



## APPLICATION FOR A PAID GOVERNMENT LICENCE

<b>Name of Government Entity:</b>	
<b>Category:</b>	National / State / Local [circle as appropriate]
<b>ABN (if applicable):</b>	
<b>Address:</b>	
<b>Phone number:</b>	
<b>Contact person:</b>	
<b>Email address:</b>	
<b>Licence Fee:</b> <small>To be completed by NearMap</small>	(payable within 30 days of invoice date)
<b>Term:</b>	12 months
<b>Area:</b>	
<b>Supplemental Terms:</b>	
<b>Internet IP address:</b>	
<p>I, [insert name]: _____, acting on behalf of the above named Government Entity and having the authority to so act, apply for a Paid Government Licence to use, copy, modify and distribute Licensed PhotoMaps and use and copy APIs pursuant to the Paid Government Licence published as at the date of this application on <a href="http://www.nearmap.com">www.nearmap.com</a>. I confirm that I have read, understood and agree to abide by the terms and conditions of that Paid Government Licence.</p>	
<b>Signature:</b>	
<b>Date:</b>	

This Paid Government Licence will take effect upon acceptance by NearMap:

<b>Name and Position:</b>	
<b>Signature:</b>	
<b>Date of acceptance:</b>	

Please submit a completed copy of this application form to [queries@nearmap.com](mailto:queries@nearmap.com) or send a copy to NearMap Pty Ltd, PO Box 1926, West Perth WA 6872 Australia. We thank you for your application and will contact you shortly

## PAID GOVERNMENT LICENCE

### Our paid government licence applies to:

**Government Entities** that use our PhotoMaps for their own governmental purposes.

### What you can do with our PhotoMaps

Upon payment of the appropriate Licence Fees (plus Tax), you can:

- (a) use, copy, modify and distribute our PhotoMaps; and
- (b) use and copy our APIs to facilitate such use of our PhotoMaps.

### Using our PhotoMaps to derive information

If you derive information from observing our PhotoMaps, and include that information in a work, you will own that work.

If you are a Government Entity, you must obtain a paid government licence from us in order to Use, Copy, modify and distribute the NearMap PhotoMaps and Use or Copy our APIs. A **Government Entity** is any entity which is part of, or is owned and/or controlled by, any government anywhere in the world, including any ministry, department or agency of any government, and any statutory authority, state-owned corporation or quasi-governmental corporation. The identification and categorisation of each Government Entity is determined by us in our sole discretion.

The Licence Fees for each paid government licence are payable per Area per Term. This licence applies only to those NearMap PhotoMaps which depict the Area or Areas which you nominate on your application form, which we accept, and for which you pay the applicable Licence Fees (plus Tax).

If you wish to obtain a paid government licence from us, you must complete our paid government licence application form and send it to us. NearMap will review your application, and will notify you if it is accepted together with the applicable Licence Fee. If you agree to proceed on the basis of the Licence Fee, and subject to our receipt of the applicable Licence Fee, a paid government licence will come into effect on the terms set out below. We will provide you with a tax invoice in relation to any Licence Fee (plus Tax) that is paid by you. The licence will not take effect until and unless we accept your application and you agree to proceed on the basis of the Licence Fee (plus Tax). If you do not enter into a paid government licence with us, and you are a Government Entity, you must not Use, Copy, distribute or modify the NearMap PhotoMaps or Use or Copy our APIs.

## 1 Definitions

In addition to the terms defined above, in this licence:

**APIs** means any application programming interfaces for accessing the NearMap PhotoMaps and associated documentation that are made available by NearMap from time to time.

**Area** means a discrete geographical region covered by NearMap PhotoMaps.

**Commencement Date** means the date of our acceptance of your application.

**Copy** means to download or otherwise copy.

**Derived Work** means any copyright work in which you include information derived from observing the Licensed PhotoMaps or Modified PhotoMaps, such as the existence or location of geographical features.

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

**Licence Fee** means the licence fee per Term per Area accepted by us following receipt of your application for a paid government licence (exclusive of Tax, which is also payable by you at the same time as the Licence Fee).

**Licensed PhotoMaps** means the NearMap PhotoMaps which depict the Area or Areas which are specified in your application form and accepted by us, and for which you pay the applicable Licence Fees.

**Local Government Entity** means a Government Entity that is, or is owned or controlled (partly or wholly) by, a local or municipal government.

**Modified PhotoMaps** means any Licensed PhotoMaps that you modify, including through the combination or overlaying of the Licensed PhotoMaps with any other information.

**National Government Entity** means a Government Entity that is part of, or is owned and/or controlled (partly or wholly) by, the national government of the applicable country (examples are the Federal Government of Australia and the French Government).

**NearMap PhotoMaps** means the ortho-rectified photomaps and associated images (including terrain maps, 3D images and similar matter) and associated content on our website from time to time during the Term. The NearMap PhotoMaps do not include any overlaid street map information, or photomaps or other images used under licence from third parties, as described in [Copyright and credits](#).

**State Government Entity** means a Government Entity that is part of, or is owned or controlled (partly or wholly) by, the regional government of a state, territory, province, county or other territorial unit that is smaller than a National Government Entity and larger than a Local Government Entity.

**Supplemental Terms** means the supplemental terms specified in the application form.

**Tax** means any goods and services, value added or other tax payable in your or our jurisdiction in respect of this licence or the Licence Fee.

**Term** means the period specified in the application form from the Commencement Date.

**Use** means to view, link to or otherwise use.

**we, us, our or NearMap** means NearMap Pty Ltd (ACN 120 677 250) of c/- PO Box 1926, West Perth Western Australia 6872 Australia.

**you** means the particular Government Entity that has entered into this paid government licence with us, as described on your application (if that description is accepted by us) or defined by us (if we reject your description on the application, but provide an alternative definition which you accept). If that description is limited to a particular part of a Government Entity (such as a ministry, department or agency), then **you** refers only to that particular part.

## **2 Licence grant**

- (a) Subject to all of these licence terms, any Supplemental Terms and payment by you of the Licence Fee, we grant you a licence for the Term to carry out the following activities for your own governmental purposes:
  - (i) Use, Copy, and modify and distribute the Licensed PhotoMaps; and

- (ii) Use and Copy the APIs to facilitate your Use, Copying, modification and distribution of the Licensed PhotoMaps.
- (b) The licence in paragraph (a) is granted only to you. You may not assign or sublicense such rights other than the distribution rights stated below.
- (c) Without limiting the generality of clause 2(b), no other Government Entity may Use, Copy, distribute or modify the Licensed PhotoMaps or Use or Copy the APIs under your paid government licence, and any other Government Entity wishing to do so must obtain their own paid government licence.
- (d) You must not Use, Copy, modify or distribute any NearMap PhotoMaps other than the Licensed PhotoMaps.
- (e) You may only exercise your rights in the Licensed PhotoMaps, Modified PhotoMaps and APIs for lawful purposes. For example, you must not Use them to unlawfully stalk, harass or intimidate any person.
- (f) You must expressly acknowledge NearMap, in a reasonably prominent manner, as the source of any Licensed PhotoMaps and Modified PhotoMaps that you Use, Copy, modify or distribute.

### **3 Ownership of modifications**

Without affecting our rights in the Licensed PhotoMaps, you will own any modifications you make to the Licensed PhotoMaps to produce Modified PhotoMaps (to the extent any rights exist in those modifications). You may only distribute the Modified PhotoMaps on the same basis as the Licensed PhotoMaps (as described in clause 4). However if your modifications are separable from the Modified PhotoMaps, you may continue to separately exercise any rights you have in those modifications.

### **4 Distribution to others**

You may only distribute small numbers of JPEG or PDF images from Licensed PhotoMaps where such distribution is reasonably incidental to carrying out your ordinary activities and is primarily for your benefit, not the benefit of the recipient. For example, you may include an image from a Licensed PhotoMap in a report which you publish and distribute to third parties.

### **5 Derived information**

You will own all Derived Works you create.

### **6 Coverage**

- (a) The licence in clause 2(a) above applies to the Licensed PhotoMaps that are available to you on our website from time to time during the Term.
- (b) The choice of Licensed PhotoMaps which are available on the website is a matter for us to determine in our sole discretion, including the scope of geographic areas, volume and frequency.

### **7 Access**

- (a) We will make the Licensed PhotoMaps and APIs available to you via our website. While we try to ensure our website remains available, we cannot guarantee that this will be the case at all times. This includes where planned or unplanned maintenance occurs, or there are difficulties in internet communications.
- (b) We try to ensure that the Licensed PhotoMaps and APIs are free of viruses and other harmful code. It is not possible to detect all such viruses and harmful code, so we strongly recommend that

you install and use anti-virus and anti-spyware software updated with the latest definitions at all times.

- (c) If you download a large amount of Licensed PhotoMaps from our website, please respect our resources and restrict your rate of download. If you don't, we may need to restrict your download speed in order to accommodate other users.

## **8 Reliance**

- (a) Photographic images and photomaps are subject to inaccuracies and distortions, including as discussed in the NearMap [general FAQ](#) and [PhotoMap Quirks](#) pages. Electronic files may also become corrupt, and we may not be able to detect such corruption.
- (b) So, before taking any action based on the Licensed PhotoMaps, it is important that you independently check the information observable in the Licensed PhotoMaps. We are not liable for the consequences of your failure to do so, including for any wasted expenditure, personal injury or loss of, or damage to, tangible property that results from your reliance on the Licensed PhotoMaps.

## **9 Infringement claims**

- (a) Subject to paragraph (b), if any third party brings a claim against you alleging that your Use, Copying, modification or distribution of the NearMap PhotoMaps or APIs in accordance with this licence infringes their copyright, we will defend you against the claim and pay any settlement to which we consent or final court-awarded damages for which you are liable.
- (b) You must:
  - (i) promptly notify us of any such claim;
  - (ii) not make any admissions in relation to the claim without our prior written consent;
  - (iii) permit us to conduct the defence of the claim including all negotiations for settlement; and
  - (iv) provide us with any assistance reasonably requested to allow us to defend the claim.
- (c) To the maximum extent permitted by law, this clause 8 sets out our sole and exclusive liability, and your sole and exclusive remedy, for any third party claims brought against you in relation to an infringement of Intellectual Property Rights.

## **10 Term and Termination**

- (a) This paid licence commences from the Commencement Date, and unless otherwise terminated, continues for the Term.
- (b) Either party may terminate this licence with immediate effect by notifying the other party accordingly, if the other party breaches this licence.

## **11 Consequences of expiry or termination**

- (a) When this licence terminates at the end of the Term, you may continue to Use, Copy, modify and distribute any copies of the Licensed PhotoMaps you have made during the Term, subject to all terms of this licence. You will have no further rights to Use, Copy, modify or distribute any NearMap PhotoMaps on our website.
- (b) Upon termination of this licence under clause 10(b):
  - (i) your right to Use, Copy and modify and distribute the Licensed PhotoMaps and Use or Copy the APIs immediately ceases, and you must delete or destroy any copies of the Licensed

PhotoMaps and APIs that you have made other than Licensed PhotoMaps you have already distributed to others under clause 4; and

- (ii) if any modifications you have made in the Modified PhotoMaps:
  - (A) are separable from the Licensed PhotoMaps, you may continue to separately exercise any rights you have in those modifications; or
  - (B) are not separable from the Licensed PhotoMaps, you must immediately cease Using, Copying, modifying and distributing those Modified PhotoMaps, and you must delete or destroy any copies of the Modified PhotoMaps you have made other than Modified PhotoMaps you have already distributed to others under clause 4.

## 12 Liability

- (a) All express or implied guarantees, warranties, representations, or other terms and conditions relating to this licence or its subject matter, not contained in this licence, are excluded to the maximum extent permitted by law.
- (b) Nothing in this licence excludes, restricts or modifies any right or remedy, or any guarantee, warranty or other term or condition implied or imposed by any legislation which cannot lawfully be excluded or limited.
- (c) If any guarantee, warranty, term or condition is implied or imposed in relation to this licence under legislation and cannot be excluded (**Non-excludable Provision**), and we are able to limit your remedy for a breach of the Non-excludable Provision, then our liability for breach of the Non-excludable Provision is limited to one or more of the following at our option:
  - (i) in the case of goods, the replacement of the goods or the supply of equivalent goods, the repair of the goods, the payment of the cost of replacing the goods or of acquiring equivalent goods, or the payment of the cost of having the goods repaired; or
  - (ii) in the case of services, the supplying of the services again, or the payment of the cost of having the services supplied again.
- (d) Subject to our obligations under clause 9 and the Non-excludable Provisions, and to the maximum extent permitted by law, our maximum aggregate liability for all claims under or relating to this licence or its subject matter in each successive 12 month period from the date this licence commences, whether in contract, tort (including without limitation negligence), in equity, under statute or on any other basis, is limited to the greater of:
  - (i) \$1,000; or
  - (ii) the Licence Fees that you have paid to us in relation to that 12 month period.
- (e) Subject to our obligations under the Non-excludable Provisions and to the maximum extent permitted by law, we are not liable for, and no measure of damages will, under any circumstances, include:
  - (i) special, indirect, consequential, incidental or punitive damages; or
  - (ii) damages for loss of profits, revenue or goodwill,whether in contract, tort (including without limitation negligence), in equity, under statute or on any other basis, whether or not such loss or damage was foreseeable and even if advised of the possibility of the loss or damage.

## 13 General

- (a) The Licensed PhotoMaps and APIs are licensed and not sold. Except for the rights expressly granted in this licence, we reserve all rights in relation to the Licensed PhotoMaps and APIs.

- (b) Neither party is liable for any failure to comply with this licence, where that failure is beyond the reasonable control of that party.
- (c) Each party's liability under this licence is reduced to the extent that the acts or omissions of the other party contribute to or cause such liability.
- (d) Where either party provides the other with a physical address or email address, notices may be given by sending the notice to that physical address or email address.
- (e) This licence is governed by the laws of Western Australia, and each party irrevocably submits to the non-exclusive jurisdiction of the courts of Western Australia and the Commonwealth of Australia.
- (f) In this licence:
  - (i) a reference to a person includes a natural person, partnership, joint venture, association, corporation or other body corporate;
  - (ii) a reference to a thing includes a reference to any part of that thing; and
  - (iii) the words "including" and "for example" are not terms of limitation.
- (g) Any provision of this licence which is wholly or partially void or unenforceable is severed to the extent that it is void or unenforceable. The validity or enforceability of the remainder of this licence is not affected.
- (h) This licence is the entire agreement between the parties about its subject matter and replaces all previous agreements, understandings, representations and warranties about that subject matter. No modification or amendment of any of the provisions of this licence will be effective unless in writing and signed by the parties to this Agreement. Without limiting the foregoing, in no circumstances will any terms provided with or printed on a purchase order or an invoice modify, amend or otherwise form part of the licence terms.
- (i) The rights of a party under this licence are in addition to and do not exclude or limit any other rights or remedies provided by law.

#### **14 Changes to this licence**

This licence was last updated on 8 December 2011. We might change this licence from time to time. The licence terms applicable to your paid government licence will be the licence terms displayed at the time your licence is granted.