of the work or services under this Agreement without the prior written approval of the COUNTY; but this provision shall not require the approval of contracts of employment between the CONTRACTOR and personnel assigned under this Agreement, or for parties named in the proposal and agreed to under this Agreement.

10. Disputes

10.1 The parties shall attempt to resolve any disputes amicably at the working level. If that is not successful, the dispute shall be referred to the senior management of the parties for a good-faith discussion and attempts to resolve the dispute without the need for further administrative or legal proceedings. If the dispute remains after discussions between senior management, and prior to the filing of any legal action related to this Agreement, the parties shall be obligated to attend a mediation session in Riverside County before a neutral third-party mediator. A second mediation session shall be required if the first session is not successful. The parties shall share the cost of the mediations.

10.2 If the parties are unable to agree through mediation, the parties may pursue remedies through a court of competent jurisdiction located in Riverside County, State of California. The obligation to mediate shall not apply to situations where the timeline to accommodate said mediation could cause irreparable harm to a party's intellectual property or to situations involving a breach of Confidential Information. In such situations, the parties reserve the right to seek immediate equitable relief in a court of competent jurisdiction, which includes an injunction or similar action, without the need to first pursue mediation of any kind.

11. Licensing and Permits

CONTRACTOR shall comply with all State or other licensing requirements, including but not limited to the provisions of Chapter 9 of Division 3 of the Business and Professions Code. All licensing requirements shall be met at the time proposals are submitted to the COUNTY. CONTRACTOR warrants that it has all necessary permits, approvals, certificates, waivers and exemptions necessary for performance of this Agreement as required by the laws and regulations of the United States, the State of California, the County of Riverside and all other governmental agencies with jurisdiction and shall maintain these throughout the term of this Agreement.

12. Non-Discrimination

CONTRACTOR shall not be discriminate in the provision of services, allocation of benefits, accommodation in facilities, or employment of personnel on the basis of ethnic group identification, race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status or sex in the performance of this Agreement; and, to the extent they shall be found to be applicable hereto, shall comply with the provisions of the California Fair Employment and Housing Act (Gov. Code 12900 et. seq), the Federal Civil Rights Act of 1964 (P.L. 88-352), the Americans with Disabilities Act of 1990 (42 U.S.C. S1210 et seq.) and all other applicable laws or regulations.

13. Records and Documents

CONTRACTOR shall make available, upon thirty (30) days written request by any duly authorized Federal, State, or COUNTY agency, a copy of this Agreement and such books, documents and records as are necessary to certify the nature and extent of the CONTRACTOR's services provided under this Agreement. All such books, documents and records shall be maintained by CONTRACTOR for at least five years following termination of this Agreement and be available for audit by the COUNTY. CONTRACTOR shall provide to the COUNTY, with thirty (30) days written notice, reports and information directly related to this Agreement as requested by COUNTY.

14. Confidentiality

14.1 The COUNTY and CONTRACTOR shall not use for personal gain or make other improper use of privileged or confidential information which is acquired in connection with this Agreement and will only disclose Confidential Information to its employees who have a need to know, for purposes of this Agreement, and who are under a duty of confidentiality. The term "privileged or confidential information" includes but is not limited to unpublished or sensitive technological or scientific information; medical, personnel, or security records; anticipated material requirements or pricing/purchasing actions; COUNTY information or data which is not subject to public disclosure; COUNTY operational procedures; and knowledge of selection of contractors, subcontractors or suppliers in advance of official announcement.

14.2 The COUNTY and CONTRACTOR shall protect Confidential Information from unauthorized use, access, or disclosure, in the same manner as it would protect its own confidential or proprietary information of similar nature and with no less than reasonable care, and shall protect from unauthorized disclosure names and other identifying information concerning persons receiving services pursuant to this Agreement, except for general statistical information not identifying any person. The

CONTRACTOR shall not use such information for any purpose other than carrying out the CONTRACTOR's obligations under this Agreement. The CONTRACTOR shall promptly transmit to the COUNTY all third-party requests for disclosure of such information. The CONTRACTOR shall not disclose, except as otherwise specifically permitted by this Agreement or authorized in advance in writing by the COUNTY, any such information to anyone other than the COUNTY. For purposes of this paragraph, identity shall include, but not be limited to, name, identifying number, symbol, or other identifying particulars assigned to the individual, such as finger or voice print or a photograph.

14.3 The foregoing confidentiality provisions contained in this section 14 shall be subject to the public access, freedom of information, and disclosure laws applicable to COUNTY and CONTRACTOR. In the event of a disclosure or access request under this section 14.3, the party receiving the request ("Receiving Party") shall use all reasonable efforts to provide notice to the other party (the "Non-Receiving Party") and shall give the Non-Receiving Party the opportunity to redact any Confidential Information that is permitted under applicable law.

15. Administration/Contract Liaison

The COUNTY Purchasing Agent, or designee, shall administer this Agreement on behalf of the COUNTY. The Purchasing Department is to serve as the liaison with CONTRACTOR in connection with this Agreement.

16. Notices

All correspondence and notices required or contemplated by this Agreement 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 respective parties at the address set forth below.:

COUNTY OF RIVERSIDE

Assessor – County Clerk – Recorder
Attn: Procurement
P.O. Box 751
Riverside, CA 92502

CONTRACTOR

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

17. Force Majeure

If a party is unable to perform or is delayed in performing an obligation under this Agreement because of an act of war, terrorism, hurricane, earthquake, other act of God or of nature, strike or other

labor dispute, riot or other act of civil disorder, embargo, or other cause beyond the performing party's reasonable control ("Force Majeure Event"):

- (a) that obligation is suspended but only so far and for so long as that party is affected by the Force Majeure Event; and
- (b) the affected party will not be responsible for any loss or expense suffered or incurred by the other party, as a result of, and to the extent that, the affected party is unable to perform, or is delayed in performing, its obligations under this Agreement because of the Force Majeure Event.

18. EDD Reporting Requirements

In order to comply with child support enforcement requirements of the State of California, the COUNTY may be required to submit a Report of Independent Contractor(s) form **DE 542** to the Employment Development Department. The CONTRACTOR agrees to furnish the required data and certifications to the COUNTY within 10 days of notification of award of Agreement when required by the EDD. This data will be transmitted to governmental agencies charged with the establishment and enforcement of child support orders. Failure of the CONTRACTOR to timely submit the data and/or certificates required may result in the contract being awarded to another contractor. In the event a contract has been issued, failure of the CONTRACTOR to comply with all federal and state reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignments Orders and Notices of Assignment shall constitute a material breach of Agreement. If CONTRACTOR has any questions concerning this reporting requirement, please call (916) 657-0529. CONTRACTOR should also contact its local Employment Tax Customer Service Office listed in the telephone directory in the State Government section under "Employment Development Department" or access their Internet site at www.edd.ca.gov.

19. Hold Harmless/Indemnification

19.1 CONTRACTOR shall indemnify and hold harmless the County of Riverside, its Agencies, Districts, Special Districts and Departments, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives (individually and collectively hereinafter referred to as Indemnitees) from any liability, action, claim or damage whatsoever, based or asserted upon any services of CONTRACTOR, its officers, employees, subcontractors, agents or representatives arising out of property damage, bodily injury, or death.

CONTRACTOR shall defend the Indemnitees at its sole expense including all costs and fees (including, but not limited, to attorney fees, cost of investigation, defense and settlements or awards) in any claim or action based upon such acts, omissions or services. CONTRACTOR's liability under this section is reduced to the extent that the liability was caused by the default or unlawful or negligence act or omission of the COUNTY and its respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents, or representatives.

19.2 With respect to any action or claim subject to indemnification herein by CONTRACTOR, CONTRACTOR shall, at their sole cost, have the right to use counsel of their own choice and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of COUNTY; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes CONTRACTOR indemnification to Indemnitees as set forth herein.

19.3 CONTRACTOR'S obligation hereunder shall be satisfied when CONTRACTOR has provided to COUNTY the appropriate form of dismissal relieving COUNTY from any liability for the action or claim involved.

19.4 The specified insurance limits required in this Agreement shall in no way limit or circumscribe CONTRACTOR'S obligations to indemnify and hold harmless the Indemnitees herein from third party claims.

20. Insurance

20.1 Without limiting or diminishing the CONTRACTOR'S obligation to indemnify or hold the COUNTY harmless, CONTRACTOR shall procure and maintain or cause to be maintained, at its sole cost and expense, the following insurance coverage's during the term of this Agreement. As respects to the insurance section only, the COUNTY herein refers to the County of Riverside, its Agencies, Districts, Special Districts, and Departments, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents, or representatives as Additional Insureds.

A. Workers' Compensation:

If the CONTRACTOR has employees as defined by the State of California, the CONTRACTOR shall maintain statutory Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than \$1,000,000 per person per accident. The policy shall be endorsed to waive subrogation in favor of The County of Riverside.

B. Commercial General Liability:

Commercial General Liability insurance coverage, including but not limited to, premises liability, unmodified contractual liability, products and completed operations liability, personal and advertising injury, and cross liability coverage, covering claims which may arise from or out of CONTRACTOR'S performance of its obligations hereunder. Policy shall name the COUNTY as Additional Insured. Policy's limit of liability shall not be less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence limit.

C. Vehicle Liability:

If vehicles or mobile equipment is used in the performance of the obligations under this Agreement, then CONTRACTOR shall maintain liability insurance for all owned, non-owned, or hired vehicles so used in an amount not less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence limit. Policy shall name the COUNTY as Additional Insureds.

D. General Insurance Provisions - All lines:

1) Any insurance carrier providing insurance coverage hereunder shall be admitted to the State of California and have an A M BEST rating of not less than A: VIII (A:8) unless such requirements are waived, in writing, by the County Risk Manager. If the County's Risk Manager waives a requirement for a particular insurer such waiver is only valid for that specific insurer and only for one policy term.

2) The CONTRACTOR must declare its insurance self-insured retention for each coverage required herein. If any such self-insured retention exceeds \$500,000 per occurrence each such retention shall have the prior written consent of the County Risk Manager before the commencement of operations under this Agreement. Upon notification of self-insured retention unacceptable to the COUNTY, and at the election of the County's Risk Manager, CONTRACTOR'S carriers shall either; 1) reduce or eliminate such self-insured retention as respects this Agreement with the COUNTY, or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses.

3) CONTRACTOR shall cause CONTRACTOR'S insurance carrier(s) to furnish the County of Riverside with either 1) a properly executed original Certificate(s) of Insurance and certified original copies of Endorsements effecting coverage as required herein, and 2) if requested to do so orally or in writing by the County Risk Manager, provide original Certified copies of policies including all Endorsements and all attachments thereto, showing such insurance is in full force and effect. Further,

said Certificate(s) and policies of insurance shall contain the covenant of the insurance carrier(s) that thirty (30) days written notice shall be given to the County of Riverside prior to any material modification, cancellation, expiration or reduction in coverage of such insurance. In the event of a material modification, cancellation, expiration, or reduction in coverage, this Agreement shall terminate forthwith, unless the County of Riverside receives, prior to such effective date, another properly executed original Certificate of Insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto evidencing coverage's set forth herein and the insurance required herein is in full force and effect. CONTRACTOR shall not commence operations until the COUNTY has been furnished original Certificate (s) of Insurance and certified original copies of endorsements and if requested, certified original policies of insurance including all endorsements and any and all other attachments as required in this Section. An individual authorized by the insurance carrier shall sign the original endorsements for each policy and the Certificate of Insurance.

4) It is understood and agreed to by the parties hereto that the CONTRACTOR'S insurance shall be construed as primary insurance, and the COUNTY'S insurance and/or deductibles shall not be construed as contributory.

5) If, during the term of this Agreement or any extension thereof, there is a material change in the scope of services; or, there is a material change in the equipment to be used in the performance of the scope of work; or, the term of this Agreement, including any extensions thereof, exceeds five (5) years; the COUNTY reserves the right to adjust the types of insurance and the monetary limits of liability required under this Agreement, if in the County Risk Manager's reasonable judgment, the amount or type of insurance carried by the CONTRACTOR has become inadequate.

21. General

21.1 CONTRACTOR shall not delegate or assign any interest in this Agreement, whether by operation of law or otherwise, without the prior written consent of COUNTY. Any attempt to delegate or assign any interest herein shall be deemed void and of no force or effect.

21.2 Any waiver by COUNTY of any breach of any one or more of the terms of this Agreement shall not be construed to be a waiver of any subsequent or other breach of the same or of any other term of this Agreement. Failure on the part of COUNTY to require exact, full, and complete compliance with any terms of this Agreement shall not be construed as in any manner changing the terms or preventing COUNTY from enforcement of the terms of this Agreement.

21.3 In the event the CONTRACTOR receives payment under this Agreement, and the Contractor is in breach of section 5.1 of this Agreement, the CONTRACTOR must refund the payment received under this Agreement, pro-rated from the date of termination.

21.4 CONTRACTOR shall deliver services and products as specified in Exhibit A, B, and C.

21.5 CONTRACTOR shall not provide any services or products subject to any chattel mortgage or under a conditional sales contract or other agreement by which an interest is retained by a third party. The CONTRACTOR warrants that it has good title to all materials or products used by CONTRACTOR or provided to COUNTY pursuant to this Agreement, free from all liens, claims, or encumbrances.

21.6 Nothing in this Agreement shall prohibit the COUNTY from acquiring the same type or equivalent equipment, products, materials or services from other sources, when deemed by the COUNTY to be in its best interest. The COUNTY reserves the right to purchase more or less than the quantities specified in this Agreement.

21.7 The COUNTY agrees to cooperate with the CONTRACTOR in the CONTRACTOR's performance under this Agreement, including, if stated in the Agreement, providing the CONTRACTOR with reasonable facilities and timely access to COUNTY data, information, and personnel.

21.8 CONTRACTOR shall comply with all applicable Federal, State and local laws and regulations. CONTRACTOR will comply with all applicable COUNTY policies and procedures. In the event that there is a conflict between the various laws or regulations that may apply, the CONTRACTOR shall comply with the more restrictive law or regulation.

21.9 CONTRACTOR shall comply with all air pollution control, water pollution, safety and health ordinances, statutes, or regulations, which apply to performance under this Agreement.

21.10 CONTRACTOR shall comply with all requirements of the Occupational Safety and Health Administration (OSHA) standards and codes as set forth by the U.S. Department of Labor and the State of California (Cal/OSHA).

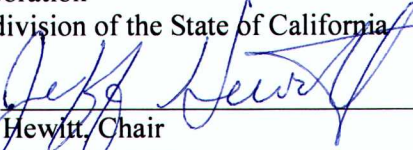
21.11 This Agreement shall be governed by the laws of the State of California. Any legal action related to the performance or interpretation of this Agreement shall be filed only in the Superior Court of the State of California located in Riverside, California, and the parties waive any provision of law providing for a change of venue to another location. In the event any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

21.12 This Agreement, including any attachments or exhibits, constitutes the entire Agreement of the parties with respect to its subject matter and supersedes all prior and contemporaneous representations, proposals, discussions and communications, whether oral or in writing. This Agreement may be changed or modified only by a written amendment signed by authorized representatives of both parties.

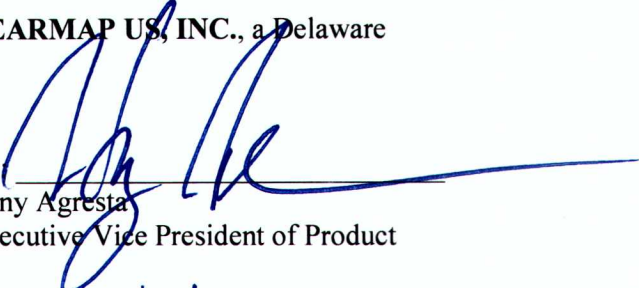
Signature page to follow

IN WITNESS WHEREOF, the Parties hereto have caused their duly authorized representatives to execute this Agreement.

COUNTY OF RIVERSIDE, a political corporation subdivision of the State of California

By: 
Jeff Hewitt, Chair
Board of Supervisors

NEARMAP US, INC., a Delaware

By: 
Tony Agresta
Executive Vice President of Product

Dated: MAR 22 2022

Dated: 3/1/2022

ATTEST:
Kecia Harper
Clerk of the Board

By: 
Deputy

APPROVED AS TO FORM:
~~Gregory P. Priamos~~
County Counsel

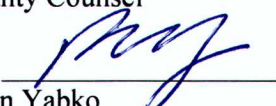
By: 
Ryan Yabko
Deputy County Counsel

Exhibit A

Scope of Service

This Agreement is for a fixed price for access to aerial imagery content made available through the CONTRACTOR'S web-based platform, MapBrowser, for the Products listed herein including access through APIs as applicable. COUNTY will receive access to Contractor's knowledge hub located at <https://docs.nearmap.com>, which contains the product information, documentation, and specifications ("Knowledge Hub"); aerial image capture; web access of such images by County users; image file delivery; web API supply; and user training on a train-the-trainer basis. For clarity, access and use by COUNTY includes all agencies, departments, and subdivisions that are under the sole jurisdiction of the COUNTY.

1. Description of Services

This service will provide Nearmap's digital imagery Products for the County of Riverside and include images of all communities as shown in Schedule A-1. In total, this acquisition will include approximately 4,250 square miles of high-resolution, with 3-band color aerial imagery.

1.1. CONTRACTOR will use commercially reasonable endeavors to capture the images between a period not to exceed one month, preferable between January and March, subject to weather conditions, Force Majeure Events, and/or air traffic control restrictions.

1.2. COUNTY will receive access to the following Products:

1.2.1. Nearmap Oblique for Government –

- Existing Nearmap standard coverage for Vertical (Orthogonal) mosaicked 3-band (RGB) imagery three times per year (spring, summer, fall); includes historical imagery dating back to 2014 – approximately 1,929 square miles.
- Existing Nearmap standard coverage for Oblique one time per year (summer); includes historical imagery dating back to 2017 – approximately 1,929 square miles.
- CONTRACTOR will use commercially reasonable endeavors to capture and deliver imagery for the COUNTY as per the coverage map provided below through CONTRACTOR'S web-based portal, MapBrowser, and in accordance with the coverage area attached as Schedule A-1.

1.2.2. Nearmap NOW –

1.2.2.1. CONTRACTOR will use commercially reasonable endeavors to capture and delivery the imagery for the 3,650 sq miles area of interest as identified in Schedule A-1.

- 1.2.2.2. Nearmap NOW - CONTRACTOR will use commercially reasonable endeavors to capture and delivery the imagery for the 600 sq miles area of interest as identified in Schedule A-1.
- 1.2.3. Nearmap Oblique for ArcGIS.
- 1.2.4. ArcGIS Integration.
- 1.2.5. Nearmap supported API access and interoperability with ESRI suite of products plus other GIS, CAD, and 3rd party applications per the Knowledge Hub.
- 1.3. CONTRACTOR shall capture and deliver Oblique images. Aerial imagery shall be in 3-band color. The oblique imagery application supports (1) use and viewing of images of a location from different compass directions; (2) measurement of elevation, structure height, and ground distance from oblique images; and (3) location of a site by Assessor Parcel Number or address.
 - 1.3.1. Orange areas: Oblique images in this area with 6-inch or better resolution.
 - 1.3.2. Green areas: No obliques required.
- 1.4. CONTRACTOR shall capture and deliver orthophoto images via the Nearmap Vertical product. Aerial imagery should be in 3-band color.
 - 1.4.1. Orange areas: ortho photo covers 3650 square miles with 3-inch resolution.
 - 1.4.2. Green areas: ortho photo covers 600 square miles with 6-inch or better resolution.
 - 1.4.3. Orthophoto positioning quality (spatial accuracy in terms of positional shift) At 25 inches (or 11-inch options).
- 1.5. CONTRACTOR shall provide access to historical images, if applicable.
- 1.6. CONTRACTOR shall provide widgets to Esri Web AppBuilder as part of Nearmap Oblique for ArcGIS.

2. Training, and Support

- 2.1. CONTRACTOR shall provide train the trainer opportunities.
- 2.2. CONTRACTOR shall provide system and end-user documentation via the Knowledge Hub.
 - 2.3. CONTRACTOR shall provide ongoing support.

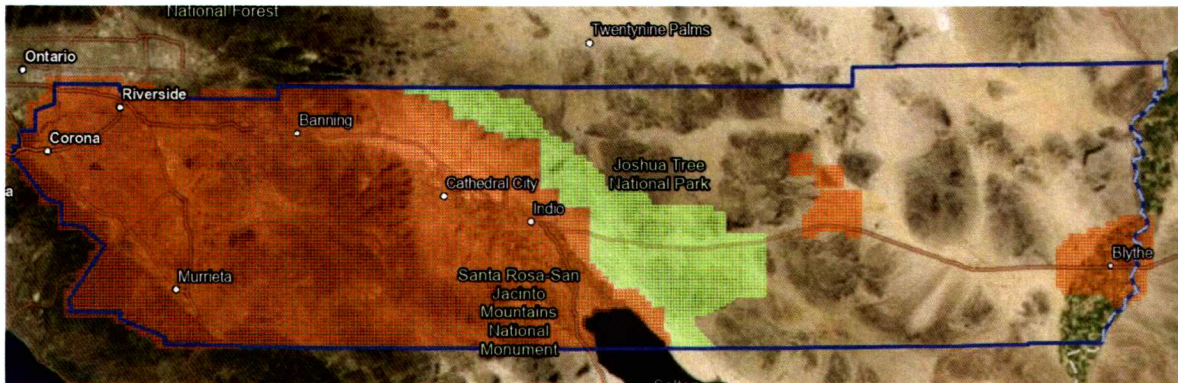
Schedule A-1

1. The following is the coverage map shows the general frequency and locations of collections across the region:



For clarity, the coverage area and the frequency of collections are subject to weather conditions, Force Majeure Events, and/or air traffic control restrictions.

2. Nearmap Coverage Expansion, Area 1, includes the following, as further described in the attached Specification document:
 - 2.1. Vertical (Orthogonal) Imagery – approximately 3,709 square miles; coverage expansion will be flown between January 15, 2022, and February 15, 2022 (estimated).
 - 2.2. Oblique Imagery – approximately 3,709 square miles; coverage expansion will be flown between January 15, 2022, and February 15, 2022 (estimated).
3. Nearmap Coverage Expansion, Area 2, includes the following, as further described in the attached Specification document:
 - 3.1. Vertical (Orthogonal) Imagery – approximately 600 square miles; coverage expansion will be flown between January 15, 2022, and February 15, 2022 (estimated).



Additional Requirements

1. Nearmap Oblique images. Aerial imagery shall be in 3-band color. The oblique imagery application supports (1) use and viewing of images of a location from different compass directions; (2) measurement of elevation, structure height, and ground distance from oblique images; and (3) location of a site by Assessor Parcel Number or address.
 - Orange areas: Oblique images in this area with 6-inch or better resolution.
 - Green areas: No obliques required.
2. CONTRACTOR shall capture and deliver orthophoto images via the Nearmap Vertical product. Aerial imagery should be in 3-band color.
 - Orange areas: ortho photo covers 3709 square miles with 3-inch resolution.
 - Green areas: ortho photo covers 713 square miles with 6-inch or better resolution.
3. Orthophoto positioning quality (spatial accuracy in terms of positional shift) at 25 inches (or 11-inch options).
4. Imagery to be provided via MapBrowser no later than 30 days after aerial imagery is captured and processed.

COVERAGE EXPANSION - ORDER SUMMARY.

<p>Legend:</p>	
	<p>Proposed Delivery Area</p>
	<p>Customer Requested AOI</p>
	<p>Nearmap Coverage</p>
<p>Delivery Specification: Customer: Riverside County Assessors Description: Riverside County, CA - Area 2 Ortho Spring Capture (January 2022) Customer AOI filename: RivCo_Area2.zip Analysis Run by: Kelsey J. on 21 December 2021 Customer Requested Area (AOI): 713 sq miles Additional Survey Area Required: 864 sq miles</p>	<p>Product Specifications: GSD: High resolution 7cm Horizontal Accuracy: 46.1cm Captures: One per contract, unless otherwise agreed. Timing: To be captured as part of next scheduled capture of adjacent Nearmap coverage area Spring 2022 – January timeframe. Subscription: Required Offer Includes: Vertical view Offer does not include: Oblique View, 3D offline extraction, LiDAR/elevation data, infrared, video, ground control.</p>

Nearmap Reference: NNOW-1269

COVERAGE EXPANSION - ORDER SUMMARY.

	<p>Legend:</p> <ul style="list-style-type: none"> Proposed Delivery Area Customer Requested AOI Nearmap Coverage
<p>Delivery Specification: Customer: Riverside County Assessors Description: Riverside County, CA – Oblique Capture Spring Capture January 2022 (Area 1) Customer AOI filename: 2021-11-12_12-22-34.jpg RiversideCounty_Area1.zip Analysis Run by: Kelsey J. on 21 December 2021 Customer Requested Area (AOI): 3,709 sq miles Additional Survey Area Required: 3,935 sq miles</p>	<p>Product Specifications: GSD: High resolution 5.5cm Ortho / 7.2 cm Oblique Horizontal Accuracy: 19.8cm Captures: One. Timing: To be captured as part of next scheduled capture of adjacent Nearmap coverage area Spring 2022 – January timeframe. Subscription: Required Offer Includes: Vertical and Oblique View. Offer does not include: 3D offline extraction, LiDAR/elevation data, infrared, video, ground control.</p>

Nearmap Reference: NNOW-1270

Exhibit B
Payment Provisions

Description:	Cost:
Nearmap Oblique for Government and Nearmap NOW (Nearmap Base Subscription plus Coverage Expansion for Area 1 and Area 2)	Included
Product Subscription per Exhibit A	Included
Enterprise License for unlimited seats per Exhibit A	Included
Nearmap Supported API access and interoperability with ESRI suite of products plus other GIS, CAD, and 3 rd party applications	Included
Technical Support and Online Support Documentation	Included
Virtual and on-site training	Included
Annual Maximum Reimbursable Amount	\$575,000

EXHIBIT C
NEARMAPS QUOTE AND PRODUCTS AGREEMENT



NEW SUBSCRIPTION QUOTE

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

Customer Name	Riverside County, CA	Quote Number	Q073260
Contract Commencement	Contract commences upon signing of quote.	Quote Expiry	01/31/2022
Subscription Term	12 Month	Account Rep	Carrie Wiley carrie.wiley@nearmap.com
Subscription Start Date	12/21/2021	Payment Term	Net 30
		Payment Method	Invoice
Bill To	Riverside County, CA Zhumei Qian 4080 Lemon Street, Riverside, California, 92501 (951) 955-0362 zqian@asrclrec.com	Ship To	Riverside County, CA Zhumei Qian 4080 Lemon Street, Riverside, California, 92501 (951) 955-0362 zqian@asrclrec.com

PRODUCT	ALLOWANCE	COVERAGE	SEATS
Nearmap Now	NA	Please refer to the attached Survey Specification for details	NA
Nearmap Now	NA	Please refer to the attached Survey Specification for details	NA
ArcGIS Integration	NA	NA	NA
Nearmap Oblique for ArcGIS	NA	Nationwide	NA
Nearmap Oblique for Government	NA	Nationwide	Unlimited
Subtotal			\$575,000.00
Estimated Tax			\$0.00
Total			USD \$575,000.00

ACCEPTANCE OF Q073260 will constitute an Agreement with Nearmap

By selecting "Yes" or signing below, you acknowledge that (a) you have read, understood and agree to the Products Agreement attached to this Quote, (b) the Product-Specific Terms which can be found at <https://www.nearmap.com/us/en/legal/product-agreements>, (c) you have the authority to agree to this New Subscription Quote and (d) you agree to pay the fees set forth herein. This New Subscription Quote constitutes a binding commitment for the Contract Term stated above. You acknowledge that the Coverage Area by Nearmap is outlined at <https://www.nearmap.com/us/en/current-aerial-maps-coverage>.

Signature / Digital Acceptance:

Date:

Full Name:

Position:

PO Number (if required):

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

Schedule 1

Additional Terms and Conditions

1. Notwithstanding Section 1.3 of the Agreement, the Agreement will not automatically renew for another Term. The parties may renew the Agreement upon mutual written agreement.

2. Section 4.3 of the Agreement is deleted in its entirety and is replaced with the following:

No Cancellation Except for cases of material breach by Nearmap where the Licensee is owed a refund under Section 5.1 of the Licensee's Professional Services Agreement ("PSA") (attached herewith), and subject to section 4.4 of this Agreement, all Fees are non-cancelable and non-refundable, except as expressly set forth in the Agreement.

3. Section 6.3 of the Agreement is deleted in its entirety and is replaced with "RESERVED."

4. The following sentence is added to the end of section 13.1 of the Agreement:

Notwithstanding the foregoing, to the extent that any such access or disclosures may be required by law (such as an open/public records request), the Licensee shall inform Nearmap of the requested disclosure with a reasonable description and shall allow Nearmap sufficient time to assert any available objection with the appropriate administrative or judicial body.

5. For clarity, under section 17.13 of the Agreement, the Agreement is governed by and construed in accordance with the laws of the State of California, with venue for any legal action to be in Riverside County, California.

Hyperlinks

6. Notwithstanding the hyperlink in the Quote, the Product Specific Terms applicable to the Agreement are attached hereto as Schedule 2 of this New Subscription Quote.

7. Notwithstanding the hyperlink in the Quote, the Coverage Area as described Schedule A-1 of the Professional Services Agreement shall govern.

8. Notwithstanding the hyperlink in section 11.1 of the Products Agreement, the Nearmap privacy policy attached hereto as Schedule 2 shall govern.

9. Notwithstanding the hyperlinks in Section 8 of the Products Agreement, the third party provider terms attached hereto as Schedule 2 shall govern.



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

PRODUCTS AGREEMENT

Recitals

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

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

1. GRANT OF LICENSE TO USE PRODUCTS

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

2. RESTRICTIONS ON RIGHT TO USE PRODUCTS

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

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

3. THE LICENSEE'S ACCESS TO PRODUCTS AND SERVICES

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

- (e) exercise any other right available to Nearmap under the terms of this Agreement or at law.
- 3.2 **Downtime** Nearmap will use reasonable efforts to ensure that the Website remains available but cannot guarantee that this will be the case at all times. Nearmap agrees that, wherever possible, all planned maintenance will be done out of normal Operational Hours to ensure optimal uptime of the Website. The Licensee may elect to subscribe to the Nearmap status page at <https://status.nearmap.com/> to receive notifications and updates relating to planned maintenance and uptime/downtime of the Website and APIs. When Nearmap becomes aware of any Fault, Nearmap will use reasonable efforts to:
 - (a) allocate such resources as may be necessary to remedy the Fault; and
 - (b) otherwise take all reasonable steps to remedy the Fault so as to minimize any disruption to the Licensee's use of the Products.
- 3.3 **Expiry** The Licensee's License will expire at the end of the Term unless renewed in accordance with section 1.3 and may be suspended or terminated, in accordance with section 6.2, if the Licensee is in breach of this Agreement.
- 3.4 **Unauthorized Use** Licensee shall take reasonable steps to prevent unauthorized access to the Products, including without limitation, protecting its passwords and other log-in information. The Licensee shall notify Nearmap immediately of any known or suspected unauthorized use of the Products, or breach of its security, and shall use best efforts to stop said breach and minimize the adverse impact of said breach on Nearmap.
- 3.5 **Audit** During the Term of this Agreement, and for two (2) years after termination or expiry of this Agreement, the Licensee shall maintain records regarding its use of the Products according to its record keeping policies and procedures. The Licensee shall permit Nearmap (or its auditors) access to the Licensee's records pertaining to the Licensee's use of the Products. Nearmap will give at least thirty (30) days prior written notice of an audit and will not conduct an audit more than once per calendar year unless non-compliance findings are noted, in which case the audit period may be extended.
- 3.6 **Audit Findings** If an audit results in findings of non-compliance, Nearmap may, at its discretion:
 - (a) invoice any additional license fees due based on the standard Nearmap Fees in place at the time of the original license grant;
 - (b) recover the reasonable cost of the audit if additional Fees exceed 5% of the Fees paid during the audit period; and
 - (c) terminate this Agreement in accordance with section 6.3. Licensee must pay all invoices issued under this section within thirty (30) days following the date of invoice or such other period agreed between the parties.
- 4. FEES**
- 4.1 **Fees** The Fees payable by the Licensee are set out in the Quote.
- 4.2 **Payment** The Fees are payable by the Licensee to Nearmap in the manner and by the due date, as set out in the Quote, at the beginning of each Term unless otherwise agreed by Nearmap. Where the Fees are payable by credit card, the Licensee authorizes Nearmap to charge the Licensee's credit card for all purchased Products listed in the Quote for the initial Term and any Renewal Term.
- 4.3 **No cancellation** Subject to section 4.4, all Fees are non-cancellable and non-refundable, except as expressly set out in the Agreement.
- 4.4 **Refund of Fees** If the Licensee is not in breach of the Agreement, and Nearmap elects to terminate the Agreement under section 6.3, Nearmap will refund the Licensee any pre-paid fees relating to the portion of Term remaining as at the date of termination.
- 4.5 **Taxes** Unless otherwise stated, Fees and Late Payment Fee do not include any direct or indirect local, state, provincial, federal, or foreign taxes, levies, duties, or similar governmental assessments of any nature, including value-added, excise, use or withholding taxes (collectively, "Taxes"). Licensee is responsible for paying all Taxes, except those assessable against Nearmap based on its income. Nearmap will invoice Licensee for such Taxes if Nearmap believes it has a legal obligation to do so and Licensee agrees to pay such Taxes if so invoiced.
- 4.6 **Late Payment** If a scheduled Fee payment is still overdue after seven (7) days notice from Nearmap, to remedy the payment default, the Licensee agrees that Nearmap may charge the Licensee a Late Payment Fee and/or immediately limit or terminate access to the Products provided under this License.
- 4.7 **Amendments** Fees of the relevant Product may only be increased at the end of the Term (including any Renewal Term) subject to Nearmap and the Licensee agreeing in writing.
- 5. THE LICENSEE'S WARRANTIES**
- 5.1 **Warranty** The Licensee warrants that:
 - (a) any information the Licensee supplies to Nearmap in respect of the Agreement is complete and correct. The Licensee must keep Nearmap informed of any change to the Licensee's information provided to Nearmap, including any change to the Licensee's contact details, or the details of a credit card used for payment;
 - (b) the Licensee will immediately notify Nearmap of any usage of any Product outside the Permitted Purpose, and provide any other information reasonably requested by Nearmap;
 - (c) the Licensee has the power to enter into this Agreement and to perform the obligations under it; and
 - (d) the Licensee has and will comply with all relevant laws relating to the Licensee's use of the:
 - (i) License;
 - (ii) Products; and
 - (iii) Website.
- 6. TERMINATION AND EXPIRY**
- 6.1 **Initial Term** This Agreement commences on the Commencement Date and continues until expiry of the Term unless terminated earlier in accordance with

- the terms of this Agreement or renewed under section 1.3.
- 6.2 **Termination by Either Party** Either party may terminate this Agreement with immediate effect by giving notice to the other party if:
 - (a) the other party breaches any of its obligation under this Agreement capable of remedy and fails to remedy that breach within fourteen (14) days after receiving notice requiring it to do so;
 - (b) the other party breaches any of its obligations under this Agreement incapable of remedy and Content; or
 - (c) the other party files for protection under bankruptcy laws, makes an assignment for the benefit of creditors, appoints, or suffers appointment of a receiver or trustee over its property, files a petition under any bankruptcy or insolvency act, or has any such petition filed against it which is not discharged within sixty (60) days of the filing thereof, or admits in writing its inability to pay its debt generally as they become due.
- 6.3 **Termination by Nearmap** Notwithstanding anything else in the Agreement, but subject to section 4.4, Nearmap has the right, in its absolute discretion and upon giving the licensee ten (10) Business Days' notice, to terminate the Agreement and the license.
- 6.4 **Consequences** If the Agreement is terminated under sections 6.2 or 6.3 or expires at the end of the Term:
 - (a) the Licensee immediately terminates and the Products will no longer be available to the Licensee;
 - (b) the Licensee must immediately destroy, delete, or return to Nearmap all Products; and
 - (c) subject to section 7.3, the Licensee and the Authorized Users are not permitted to use any Products for any purpose.
- 6.5 **Costs** Nearmap reserves all rights following termination of this Agreement, including any rights available to Nearmap to collect any outstanding Fees which may be owed by the Licensee. The Licensee will be liable for any reasonable legal costs incurred by Nearmap in enforcing its rights following termination of this Agreement.
- 6.6 **Continuing obligations** After expiry or termination of the Agreement, or a License, sections 1.5, 2, 4, 6.5, 7, 8, 9, 10, 13, 14, 15, and 17 will still be binding on the Licensee in relation to Products licensed or obtained during the Term.

- 7. INTELLECTUAL PROPERTY**
- 7.1 **Ownership** Unless otherwise indicated, the Website, the Products, the Content, and all associated Intellectual Property Rights, data, information, and software are owned by Nearmap and are protected by copyright, moral rights, trademark, and other laws relating to the protection of intellectual property. Nearmap reserves all of its Intellectual Property Rights. Except for the limited License granted to the Licensee in section 1.1, no ownership or Intellectual Property Rights in the Website, any Product, or Content will pass or be licensed to the Licensee.
- 7.2 **Trademarks** The Nearmap trademarks and all associated Intellectual Property Rights are owned by Nearmap. Nothing in the Agreement confers upon the Licensee any rights to use or modify any of Nearmap's trademarks, except that Nearmap grants the Licensee a royalty free, limited, non-exclusive, non-transferrable, non-sublicensable license to reproduce and display Nearmap trademarks only to the extent necessary to comply with the Licensee's obligations under the Agreement. Any such reproduction and display of those marks must comply with the policies and rules Nearmap makes available to the Licensee from time to time.
- 7.3 **Derivative Works** Subject to compliance with all other terms of this Agreement, the Licensee is granted a non-exclusive right to produce and use Derivative Works for a Permitted Purpose. Unless otherwise notified to the Licensee by Nearmap, the Licensee may continue using Derivative Works following termination or expiry of this Agreement. For the avoidance of doubt, Nearmap will continue to own all rights in and to any Products and Content embedded in a Derivative Work, but all other rights in and to the Derivative Work will belong to the Licensee.
- 8. THIRD PARTY PROVIDERS**
- 8.1 **Nearmap engages Third Party Providers** in order to provide the Products and comply with its obligations under this Agreement and for the Licensee to receive the intended benefit of this Agreement. The Licensee agrees to comply with all requirements and restrictions that Third Party Providers may impose on the Licensee directly or indirectly by imposition on Nearmap, in relation to their respective products and/or services, at the time of or subsequent to, the Agreement. The Licensee acknowledges that provision of the Products is subject to, and dependent upon, adequate delivery of products and services by the Third Party Providers. In accordance with section 9 of the Agreement, Nearmap's liability is reduced to the extent that loss or damage of any kind is caused or contributed to, by Third Party Providers. For the Licensee's convenience, Nearmap has set out in this section 8 links to the terms and conditions of these Third Party Providers with which the Licensee is required to comply. The Licensee further acknowledges that by entering into the Agreement, the Licensee is deemed to accept the respective terms and conditions of Third Party Providers, which currently include the Third Party Providers set out below. Third Party Providers and their terms of supply may change from time to time during the Term of the Agreement.
 - (a) **Google** Nearmap engages Google to supply navigation and geo-location data, and related content. By entering into the Agreement, the Licensee agrees to the Google Terms of Service as they apply to the Licensee. https://www.google.com/enterprise/earthmaps/legal/us/maps_purchase_agreement_apac.html;
 - (b) **Amazon Web Services (AWS)** Nearmap engages Amazon Web Service, Inc. to provide services (the "AWS Services") which enables delivery of the

Products. By entering into the Agreement, the Licensee agrees to comply with the AWS Customer Agreement (<http://aws.amazon.com/agreement/>) as it applies to the Licensee. Use of the Products is also subject to the Licensee's compliance with the following AWS policies:

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

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

9. WARRANTY AND LIABILITY

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

- (c) the Licensee's use of, or any third party's use of, or inability to use, any Derivative Works, including without limitation, any output from the Derivative Works.
- 9.9 **Notice of claim** Nearmap will provide the Licensee with notice of any claim or allegation, under section 9.8, and Nearmap has the right to participate in the defense of any such claim at its expense.

10. COPYRIGHT COMPLAINTS

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

11. PRIVACY POLICY

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

12. FORCE MAJEURE

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

13. CONFIDENTIALITY

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

14. NOTICES

- 14.1 All notices and consents will be in writing and will be considered delivered and effective upon receipt (or when delivery is refused) when (a) personally delivered; (b) sent by registered or certified mail (postage prepaid, return receipt requested); (c) sent by nationally recognized private courier (with signature required and all

fees prepaid); or (d) sent by email with confirmation of transmission. Notices must be sent to the Licensee at the address set forth in the Quote (or if none is specified, the address to which Nearmap sends invoices) and for Nearmap to 10897 South River Front Parkway, Suite 150, South Jordan, UT 84095, USA, or at another address as a party may designate in writing.

15. TECHNOLOGY EXPORT

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

16. NEARMAP NOW

16.1 **Survey** During the Term, the Licensee may request a survey of an area which is not covered (in its entirety or in part) by the Coverage Area ("Survey"). The Licensee must provide a detailed description of the area that is to be covered by the Survey and which is to be included in the Survey Specification. Upon receipt of such a request in writing, Nearmap may, in its absolute discretion, agree to provide the Survey to the Licensee for a Survey Fee.

16.2 **Delivery of Survey** Subject to sections 12 and 16.1, Nearmap will deliver the Survey to the Licensee by uploading the Survey to the Website within six (6) months of the date on which Nearmap receives payment of the Survey Fee in full from the Licensee. Nearmap will notify the Licensee in writing once the Survey has been uploaded to the Website.

16.3 **Availability to other Nearmap customers** Nearmap may, at its absolute discretion, allow other customers of Nearmap to access the Survey on the Website.

16.4 **Refund of Survey Fee** If the Licensee is not in breach of the Agreement, and Nearmap elects to terminate the Agreement under section 6.3 prior to delivery of the Survey, Nearmap will refund the Survey Fee to the Licensee.

16.5 **Other Products** This Section 16 will not be applicable to the Licensee if the Licensee has not purchased a Survey.

17. MISCELLANEOUS TERMS

17.1 **Nearmap customer** Licensee grants Nearmap the right to use Licensee's name and logo to identify as a Nearmap customer for marketing or promotional purposes in public or private communications with our existing or potential customers, subject to Licensee's standard trademark usage guidelines as provided to us from time to time.

17.2 **Additional Terms and Conditions** The Additional Terms and Conditions form part of, and should be read in conjunction with, this Agreement.

17.3 **Precedence of Documents** This Agreement is comprised of:
 (a) the Additional Terms and Conditions;
 (b) the Quote;
 (c) any Product-Specific Terms; and
 (d) this products agreement.
 If there is any ambiguity or inconsistency between the documents comprising the Agreement, the document appearing higher in the list will have precedence. This Agreement between Nearmap and the Licensee supersedes all terms and conditions attached to the Licensee's purchase order.

17.4 **Independent Contractors** The parties are independent contractors and will so represent themselves in all regards. Neither party is the agent of the other, and neither may make commitments on the other's behalf. The parties agree that neither party's employee or contractor is an employee of the other party.

17.5 **Construction** The parties agree that the terms of this Agreement result from negotiations between them. This Agreement will not be construed in favor of or against either party by reason for authorship.

17.6 **Waiver** Neither party will be deemed to have waived any of its rights under this Agreement by lapse of time or by any statement or representation other than by an authorized representative in an explicit written waiver. No waiver of a breach of this Agreement will constitute a waiver of any other breach of this Agreement.

17.7 **Severability** If one or more of the terms of the Agreement are found to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining terms will not be affected.

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

17.9 **Assignment** This Agreement shall not be assigned by either party without the prior written consent of the other party which shall not be unreasonably withheld; provided, however, that Nearmap may, upon written notice to the Licensee, assign all of its rights under this Agreement to (i) a parent, subsidiary or Affiliate of Nearmap, (ii) a purchaser of all or substantially all assets related to this Agreement, or (iii) a third party participating in a merger, acquisition, sale of assets or other corporate reorganization in which Nearmap is participating. Any attempt to assign this Agreement in violation of this provision shall be void and of no effect. This Agreement shall bind and inure to the benefit of the parties and their respective successors and permitted assigns.

17.10 **Entire Agreement** This Agreement:
 (a) comprises the entire agreement and understanding between the parties on everything connected with the subject matter of this Agreement; and supersedes any prior agreement or understanding on anything connected with that subject matter.

17.11 **Counterparts** This Agreement may consist of a number of counterparts and, if so, the counterparts taken together constitute one and the same instrument. This Agreement is not binding on any party unless one or more counterparts

have been duly executed by, or on behalf of, Nearmap and the Licensee.

17.12 **Language** The parties have expressly agreed that this Agreement, and all ancillary agreements, documents, or notices relating to the Agreement, be drafted solely in the English language. Les parties aux présentes ont expressément convenu que cet accord et toute autre convention, document ou avis y afférent soient rédigés en anglais seulement.

17.13 **Governing Law** This Agreement will be governed by and construed in accordance with the laws of the State where the Licensee is carrying on business (without giving effect to the conflicts of laws provisions thereof).

18. DEFINITIONS

In this Agreement:
Additional Terms and Conditions means the additional terms and conditions (if any) set out in the Quote.
Affiliate means, with respect to Nearmap, any entity that controls or is controlled by Nearmap, or is under common control with Nearmap. For purposes of this definition, an entity shall be deemed to control another entity if it owns or controls, directly or indirectly, at least 50% of the voting equity of another entity (or other comparable interest for an entity other than a corporation).
Allowance means any usage allowance the Licensee is permitted to use and/or drawn down against for any Licensed Non-Government Products as specified the Quote.
API means application programming interface.
Authorized User means the number of persons specified in the "Seats" section of the Quote, who have been granted access to the Product by the Licensee pursuant to the term and conditions of this Agreement, and who either has been assigned a unique Nearmap user login credential or whom the Licensee has assigned a user login credential that enables access to the Product.
Business Days means any day other than a Saturday, a Sunday or a recognized public holiday in Utah, USA.
Claim means any claim, cost (including legal costs on a solicitor and client basis), damages, debt, expense, tax, liability, loss, obligation, allegation, suit, action, demand, cause of action, proceeding, or judgment of any kind, however calculated or caused, and whether direct or indirect, consequential, incidental or economic.
Commencement Date means (a) for New Subscription Quotes, the date as specified in the "Contract Commencement" section or the "Subscription Start Date" section of the Quote, whichever is later, or (b) for Renewal Quotes or Amendment Quotes, the date as specified in the "Subscription Start Date" section of the Quote.
Commercial Purpose means to distribute, transfer, sell, sublicense, or pass possession of any Products (in whole or in part) for the purpose of direct commercial benefit or gain by the Licensee.
Confidential Information means the terms of this Agreement, the pricing, and any other information relating to the business, finances, strategy, methods, processes, products, metadata, services or other affairs of Nearmap or its representatives; or related bodies corporate which is disclosed to, learnt by or accessed by the Licensee in connection with the Agreement, whether before or after the Licensee entered into the Agreement, whether orally, electronically, in writing or otherwise, but excludes information which:
 (a) is or becomes part of the public domain otherwise than as a consequence of a breach of the Agreement;
 (b) the Licensee has obtained from a source other than Nearmap which source is entitled to disclose it; or
 (c) the Licensee has developed or acquired independently before the date of the Agreement, and can provide reasonable proof.
Content means any content made available by or on behalf of Nearmap to the Licensee in connection with the License, whether or not through the Website or an API.
Coverage Area means the area specified in the "Coverage" section of the Quote for which Nearmap has available Products, which may cover part or all of that area and which may cover part (but not all) of the area covered by the Survey.
Derivative Work means any new work created by or for the Licensee that incorporates, embeds, or includes all or part of a Nearmap Product or Content.
Fair Use Policy means the policy as attached to the Quote.
Fault means any fault, failure, error, or defect which prevents the Licensee from accessing the Products, other than where access is prevented due to a planned outage, because of an unforeseeable event beyond Nearmap's reasonable control or any conduct or activity undertaken by the Licensee, the Licensee's employees, agents, or mandataries.
Fees means the fees specified in the Quote, payable by the Licensee for the License, or as otherwise agreed in writing between Nearmap and the Licensee. **Government Products** means any Products specified in the Quote that are described as "Nearmap Vertical for Government" and "Nearmap Oblique for Government" and includes any other Products offered by Nearmap for government customers only where use of its License is connected to the Fair Use policy.
Intellectual Property Rights includes all industrial and intellectual property rights throughout the world, including copyright, moral rights, trademarks, patents, rights to protect confidential information, and any other similar rights.
Late Payment Fee means a fee, as notified by Nearmap to the Licensee, corresponding to the costs incurred by Nearmap (including, without limitation, administrative and other costs) in recovering any payment not made by the Licensee on the due or scheduled date for payment. Late fees incur interest at the rate of 1.5% per month (being 18% per year).
License means the license granted in section 1.1.
Licensee means the person or entity specified in the "Customer Name" section of the Quote.
Nearmap means Nearmap US, Inc.
Non-Government Products means all Products specified in the Quote that do not fall under the definition of Government Products.
Operational Hours means 9am to 5pm PT.

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

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

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

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

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

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

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

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

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

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

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

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

Survey Specification means the survey specification referred to in the Quote.

Term means the term specified in the "Subscription Term" section of the Quote, commencing on the Commencement Date. Where a Subscription Period is stated on the Quote, "Term" means the Subscription Period.

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

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

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

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 datausage 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.