

nearmap US, Inc.
TERMS OF USE

PLEASE READ THESE TERMS OF USE CAREFULLY, INCLUDING THE MANDATORY ARBITRATION PROVISION IN SECTION 11. BY CLICKING "I AGREE" OR ACCESSING OR USING THIS WEBSITE OR ANY NEARMAP PRODUCTS AND SERVICES, YOU AGREE TO BE BOUND BY THESE TERMS OF USE AND ALL TERMS INCORPORATED BY REFERENCE. IF YOU DO NOT AGREE TO ALL OF THESE TERMS, DO NOT ACCESS OR USE THIS WEBSITE OR ANY NEARMAP PRODUCTS AND SERVICES.

nearmap US, Inc. (**nearmap**) is a provider of aerial photography and associated products and services, including the nearmap website, available at <http://us.nearmap.com> (**Website**). Your use of the nearmap products and services including any instructions and any related documentation (**Products**) and the Website are subject to these Terms of Use and any applicable Additional Terms and Conditions, which together make up the legal agreement between you and nearmap (**Agreement**). This Agreement does not alter the terms or conditions of any other agreement you may have with nearmap or its subsidiaries or affiliates for products, services or otherwise and those terms and conditions will take precedence where it conflicts with these terms. If you are using the nearmap products, services or Website on behalf of an entity, you represent and warrant that you are authorized to accept this Agreement on such entity's behalf, and that such entity will be responsible to nearmap if you violate this Agreement. You may only access the Website and use the Products if you are (a) over 13 years old and (b) allowed by law to enter into a binding agreement.

Definitions of capitalized words are set out in clause 13 of this Agreement.

1. GRANT OF LICENSE TO USE PRODUCTS

1.1 Grant Subject your compliance with these terms, the law and payment of any applicable Fee, nearmap grants to you a limited, non-exclusive, non-transferrable license to use the Products for the Permitted Purpose (**License**). nearmap reserves all rights not granted under these terms.

2. RESTRICTIONS ON RIGHT TO USE PRODUCTS AND WEBSITE

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 you. You may not distribute, transfer, resell, assign, rent, lease or sublicense any Product or any of your rights under this License without nearmap's prior written consent.

2.3 No third party access Unless otherwise provided in this Agreement, you must not make any Product available in any medium or manner to any third party (including your affiliates and subsidiaries).

2.4 Prohibited use of Website and Products You agree that your use of the Website and Products will not violate any law, contract, intellectual property or other third-party right or constitute a tort, and that you are solely responsible for your conduct while using the Website and Products. You further agree not to:

- (a) do anything to damage, interfere with, negatively affect, inhibit or disrupt access to or use of the Website or Products or do anything which might impair its functionality;
- (b) use the Website or Products 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;
- (c) use the Website or Products to harvest or collect the email addresses or other contact information of other users for the purpose of sending spam or other commercial messages;
- (d) publish, post, distribute, disseminate or otherwise transmit, discriminatory, defamatory, hateful, harassing, abusive, threatening, offensive, infringing, obscene, indecent or other unlawful or objectionable or confidential material or information;
- (e) 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;
- (f) remove any content or information from the Website or Products;
- (g) falsify the true ownership of a Product or other material or information made available via the Website;
- (h) obtain or attempt to obtain unauthorized access, through whatever means, to the Website;
- (i) develop any third-party applications that interact with the Website or Products without nearmap's prior written consent;
- (j) use any robot, iframe, spider, crawler, scraper or other automated means or interface not provided by nearmap to access the Website or Products, including, without limitation, for the purpose of copying, extracting, aggregating, displaying, publishing or distributing any content or data made available via the Website or Products;
- (k) use the Website other than in accordance with the Agreement;
- (l) share content or engage in behaviour that violates anyone's Intellectual Property Rights;
- (m) violate applicable law; or
- (n) attempt any of the above acts or engage, encourage or permit another person to do any of the above acts.

3. YOUR ACCESS TO PRODUCTS AND WEBSITE

3.1 Confidentiality You must keep your License and account access details secure and confidential. Unless otherwise authorized in writing by nearmap, you must not share your License or nearmap account access details with any person or third party other than if required to do so by applicable law, administrative process or court order; provided, however, that you will limit the disclosure to only that information that must be disclosed to comply with

such law, process or order and you will give nearmap prompt prior notice of such compelled disclosure to the extent legally permitted, so that nearmap may seek to protect such information. You must notify nearmap immediately if you become aware there is or has been an unauthorized use of your License or account access details, or any other security breach relating to your nearmap account.

4. YOUR WARRANTIES

4.1 Warranty You warrant that:

- (a) any information you supply to nearmap with respect to this Agreement is complete and correct. You must keep nearmap informed of any change to your information provided to nearmap.
- (b) you will immediately notify nearmap of any usage of any Product outside the Permitted Purpose, and provide any other information reasonably requested by nearmap;
- (c) you have the power to enter into this Agreement and to perform the obligations under it; and
- (d) you have and will comply with all relevant laws relating to your use of the:
 - (i) License;
 - (ii) Products; and
 - (iii) Website.

5. TERMINATION

5.1 Termination by you You may stop using the Products at any time. Termination of your account does not relieve you of any obligation to pay any outstanding fees.

5.2 Termination by nearmap Regardless of anything else in the nearmap has the right, in its absolute discretion, to terminate the Agreement and the License for reasons other than cause, then nearmap will make reasonable effort to notify you at least 30 days prior to termination via the email address you provided to us. Unless stated in the Additional Terms and Conditions with you, nearmap may at any time terminate this Agreement (and/or your access to the Products) with you if:

- (a) you breach any provision of this Agreement (or act in a manner that clearly shows you do not intend to, or are unable to comply with this Agreement;
- (b) you fail to make timely payment of Fees, if any;
- (c) nearmap is required to do so by law (for example, where the provision of the Products to you is, or becomes unlawful);
- (d) nearmap elects to discontinue the Products, in whole or in part; or
- (e) your free trial of the Products has expired.

5.3 Consequences If the Agreement is terminated under clauses 5.1 or 5.2:

- (a) the License immediately terminates and the Products will no longer be available to you; and
- (b) you must immediately destroy, delete or return to nearmap all Product.;

5.4 Continuing obligations After expiry or termination of the Agreement or a License, clauses 2, 3, 5.3, 6, 7, 8, 9, 11 and 12 will still be binding on you in relation to your use of the Website and Products licensed or obtained during the Term.

6. INTELLECTUAL PROPERTY

6.1 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 you in clause 1.1, no ownership or Intellectual Property Rights in the Website or any Product will pass to you.

6.2 **Trademarks** The nearmap trademarks and all associated Intellectual Property Rights are owned by nearmap. Nothing in the Agreement confers upon you any rights to use or modify any of nearmap's trademarks.

7. THIRD PARTY PROVIDERS

7.1 nearmap engages Third Party Providers in order to provide the Products. You agree to comply with all requirements and restrictions that Third Party Providers may impose on you 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. You acknowledge that provision of the Products is subject to, and dependent upon, adequate delivery of products and services by the Third Party Providers. In accordance with clause 8 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 your convenience, nearmap has set out in this clause 7 links to the terms and conditions of these Third Party Providers with which you are required to comply. You further agree 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 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. You agree to the Google Terms of Service as they apply to you. 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, you agree to comply with the AWS Customer Agreement (<http://aws.amazon.com/agreement/>) as it applies to you. Use of the Products is also subject to your 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/>);

NASA/NCAS By entering into the Agreement, you agree to the following NASA/NCAS terms and conditions: (<https://www.nearmap.com/Legal-Information/Copyright>)

8. WARRANTY AND LIABILITY

8.1 **DISCLAIMER OF WARRANTIES** 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.

8.2 **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. NEARMAP SPECIFICALLY DISCLAIMS ANY LIABILITY FOR ANY ACTIONS RESULTING FROM YOUR USE OF THE PRODUCTS. YOU MAY ACCESS THE PRODUCTS AT YOUR OWN DISCRETION AND RISK, AND YOU ARE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE USE AND ACCESS OF THE PRODUCTS

8.3 **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. YOU ARE RESPONSIBLE FOR THE ENTIRE COST OF ALL SERVICING, REPAIR OR CORRECTION REQUIRED DUE TO YOUR 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.

8.4 **LIMIT OF LIABILITY** 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 WEBSITE AND PRODUCTS SHALL EXCEED THE GREATER OF \$100 OR THE TOTAL AMOUNT, IF ANY, PAID BY YOU TO NEARMAP TO ACCESS AND USE THE WEBSITE AND THE PRODUCTS IN THE SIX MONTHS PRIOR TO THE DATE GIVING RISE TO THE LIABILITY.

8.5 **THIRD PARTY PROVIDERS** YOU ACKNOWLEDGE 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. **INDEMNITY** YOU AGREE TO INDEMNIFY AND HOLD NEARMAP AND ITS DIRECTORS, OFFICER, EMPLOYEES, AGENTS AND SUBCONTRACTORS, HARMLESS FROM AND AGAINST ANY THIRD PARTY CLAIMS, AND MUST PAY ON DEMAND ALL LOSSES, EXPENSES, DAMAGES AND COSTS (INCLUDING REASONABLE ATTORNEYS' FEES AND COSTS) SUFFERED OR INCURRED BY NEARMAP, WHICH ARISE OUT OF YOUR USE OF THE WEBSITE AND PRODUCTS.

10. PRIVACY POLICY

Please refer to nearmap's Privacy Policy, available at <https://us.nearmap.com>, for information about how nearmap collects, uses and discloses information about you.

11. ARBITRATION

PLEASE READ THE FOLLOWING PARAGRAPH CAREFULLY BECAUSE IT REQUIRES YOU TO ARBITRATE DISPUTES WITH NEARMAP AND LIMITS THE MANNER IN WHICH YOU CAN SEEK RELIEF FROM NEARMAP.

You and nearmap agree to arbitrate any dispute arising from this Agreement or your use of the Website or Products, except that you and nearmap are not required to arbitrate any dispute in which either party seeks equitable and other relief for the alleged unlawful use of copyrights, trademarks, trade names, logos, trade secrets, or patents. ARBITRATION PREVENTS YOU FROM SUING IN COURT OR FROM HAVING A JURY TRIAL.

You and nearmap agree that you will notify each other in writing of any dispute within thirty (30) days of when it arises. Notice to nearmap shall be sent to support@nearmap.com. You and nearmap further agree: (a) to attempt informal resolution prior to any demand for arbitration; (b) that any arbitration will occur in Los Angeles, California; (c) that arbitration will be conducted confidentially by a single arbitrator in accordance with the rules of JAMS; and (d) that the state or federal courts in Los Angeles, California have exclusive jurisdiction over any appeals of an arbitration award and over any suit between the parties not subject to arbitration. Other than class procedures and remedies discussed below, the arbitrator has the authority to grant any remedy that would otherwise be available in court. WHETHER THE DISPUTE IS HEARD IN ARBITRATION OR IN COURT, YOU AND NEARMAP WILL NOT COMMENCE AGAINST THE OTHER A CLASS ACTION, CLASS ARBITRATION OR OTHER REPRESENTATIVE ACTION OR PROCEEDING.

12. MISCELLANEOUS

12.1 **Additional Terms and Conditions** The Additional Terms and Conditions form part of, and should be read in conjunction with, this Agreement. If there is any inconsistency between this Agreement and the Additional Terms and Conditions, the Additional Terms and Conditions prevail to the extent of the inconsistency.

12.2 **Waiver** Any waiver of any terms of the Agreement will be effective only if in writing and signed by nearmap. Any rights not expressly granted herein are reserved.

12.3 **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.

12.4 **Amendments** nearmap reserves the right at any time to amend this Agreement and/or to impose new and/or additional terms or conditions on your use of the Website and the Products. It is your responsibility to check this Agreement periodically for changes. By continuing to use the Website and access the Products after the revisions come into effect, you agree to be bound by the revised terms.

12.5 **Non-Assignment** You may not assign or purport to assign your rights or obligations under this Agreement without the prior written consent of nearmap.

12.6 **Entire Agreement** This Agreement:

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

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

13. **DEFINITIONS**

In this Agreement:

Additional Terms and Conditions means the additional terms and conditions (if any) as agreed between nearmap and you, which forms part of this Agreement.

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.

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 you.

Fees means the fees as set out in the Additional Terms and Conditions, or as otherwise agreed in writing between nearmap.

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.

Permitted Purpose means the use of Products by you in your personal capacity for non-commercial purposes to determine if you wish to purchase a license, and at all times excludes any:

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

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 domain(s) specified in the introduction to these Terms of Use.