

**REQUEST FOR LEGISLATIVE ACTION**

Completed by County Counselor's Office:

Res/Ord No.: 20378

Sponsor(s): Charlie Franklin

Date: February 17, 2020

<b>SUBJECT</b>	<p>Action Requested  <input checked="" type="checkbox"/> Resolution  <input type="checkbox"/> Ordinance</p> <p>Project/Title: <u>Authorizing the Purchase of a Subscription based Service as a Sole Source from Nearmap cloud-based software for use by the Assessment Department and GIS Department for the image capture and hosting of parcel images for the Assessment Department</u></p>														
<b>BUDGET INFORMATION</b> <i>To be completed By Requesting Department and Finance</i>	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td>Amount authorized by this legislation this fiscal year:</td> <td style="text-align: right;">\$0</td> </tr> <tr> <td>Amount previously authorized this fiscal year:</td> <td></td> </tr> <tr> <td>Total amount authorized after this legislative action:</td> <td style="text-align: right;">\$100,000.00</td> </tr> <tr> <td>Amount budgeted for this item * (including transfers):</td> <td style="text-align: right;">\$100,000.00</td> </tr> <tr> <td>Source of funding (name of fund) and account code number: Software:</td> <td></td> </tr> <tr> <td>Other Contractual Services: 045-1902-56790</td> <td style="text-align: right;">\$100,000.00</td> </tr> <tr> <td><b>Total</b></td> <td style="text-align: right;"><b>\$100,000.00</b></td> </tr> </table> <p>* If account includes additional funds for other expenses, total budgeted in the account is: \$</p> <p><b>OTHER FINANCIAL INFORMATION:</b></p> <p><input type="checkbox"/> No budget impact (no fiscal note required)  <input type="checkbox"/> Term and Supply Contract (funds approved in the annual budget); estimated value and use of contract:          Department: _____ Estimated Use: _____</p> <p>Prior Year Budget (if applicable): _____          Prior Year Actual Amount Spent (if applicable): _____</p>	Amount authorized by this legislation this fiscal year:	\$0	Amount previously authorized this fiscal year:		Total amount authorized after this legislative action:	\$100,000.00	Amount budgeted for this item * (including transfers):	\$100,000.00	Source of funding (name of fund) and account code number: Software:		Other Contractual Services: 045-1902-56790	\$100,000.00	<b>Total</b>	<b>\$100,000.00</b>
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<b>PRIOR LEGISLATION</b>	<p>Prior ordinances and (date): _____          Prior resolutions and (date): _____</p>														
<b>CONTACT INFORMATION</b>	<p>RLA drafted by (name, title, &amp; phone): Craig Reich, Senior Buyer, 881-3265</p>														
<b>REQUEST SUMMARY</b>	<p>Jackson County GIS and Assessment Departments are requesting to purchase a Subscription Bases Service as a Sole Source from Nearmap, a cloud-based, geo-content provider that delivers high resolution orthorectified, panorama, oblique imagery, and 3-D Mesh building models. Nearmap's resolution, frequency and clarity bring a unique trifecta to the industry.</p> <p>Nearmap's custom built camera system allows for capture elevations over 10,000 feet in Class E airspace minimizing delays and is above the air traffic control restriction zones. Upon completion of an image capture, the image cartridges are shipped for processing and, within three weeks, the imagery is hosted and able to be viewed on the GIS applications such as parcel viewer (unlike any other aerial imagery provider in the marketplace). The 3-inch resolution and cloud-based 3-D Mesh will allow Jackson County to streamline workflows and greatly increase the efficacy of GIS, as well as deliver the Assessment department newer imagery in a fraction of the time of similar services.</p> <p>The County currently pays \$30,000 for ortho-imagery and \$175,000 for oblique imagery every two years. Nearmap offers a subscription bases service which includes ortho and oblique imagery and 3D Mesh models at a cost of \$100,000 per year (5-year term).</p> <p>The County can decline to exercise any renewal, in writing, and future payments are subject to annual appropriation.</p> <table border="1" style="width:100%; border-collapse: collapse; margin-top: 10px;"> <thead> <tr> <th style="text-align: center;">Vendor Name and Location</th> <th style="text-align: center;">Amount</th> </tr> </thead> <tbody> <tr> <td>Nearmap US Inc. South Jordan, UT 84095</td> <td style="text-align: right;">\$100,000.00</td> </tr> </tbody> </table> <p>The Director of Finance and Purchasing recommends the purchase of a subscription based service from Nearmap for the use of cloud-based software for the use by the GIS and Assessment Departments at the cost of \$100,000</p>	Vendor Name and Location	Amount	Nearmap US Inc. South Jordan, UT 84095	\$100,000.00										
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Nearmap US Inc. South Jordan, UT 84095	\$100,000.00														

	per year for a 5 year term.	
CLEARANCE	<input type="checkbox"/> Tax Clearance Completed (Purchasing & Department) N/A <input type="checkbox"/> Business License Verified (Purchasing & Department) <input type="checkbox"/> Chapter 6 Compliance - Affirmative Action/Prevailing Wage (County Auditor's Office) N/A	
COMPLIANCE	<input type="checkbox"/> MBE Goals N/A <input type="checkbox"/> WBE Goals N/A <input type="checkbox"/> VBE Goals N/A	
ATTACHMENTS	Information Technology Memorandum and vendor's invoices	
REVIEW	Department Director: <i>Haronne Beauty Dean Seal</i>	Date: <i>2/13/2020</i>
	Finance (Budget Approval): <i>If applicable</i>	Date: <i>2/13/2020</i>
	Division Manager: <i>[Signature]</i>	Date: <i>2/13/2020</i>
	County Counselor's Office: <i>Bryan Conish</i>	Date: <i>2/13/2020</i>

Fiscal Information (to be verified by Budget Office in Finance Department)

- This expenditure was included in the annual budget.
- Funds for this were encumbered from the \_\_\_\_\_ Fund in \_\_\_\_\_.
- There is a balance otherwise unencumbered to the credit of the appropriation to which the expenditure is chargeable and there is a cash balance otherwise unencumbered in the treasury to the credit of the fund from which payment is to be made each sufficient to provide for the obligation herein authorized.
- Funds sufficient for this expenditure will be/were appropriated by Ordinance # \_\_\_\_\_
- Funds sufficient for this appropriation are available from the source indicated below.

Account Number:	Account Title:	Amount Not to Exceed:

- This award is made on a need basis and does not obligate Jackson County to pay any specific amount. The availability of funds for specific purchases will, of necessity, be determined as each using agency places its order.
- This legislative action does not impact the County financially and does not require Finance/Budget approval.

### Fiscal Note:

This expenditure was included in the Annual Budget.

PC# \_\_\_\_\_

Date: January 29, 2020

RES # 20378

<u>Department / Division</u>	<u>Character/Description</u>	<u>Not to Exceed</u>
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<b>045    Assessment Fund</b>		
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1902    Assessment	56790    Other Contractual Services	\$     100,000
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\$     100,000

  
Budget Office



**Department of  
INFORMATION TECHNOLOGY  
JACKSON COUNTY, MISSOURI**

816-881-3151

415 EAST 12TH STREET, ROOM G-8  
KANSAS CITY, MO 64106

**TO: CRAIG REICH, SENIOR BUYER**

**FROM: MICHAEL ERICKSON, DIRECTOR OF IT AND GIS** *ME*

**DATE: JANUARY 13, 2020**

**RE: RLA TO USE NEARMAP FOR OUR ORTHOS, PANORAMA, OBLIQUE IMAGERY AND 3-D MESH.**

Nearmap is a cloud-based, geo-content provider that delivers high resolution orthorectified, panorama, oblique imagery, and 3-D Mesh building models. Nearmap's resolution, frequency and clarity brings a unique trifecta to the industry.

Nearmap's custom built camera system allows for capture elevations over 10,000 feet in Class E airspace minimizing delays and is above the air traffic control restriction zones. Upon completion of an image capture, the image cartridges are shipped for processing and, within three weeks, the imagery is hosted and able to be viewed on our GIS applications such as parcel viewer (unlike any other aerial imagery provider in the marketplace). The 3-inch resolution and cloud-based 3-D Mesh will allow Jackson County to streamline workflows and greatly increase the efficacy of GIS, as well as deliver the Assessment department newer imagery in a fraction of the time of similar services.

The County currently pays \$30,000 for ortho-imagery and \$175,000 for oblique imagery every two years. Nearmap offers a subscription based service which includes ortho and oblique imagery and 3D mesh models at cost of \$100,000 per year (5-year term).

The funds will come from 001-1902-56080

Jackson County, Missouri

**AFFIDAVIT**

STATE OF Utah )  
COUNTY OF Salt Lake ) SS  
 )

Tim Frank \_\_\_\_\_ of the City of South Jordan  
County of Salt Lake State of Utah being duly sworn on her or his oath, deposes and says;

1. That I am the Vice President, Marketing, US (Title of Affiant) of Nearmap US, Inc (Name of Bidder) and have been authorized by said Bidder to make this Affidavit upon my best information and belief, after reasonable inquiry as to the representations herein.

2. No Officer, Agent or Employee of Jackson County, Missouri is financially interested directly or indirectly what Bidder is offering to sell to the County pursuant to this Invitation (though no representation is made regarding potential ownership of publicly traded stock of bidder).

3. If Bidder were awarded any contract, job, work or service for Jackson County, Missouri, no Officer, Agent or Employee of the County would be interested in or receive any benefit from the profit or emolument of such.

4. Either Bidder is duly listed and assessed on the tax rolls of Jackson County, Missouri and is not delinquent in the payment of any taxes due to the County or Bidder did not have on December 31, 2019 any property subject to taxation by the County and if bidder is duly listed and assessed on the tax rolls of Jackson County, Missouri, bidder agrees to permit an audit of its records, if requested by the Jackson County Director of Assessment, as they relate to the assessment of Business Personal Property.

5. Bidder has not participated in collusion or committed any act in restraint of trade, directly or indirectly, which bears upon anyone's response or lack of response to the Invitation.

6. Bidder certifies and warrants that Bidder or Bidder's firm/organization is not listed on the General Services Administration's Report of Debarred and/or Suspended Parties; or the State of Missouri and City of Kansas City, Missouri Debarment List

7. Bidder certifies and affirms its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the contracted services.

8. Bidder certifies and affirms that it does not knowingly employ any person who is an unauthorized alien in connection with the contracted services.

Nearmap US, Inc (Name of Bidder)  
By: Tim Frank (Signature of Affiant)  
VP Marketing, US (Title of Affiant)

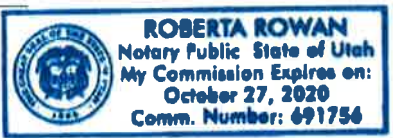
Subscribed and sworn to before me this 16 day of January, 2020

Roberta Rowan

NOTARY PUBLIC in and for the County of Salt Lake (SEAL)

State of Utah

My Commission Expires: 10/27/2020



## Michael G. Ohlson-Dicus

---

**From:** A. Brett Clark <abcdude@gmail.com>  
**Sent:** Friday, January 17, 2020 2:24 PM  
**To:** CRO  
**Cc:** Brett Clark; Michael G. Ohlson-Dicus  
**Subject:** Re: EXTERNAL Fwd: Nearmap's Equal Employment Opportunity Statement for Jackson County, MO

Excellent!

Given that we provided the affidavit and W9, is there anything else you require?

-Brett

317-775-2319  
Sent from my iPhone

On Jan 17, 2020, at 2:21 PM, CRO <CRO@jacksongov.org> wrote:

Brett,

Nearmap US Inc. is now in Vendor Compliance with Jackson County for 2020.

If you have any questions please let me know.

Sincerely,

Jaime Guillen  
Compliance Review Officer  
Jackson County Auditor's Office  
816-881-3370  
[jguillen@jacksongov.org](mailto:jguillen@jacksongov.org)

**From:** A. Brett Clark [mailto:abcdude@gmail.com]  
**Sent:** Friday, January 17, 2020 12:25 PM  
**To:** CRO <CRO@jacksongov.org>  
**Cc:** Brett Clark <brett.clark@nearmap.com>  
**Subject:** EXTERNAL Fwd: Nearmap's Equal Employment Opportunity Statement for Jackson County, MO

WARNING: This email originated outside of Jackson County.  
DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

In case this didn't come through, please see attached and below.

-Brett

317-775-2319

Sent from my iPhone

Begin forwarded message:

**From:** Brett Clark <[brett.clark@nearmap.com](mailto:brett.clark@nearmap.com)>  
**Date:** January 17, 2020 at 12:24:03 PM CST  
**To:** Brett Clark <[abcdude@gmail.com](mailto:abcdude@gmail.com)>  
**Subject:** Fwd: Nearmap's Equal Employment Opportunity Statement for Jackson County, MO

Sent from my iPhone

Begin forwarded message:

**From:** Corey Gerson <[corey.gerson@nearmap.com](mailto:corey.gerson@nearmap.com)>  
**Date:** January 17, 2020 at 12:09:33 PM CST  
**To:** "CRO@jacksongov.org" <[CRO@jacksongov.org](mailto:CRO@jacksongov.org)>  
**Cc:** Brett Clark <[brett.clark@nearmap.com](mailto:brett.clark@nearmap.com)>  
**Subject:** Nearmap's Equal Employment Opportunity Statement for Jackson County, MO

Hello,

I hope this finds you well. Nearmap this morning completed the Jackson County Certificate of Compliance. (Please see attached confirmation.) As such, we are now also submitting the attached extract of Nearmap's Equal Employment Opportunity policy statement.

Please let us know if there's anything more we can provide.

Thank you.

Corey

**Corey Gerson**  
Associate Counsel

<image001.png>

142 W. 57<sup>th</sup> Street  
11<sup>th</sup> Floor  
New York, NY 10019  
T: +1 412-512-3417



# NEW SUBSCRIPTION QUOTE

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

<b>Customer Name</b>	Jackson County, MO	<b>Quote Number</b>	Q048928
<b>Type</b>	New Subscription	<b>Quote Expiry</b>	03/31/2020
<b>Contract Commencement</b>	Contract commences upon signing of quote.	<b>Contract Term</b>	60 Month
<b>Public Facing URL</b>	<a href="https://www.arcgis.com/apps/webappviewer/index.html?id=19d0c3fbbfac42a1bc35bad9be238c53">https://www.arcgis.com/apps/webappviewer/index.html?id=19d0c3fbbfac42a1bc35bad9be238c53</a>	<b>Subscription Start Date</b>	03/01/2020
<b>Sales Rep</b>	Brett Clark	<b>Sales Rep Email</b>	brett.clark@nearmap.com
<b>Auto Renew</b>	No	<b>Payment Term</b>	Net 30
<b>Bill To</b>	Jackson County, MO Richard Buford 303 W. Walnut St., Independence, Missouri, 64050 (816) 881-4567 rbuford@jacksongov.org	<b>Ship To</b>	Jackson County, MO Richard Buford 303 W. Walnut St., Independence, Missouri, 64050 (816) 881-4567 rbuford@jacksongov.org

PRODUCT	ANNUALIZED ESTIMATED USAGE*ALLOWANCE^	COVERAGE	SEATS	TOTAL
Nearmap Oblique for Government*, Public Display License for Government, Offline Copy Add-On for Government, Nearmap Now, 3D Viewer & ArcGIS Integration	*50GB	Nationwide  (Excludes Nearmap Now and Offline Copy Add-On: see attached AOI)	*Unlimited	\$90,000.00/year
3D Export	^50 sq. miles/year	Nationwide	N/A	\$10,000.00/year
			<b>Subtotal</b>	\$100,000.00/ year
			<b>Estimated Tax</b>	\$0.00
			<b>Total</b>	<b>\$500,000.00</b>



**ACCEPTANCE OF Q048928**

By selecting "Yes" or **signing below**, you acknowledge that (a) you have read, understood and agree to the Products Agreement and Product-Specific Terms which can be found at <http://go.nearmap.com/legal/us-agreements-page>, (b) you have the authority to agree to this New Subscription Quote and (c) 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://go.nearmap.com/current-aerial-maps>.

Signature / Digital Acceptance:

Date:

Full Name:

Position:

PO Number (if required):

If printed, please sign, scan and email to: [orders.us@nearmap.com](mailto:orders.us@nearmap.com)



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

## PRODUCTS AGREEMENT

### Recitals

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

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

### 1. GRANT OF LICENSE TO USE PRODUCTS

- 1.1 **Grant** Subject to the terms of this Agreement and payment by the Licensee of the Fee, Nearmap grants to the Licensee a limited, non-exclusive, non-transferrable license for the Term to use the Products in the Coverage Area for the Permitted Purpose (**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 you exceed the total number of Authorized Users, you 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 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. The Licensee will receive notice of any pricing changes or changes to the terms of this Agreement prior to the commencement of each Renewal Term. If Auto Renew is marked "No" in the Quote, this section 1.3 is not applicable to the Licensee.
- 1.4 **Replacement Product** Nearmap may from time to time supply the Licensee with a replacement Product of no lesser quality than the previously supplied Product at its absolute discretion. If requested by Nearmap, the Licensee must stop using any previously supplied Product and use the replacement Product from date of delivery from Nearmap.
- 1.5 **Acknowledge Nearmap source** The Licensee must expressly acknowledge Nearmap, in a reasonably prominent manner (by display of the Nearmap logo or other appropriate attribution), as the source of any Product or Derivative Works that the Licensee use, copy, modify or distribute. Unless otherwise permitted in writing, the Licensee must not remove or cause to be removed any Nearmap logo, watermark or other Nearmap attribution in any Product or Derivative Works.
- 1.6 **Periodic Data Allowance** Nearmap measures data usage by the Licensee under this License. In using the Products, the Licensee's consumption of data in the Period must not exceed the Periodic Data Allowance. The following conditions apply to the Licensee's Periodic Data Allowance:
- (a) the Periodic Data Allowance used by the Licensee will be calculated at the end of every Period based on the total data usage of all users who access and use the Licensee's Nearmap account during that Period;
  - (b) if the Licensee elects to download Products available to the Licensee on the Website, this will be applied to the Periodic Data Allowance. The Licensee may have the option to elect to download high resolution images. Downloading these images will use a higher portion of the Periodic Data Allowance than downloading a lower resolution image;
  - (c) if the amount of data consumed by the Licensee in any given Period is less than the Periodic Data Allowance, the balance will not be rolled over to a following Period;
  - (d) the Licensee agrees that Nearmap may charge the Licensee additional fees, up to a maximum of the Excess Data Rate, for any use by the Licensee of the Products resulting in data consumption in excess of the Periodic Data Allowance;
  - (e) Nearmap will provide notice to the Licensee if it exceeds its Periodic Data Allowance for any Period; and
  - (f) if the Licensee exceeds the Periodic Data Allowance, Nearmap may, in its absolute discretion, elect to:
    - (i) restrict the Licensee's access to the Products until the Periodic Data Allowance is reset or until additional fees are paid; or
    - (ii) immediately cease the Licensee's access to the Products for the remainder of the Period.
- 1.7 **Unavailability** Subject to section 12, if a Product is not available for a period of 3 consecutive days the Term will be extended by the period of unavailability.

### 2. RESTRICTIONS ON RIGHT TO USE PRODUCTS

- 2.1 **Permitted Purpose** The Products must only be used for the Permitted Purpose.
- 2.2 **No right to distribute, transfer, resell, assign or sublicense** This 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 the Licensee's subsidiaries and affiliates).
- 2.4 **Employees** The Licensee may make Products available to any employee, subject to that person complying with the terms of the Agreement as if they were a party to it and the total number of Authorized Users has not been exceeded. The Licensee is responsible and liable for any Authorized User 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 which includes but is not limited to any:
- (a) machine learning models (including the model form and model parameters);
  - (b) outputs of machine learning models;
  - (c) software that processes or transforms input data for training a machine learning model or getting a prediction from a machine learning model into a format suitable for training or making such prediction; or
  - (d) software used to train a machine learning model or compute outputs of a machine learning model for a given set of input data.
- 2.6 **No caching and creation of database** Except as expressly permitted under this Agreement, the Licensee is not permitted to:
- (a) use its access to the Products under this Agreement for the purposes of creating a database of imageries for resale, distribution, sub-license or other commercial purposes and mass downloads or bulk feeds of any imagery; and
  - (b) pre-fetch, retrieve, cache, index, or store any Content or portion of the Products.
- 2.7 **Limits on use of Website** In the Licensee's use of the Website, the Licensee must not (without the prior written consent of Nearmap):
- (a) provide a link to another URL;
  - (b) upload content or other information to the Website;
  - (c) do anything to damage, interfere or disrupt access to the Website or do anything which might impair its functionality;
  - (d) use the Website in any way to send unsolicited (commercial or otherwise) e-mail or any material for marketing or publicity purposes, or any similar abuse of either;
  - (e) publish, post, distribute, disseminate or otherwise transmit, defamatory, offensive, infringing, obscene, indecent or other unlawful or objectionable or confidential material or information;
  - (f) make available, upload or distribute by any means any material or files that contain any viruses, bugs, corrupt data, "trojan horses", "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 the Agreement;
  - (k) attempt any of the above acts or engage, encourage or permit another person to do any of the above acts; or
  - (l) provide or allow access which exceeds the total number of Authorized Users in connection with use of the Product.
- 2.8 **Breach** If the Licensee breaches any of sections 2.1 to 2.5 inclusive, Nearmap reserves its rights to terminate the Agreement in accordance with section 6.2, restrict the Licensee's access to the Products and/or take any other steps available to it at law.

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

- 3.1 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 user, by a different Authorized User to the person whom it was issued to 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 including but not limited to low resolution imagery for the remainder of the month;
  - (c) immediately cease the Licensee's access to the Product;

- (d) require the Licensee to pay for any additional charges in accordance with Nearmap's then current price list for the applicable Product, in respect of any such unauthorized use; and/or
- (e) exercise any other right available to Nearmap under the terms of this Agreement.
- 3.2 **Downtime** Nearmap will use reasonable 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. 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 License, including without limitation protect its passwords and other log-in information. The Licensee shall notify Nearmap immediately of any known or suspected unauthorized use of the License or breach of its security and shall use best efforts to stop said breach.
- 3.5 **Audit** During the Term of this Agreement and for two (2) years after termination or expiry of this Agreement, the Licensee shall maintain accurate and complete records regarding its use of the Products and the Licensee shall permit Nearmap (or its auditors) access to the business location(s), books and records, employees and/or contractors pertaining to the Licensee's use of the Products. Nearmap will give at least thirty (30) days prior written notice of an audit and will not conduct an audit more than once per calendar year unless non-compliance findings are noted and in which case the audit period can be expanded.
- 3.6 **Audit Findings** If an audit results in findings of non-compliance, Nearmap may, at its discretion (a) invoice any additional license fees due based on the standard Nearmap Fees in place at the time of the original license grant, (b) recover the reasonable cost of the audit if additional Fees exceed five (5) per cent of the Fees paid during the audit period and (c) terminate this Agreement in accordance with section 6.2. Licensee must pay all invoices issued under this section within thirty (30) days following the date of invoice.
- 4. FEES**
- 4.1 **Fees** The Fees payable by the Licensee 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.
- 4.3 **No cancellation** Subject to section 4.4, all Fees are non-cancellable and non-refundable except as expressly set out in the Agreement.
- 4.4 **Refund of Fees** If the Licensee is not in breach of the Agreement, and Nearmap elects to terminate the Agreement under section 6.3, Nearmap will refund the Licensee any pre-paid fees relating to the portion of Term remaining as at the date of termination.
- 4.5 **Taxes** Unless otherwise stated, Fees and Late Payment Fee do not include any direct or indirect local, state, federal or foreign taxes, levies, duties or similar governmental assessments of any nature, including value-added, excise, use or withholding taxes (collectively, "Taxes"). Licensee is responsible for paying all Taxes except those assessable against Nearmap based on its income. Nearmap will invoice Licensee for such Taxes if Nearmap believes it has a legal obligation to do so and Licensee agrees to pay such Taxes if so invoiced.
- 4.6 **Late Payment** If a scheduled Fee payment is not made in full for any reason, the Licensee gives Nearmap permission to charge a Late Payment Fee and/or immediately limit or terminate access to the Products provided under this License.
- 4.7 **Acceleration** In the event of the Licensee failing to pay Nearmap the Fees in full in accordance with the terms of this Agreement, all Fees (whether accrued or not) will become immediately due and payable.
- 4.8 **Amendments** Fees at the end of the Term may only be increased 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; or
- (c) the other party files for protection under bankruptcy laws, makes an assignment for the benefit of creditors, appoints or suffers appointment of a receiver or trustee over its property, files a petition under any bankruptcy or insolvency act or has any such petition filed against it which is not discharged within sixty (60) days of the filing thereof or admits in writing its inability to pay its debt generally as they become due.
- 6.3 **Termination by Nearmap** Regardless of anything else in the Agreement but subject to section 4.4, Nearmap has the right, in its absolute discretion and upon giving the Licensee 10 Business Days' notice, to terminate the Agreement and the License.
- 6.4 **Consequences** If the Agreement is terminated under sections 6.2 or 6.3 or expires at the end of the Term:
- (a) the License immediately terminates and the Products will no longer be available to the Licensee;
- (b) The Licensee must immediately destroy, delete or return to Nearmap all Products; and
- (c) subject to section 7.3, the Licensee and the Authorized Users are not permitted to use any Products for any purpose.
- 6.5 **Costs** Nearmap reserves all rights following termination of this Agreement, including any rights available to Nearmap to collect any outstanding Fees which may be owed by the Licensee. The Licensee will be liable for any reasonable legal costs incurred by Nearmap in enforcing its rights following termination of this Agreement.
- 6.6 **Continuing obligations** After expiry or termination of the Agreement or a License, sections 1.5, 2, 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 and all associated Intellectual Property Rights, data, information and software are owned by Nearmap and are protected by copyright, moral rights, trademark and other laws relating to the protection of intellectual property. Nearmap reserves all of its Intellectual Property Rights. Except for the limited License granted to the Licensee in section 1.1, no ownership or Intellectual Property Rights in the Website or any Product will pass to the Licensee.
- 7.2 **Trademarks** The Nearmap trademarks and all associated Intellectual Property Rights are owned by Nearmap. Nothing in the Agreement confers upon the Licensee any rights to use or modify any of Nearmap's trademarks, except that Nearmap grants the Licensee a royalty free, limited non-exclusive, non-transferrable, non-sublicensable license to use Nearmap trademarks to the extent necessary to comply with the Licensee's obligations under the Agreement.
- 7.3 **Derivative Works** Subject to compliance with all other terms of this Agreement, the Licensee is granted a non-exclusive right to produce and use Derivative Works for a Permitted Purpose. Unless otherwise notified to the Licensee by Nearmap, the Licensee may continue using Derivative Works following termination or expiry of this Agreement. The Licensee and Nearmap will jointly own all rights in and to any Product embedded in a Derivative Work.
- 8. THIRD PARTY PROVIDERS**
- 8.1 Nearmap engages Third Party Providers in order to provide the Products. The Licensee agrees to comply with all requirements and restrictions that Third Party Providers may impose on 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 agrees to comply with the respective terms and conditions of Third Party Providers, which currently include the Third Party Providers set out below. Third Party Providers and their terms of supply may change from time to time during the Term of the Agreement.
- (a) **Google** Nearmap engages Google to supply navigation and geo-location data, and related content. By entering into the Agreement, the Licensee agrees to the Google Terms of Service as they apply to the Licensee [https://www.google.com/enterprise/earthmaps/legal/us/maps\\_purchase\\_agreement\\_apac.html](https://www.google.com/enterprise/earthmaps/legal/us/maps_purchase_agreement_apac.html)
- (b) **Amazon Web Services (AWS)** Nearmap engages Amazon Web Service, Inc. to provide services (**AWS Services**) which enables delivery of the Products. By entering into the Agreement, the Licensee agrees to comply with the AWS Customer Agreement (<http://aws.amazon.com/agreement/>) as it applies to the Licensee. Use of the Products is also subject to the Licensee's compliance with the following AWS policies:
- (i) Privacy Policy (<http://aws.amazon.com/privacy/>)
- (ii) Acceptable Use Policy (<http://aws.amazon.com/aup/>)
- (iii) Terms of Use (<http://aws.amazon.com/terms/>)
- (iv) Service Terms (<http://aws.amazon.com/serviceterms/>)
- (v) Trademark Use Guideline (<http://aws.amazon.com/trademark-guidelines/>);
- (c) **NASA/NCAS** By entering into the Agreement, the Licensee agrees to the following NASA/NCAS terms and conditions: (<https://www.nearmap.com/legal-information/copyright>)
- 9. WARRANTY AND LIABILITY**

9.1 **Warranty** Nearmap agrees to use industry standard GPS to ensure captured imagery has accurate geographical positioning.

9.2 **DISCLAIMER OF WARRANTIES OTHER THAN AS SET FORTH IN SECTION 9.1, THE WEBSITE AND THE PRODUCTS ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITHOUT ANY WARRANTIES OF ANY KIND TO THE FULLEST EXTENT PERMITTED BY LAW. NEARMAP AND ITS CONTENT PROVIDERS, AGENTS AND AFFILIATES EXPRESSLY DISCLAIM ANY AND ALL WARRANTIES, WHETHER EXPRESS, STATUTORY OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND COURSE OF DEALING OR PERFORMANCE.**

9.3 **NO REPRESENTATIONS WHILE NEARMAP USES REASONABLE EFFORTS TO ENSURE THE ACCURACY, CORRECTNESS AND RELIABILITY OF THE PRODUCTS AND THE WEBSITE, NEARMAP MAKES NO REPRESENTATIONS OR WARRANTIES AS TO THE ACCURACY, CORRECTNESS OR RELIABILITY OF ANY PRODUCT OR CONTENT CONTAINED ON THE WEBSITE. THE PRODUCTS AND THE WEBSITE ARE SUBJECT TO ERRORS, OMISSIONS, INACCURACIES AND DISTORTIONS AND NEARMAP WILL NOT BE RESPONSIBLE FOR, OR LIABLE FOR ANY CLAIMS MADE BY OR ARISING OUT OF, ANY PERSON OR ENTITY SEEKING TO RELY ON ANY OF THE PRODUCTS OR THE WEBSITE.**

9.4 **LIMIT OF LIABILITY NEARMAP'S LIABILITY FOR: (A) A BREACH OF A WARRANTY UNDER SECTION 9.1; OR (B) A BREACH OF A WARRANTY WHICH IS IMPLIED OR IMPOSED IN RELATION TO THIS LICENSE UNDER LEGISLATION AND CANNOT BE EXCLUDED, WILL BE LIMITED TO, AT NEARMAP'S OPTION, REPLACING OR REPAIRING THE PRODUCTS OR SUPPLYING PRODUCTS EQUIVALENT TO THE RELEVANT PRODUCTS, OR PAYING THE COST OF REPLACING OR REPAIRING THE PRODUCTS.**

9.5 **NO LIABILITY FOR CLAIMS TO THE EXTENT PERMITTED BY LAW, IN NO EVENT WILL NEARMAP, ITS CONTENT PROVIDERS, AGENTS OR AFFILIATES BE LIABLE FOR ANY CLAIMS OF ANY KIND ARISING FROM OR CONNECTED WITH THE USE OF THE WEBSITE OR THE PRODUCTS, OR THE UNAVAILABILITY OF THE SAME, INCLUDING BUT NOT LIMITED TO LOSS OF USE, LOSS OF PROFITS OR LOSS OF DATA, AND DIRECT, INDIRECT, INCIDENTAL, PUNITIVE AND CONSEQUENTIAL DAMAGES, WHETHER IN CONTRACT, TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE) OR OTHERWISE. THE LICENSEE IS RESPONSIBLE FOR THE ENTIRE COST OF ALL SERVICING, REPAIR OR CORRECTION REQUIRED DUE TO THE LICENSEE'S USE OF THIS WEBSITE OR THE PRODUCTS. THIS EXCLUSION APPLIES, WITHOUT LIMITATION, TO ANY CLAIMS CAUSED BY OR RESULTING FROM RELIANCE BY A USER ON ANY INFORMATION OBTAINED FROM NEARMAP.**

9.6 **AGGREGATE LIMIT IN NO EVENT WILL THE AGGREGATE LIABILITY OF NEARMAP, WHETHER IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE, WHETHER ACTIVE, PASSIVE OR IMPUTED), PRODUCT LIABILITY, STRICT LIABILITY OR OTHER THEORY, ARISING OUT OF OR RELATING TO THE USE OF THE PRODUCTS EXCEED ANY COMPENSATION OR FEE THE LICENSEE HAS PAID, IF ANY, TO NEARMAP FOR ACCESS TO OR USE OF THE PRODUCTS OVER THE 12 MONTH PERIOD PRIOR TO THE ALLEGED DEFAULT, BREACH OR EVENT GIVING RISE TO THE LIABILITY.**

9.7 **Third Party Providers** The Licensee acknowledges that Nearmap relies on the services of Third Party Providers in order to supply the products and services. Without limiting any of the above, for the avoidance of doubt, to the fullest extent permitted by applicable law, Nearmap will not be liable for any loss, damage, or cost of any kind, which is caused, or contributed to, by a third party service provider.

9.8 **Indemnity** The Licensee agrees to indemnify Nearmap and its directors, officer, employees, agents and subcontractors, from and against any and all direct or indirect claims, damages, losses, liabilities, expenses and costs (including reasonable attorney's fees and costs) arising from or out of:

(a) the Licensee's actual or alleged breach of any provisions of this Agreement;

(b) the Licensee's use of the Product for any purpose; and

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

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

10. **COPYRIGHT COMPLAINTS**

10.1 Subject to section 9, if any third party brings a Claim against the Licensee alleging that the Licensee's use of the Products in accordance with this License infringes their copyright ("**Infringement Claim**"), Nearmap will defend the Licensee against the 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 by Nearmap to modify the portion of the Product applicable to the **Infringement Claim**; or

(iii) third-party products, services, hardware, software or other materials, or a combination of these with the Products would not be infringing without this combination; or

(b) if the Licensee fails to comply with section 10.2.

10.4 To the maximum extent permitted by law, this section 10 sets out Nearmap's sole and exclusive liability, and the Licensee's sole and exclusive remedy, for any third party **Infringement Claims** brought against the Licensee in relation to an infringement of Intellectual Property Rights.

11. **PRIVACY POLICY**

11.1 Nearmap will use any data supplied by the Licensee as set out in Nearmap's Privacy Policy, available at <http://go.nearmap.com/legal/privacy-policy>.

11.2 By entering into this Agreement, the Licensee expressly consents to receiving by email direct marketing communications from Nearmap.

11.3 By entering into this Agreement, the Licensee acknowledges that personal information provided by the Licensee in the course of accessing Products (including, without limitation, credit or debit card details provided by the Licensee for the purpose of paying Nearmap) may be disclosed to and held by one or more of Nearmap's third party suppliers and partners (including, without limitation, providers of payment processing services), and used by those third parties in connection with the supply of Products. Nearmap will have no liability whatsoever with respect to any personal information held by a third party in connection with the supply of Products.

12. **FORCE MAJEURE**

12.1 **Force Majeure Event** If a party is unable to perform or is delayed in performing an obligation under this Agreement (except for any obligation to pay money, including Fees) because of an acts of war, terrorism, hurricanes, earthquakes, other acts of God or of nature, strikes or other labor disputes, riots or other acts of civil disorder, embargoes, or other causes beyond the performing party's reasonable control (**Force Majeure Event**):

(a) that obligation is suspended but only so far and for so long as that party is affected by the Force Majeure Event; and

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

12.2 **Notice of Force Majeure Event** If a Force Majeure Event occurs, the party affected by the Force Majeure Event must:

(a) promptly give the other party notice of the Force Majeure Event and an estimate of the non-performance and delay;

(b) take all reasonable steps to overcome the effects of the Force Majeure Event; and

(c) resume compliance as soon as practicable after the Force Majeure Event no longer affects it.

13. **CONFIDENTIALITY**

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

14. **NOTICES**

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

15. **TECHNOLOGY EXPORT**

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

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.

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 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 **Nearmap Basic** This Section 16 will not be applicable to the Licensee if the License purchased is for a Nearmap Basic Product.
17. **MISCELLANEOUS TERMS**
- 17.1 **Nearmap customer** The Licensee agrees that Nearmap may identify the Licensee as a Nearmap customer in Nearmap business materials.
- 17.2 **Additional Terms and Conditions** The Additional Terms and Conditions form part of, and should be read in conjunction with, this Agreement.
- 17.3 **Precedence of Documents** This Agreement is comprised of:
- the Quote;
  - the Additional Terms and Conditions; and
  - this agreement.
- If there is any ambiguity or inconsistency between the documents comprising the Agreement, the document appearing higher in the list will have precedence.
- 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 no Nearmap employee or contractor will be an employee of the Licensee.
- 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:
- 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 **Governing Law** This Agreement will be governed by and construed in accordance with the laws of the State of Utah applicable to agreements made and to be entirely performed within the State of Utah, without resort to its conflict of law provisions.

## 18. DEFINITIONS

In this Agreement:

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

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

**Authorized User** means the number of person 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.

**Auto Renew** means the section of the Quote titled "Auto Renew".

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

**Claim** means any claim, cost (including legal costs on a solicitor and client basis), damages, debt, expense, tax, liability, loss, obligation, allegation, suit, action, demand,

cause of action, proceeding or judgment of any kind however calculated or caused, and whether direct or indirect, consequential, incidental or economic.

**Commencement Date** means the date as specified in the "Contract Commencement" section of the Quote.

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

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

**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 includes or embeds all or part of a Nearmap Product.

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

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

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

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

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

**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.

**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.

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

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

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

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

- Commercial Purpose;
- Unlawful Purpose;
- Integration or attempt to integrate the Product in an internal system of the Licensee or of a third party; and
- Redistribution or copying of files, images, 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, if applicable, the Survey.

**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".

**Schedules** means the schedules to the Quote, which 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 "Contract Term" section of the Quote, commencing on the (a) Commencement Date, or (b) Subscription Start Date (if a date is specified), whichever is a later date unless a Subscription Period is stated.

**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.

Schedule 1

**Additional Terms and Conditions**

1. Section 1.3 (Renewal) of the Agreement is hereby deleted in its entirety and replaced with the following:

**Renewal** This Agreement will not automatically renew for another Term. The parties may renew the Agreement for a further Term subject to mutual written agreement."

2. Section 9.8 (Indemnity) of the Agreement is deleted in its entirety and replaced with the words "intentionally omitted".

3. Section 17.12 (Governing Law) of the Agreement is deleted in its entirety and replaced with the following:

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

4. Notwithstanding the "Payment Term" section on the Quote, the Licensee Fees (excluding Taxes) for the Term of the Agreement is payable as follows:

- (a) \$100,000 for the first year of the Term payable by the due date as specified on the applicable invoice issued;
- (b) \$100,000 for the second year of the Term payable by the due date as specified on the applicable invoice issued;
- (c) \$100,000 for the third year of the Term payable by the due date as specified on the applicable invoice issued;
- (d) \$100,000 for the fourth year of the Term payable by the due date as specified on the applicable invoice issued; and
- (e) \$100,000 for the fifth year of the Term payable by the due date as specified on the applicable invoice issued.

5. One (1) Offline-Copy Add-On will be provided to the Licensee for every year of the Term, through 2024, for the area as set forth in Schedule 2.

6. The Licensee agrees that the right to use the 3D Viewer and 3D Product is only to be used, solely by the Licensee and at all times excludes making such products available in any medium or manner (including but not limited to sharing or using the License (as defined in the Products Agreement) with:

- (a) any lower tier government, including but not limited to cities and township;
- (b) any neighboring local governments, including but not limited to county, parish, city, or town governments; and/or
- (c) any higher tier government, including but not limited to county, parish, state or provincial agency.

# TERMS AND CONDITIONS APPLICABLE TO NEARMAP FOR GOVERNMENT PRODUCTS

1. Section 1.3 of the agreement does not apply to this License, and any auto-renewal of the Agreement will be by mutual agreement between the parties.
2. Section 1.6 of the agreement does not apply to this License.
3. Definitions of "Periodic Data Allowance" and "Excess Data Rate" in the agreement do not apply to this License.
4. The Licensee agrees that the right to use the Product is only to be used, solely by the Licensee and at all times excludes making the Product available in any medium or manner (including but not limited to sharing or using the License (as defined in the Products Agreement)) with:
  1. any lower tier government, including but not limited to cities and township;
  2. any neighboring local governments, including but not limited to county, parish, city, or town governments; and/or
  3. any higher tier government, including but not limited to county, parish, state or provincial agency.
5. **Annual Actual Usage** Nearmap measures data usage by the Licensee under this License as follows:
  1. the data allowance used by the Licensee will be calculated at the end of the Term (or Renewal Term), based on the total data usage of all users who access and use the Licensee's Nearmap account during the Term (or Renewal Term) (**Annual Actual Usage**); and
  2. if the Licensee elects to download Products available to the Licensee on the Website or accesses the Product through other delivery methods made available by Nearmap from time to time, this will be applied to the Annual Actual Usage. The Licensee may have the option to elect to download high resolution images. Downloading these images will lead to a higher Annual Actual Usage than downloading a lower resolution image.
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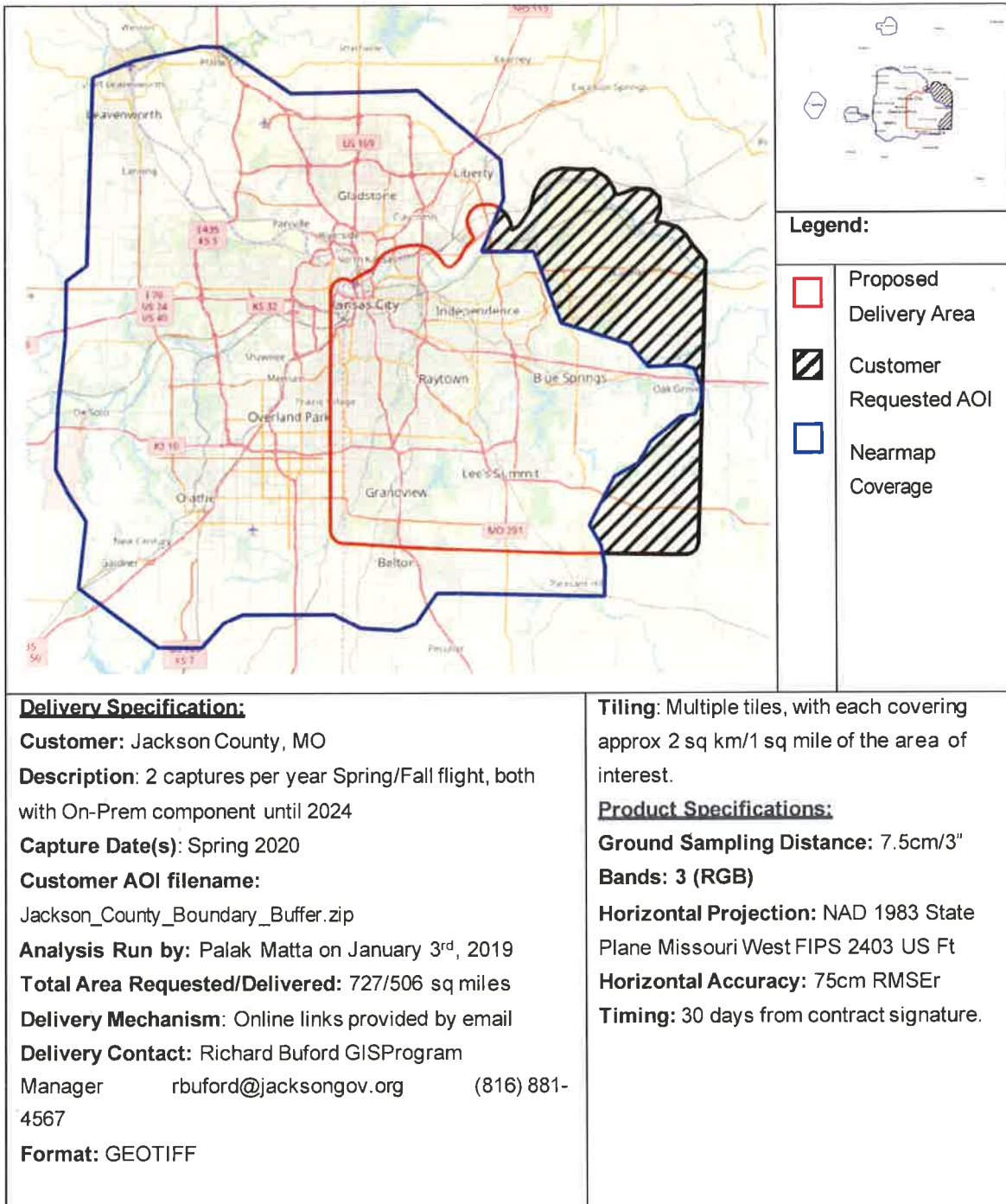
An aerial photograph of a residential neighborhood with houses, streets, and green spaces. A large, semi-transparent dark blue rectangular area is overlaid on the left side of the image. White dashed lines, including a prominent curved one, are drawn over the map. White L-shaped corner markers are positioned at the top-left and bottom-right corners of the dark blue overlay.

# ORDER SUMMARY - SPECIFICATION.

NEARMAP LOCATION CONTENT FOR:  
**Jackson County, MO**



# ORDER SUMMARY.



**Delivery Specification:**

**Customer:** Jackson County, MO  
**Description:** 2 captures per year Spring/Fall flight, both with On-Prem component until 2024  
**Capture Date(s):** Spring 2020  
**Customer AOI filename:** Jackson\_County\_Boundary\_Buffer.zip  
**Analysis Run by:** Palak Matta on January 3<sup>rd</sup>, 2019  
**Total Area Requested/Delivered:** 727/506 sq miles  
**Delivery Mechanism:** Online links provided by email  
**Delivery Contact:** Richard Buford GISProgram Manager      rbuford@jacksongov.org      (816) 881-4567  
**Format:** GEOTIFF

**Tiling:** Multiple tiles, with each covering approx 2 sq km/1 sq mile of the area of interest.

**Product Specifications:**  
**Ground Sampling Distance:** 7.5cm/3"  
**Bands:** 3 (RGB)  
**Horizontal Projection:** NAD 1983 State Plane Missouri West FIPS 2403 US Ft  
**Horizontal Accuracy:** 75cm RMSEr  
**Timing:** 30 days from contract signature.

Nearmap Reference: NMD-652

**WE CHANGE THE WAY PEOPLE VIEW THE WORLD, SO THEY CAN PROFOUNDLY CHANGE THE WAY THEY WORK.**

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