



# ASX RELEASE

14 November 2022

## NEARMAP LITIGATION AND TRADING UPDATE

Nearmap Ltd (NEA:ASX) wishes to provide an update on recent filings lodged in the United States District Court (District of Utah, the Court). Given these developments, we are also taking the opportunity to provide an update on the Company's year-to-date trading performance in FY23.

### LITIGATION UPDATE

On 4 May 2021 Eagle View Technologies, Inc. and Pictometry International Corp (collectively, EagleView) filed a complaint against a U.S. subsidiary of Nearmap, Nearmap US, Inc. (Nearmap US) in the U.S. District Court for the District of Utah alleging infringement of a number of U.S. Patents relating to the following products in the U.S.: MapBrowser, Nearmap on OpenSolar and the supply of Roof Geometry Technology. Nearmap US has filed an answer to the complaint and counterclaims and has also filed *inter partes* review petitions with the U.S. Patent and Trademark Office's Patent Trial and Appeal Board to contest the validity of some of the patents asserted by EagleView.

On 11 November 2022, EagleView filed a motion with the Court seeking to amend its complaint (EagleView Motion) to:

- add new parties to the proceeding – namely Nearmap Australia Pty Ltd, Nearmap Ltd, and GAF Materials LLC (GAF) – and to allege infringement by both Nearmap and GAF as to the eight originally-asserted patents;
- allege infringement by both Nearmap and GAF of three newly-asserted patents that were previously asserted against GAF in EagleView's separate lawsuit against GAF (U.S. Patent Nos. 8,078,436, 8,170,840 and 9,129,376);
- allege infringement by Nearmap HyperCamera of a newly-asserted patent (U.S. Patent No. 9,182,657);
- allege infringement by Nearmap AI of a newly-asserted patent (U.S. Patent No. 10,671,648); and
- allege trade secret misappropriation claims against Nearmap.

GAF is the largest roofing and ventilation manufacturer in North America. GAF has no contract with Nearmap. On 4 May 2021, EagleView filed a patent infringement lawsuit against GAF in the United States District Court (District of New Jersey). On 25 March 2022, the New Jersey court granted GAF's motion to have that case transferred to the Utah Court. On 13 April 2022, the Court denied EagleView's motion to consolidate the GAF case with the Nearmap case, ruling that the cases would continue on separate schedules, with separate trials.

Nearmap will file its opposition to the EagleView Motion on or before 23 November 2022.

**Whether or not the EagleView Motion succeeds, Nearmap continues to believe that EagleView's allegations are fundamentally without merit and Nearmap is well prepared to vigorously defend against the existing claims and foreshadowed new claims and to assert additional defences and counterclaims.**



In this respect, on 20 September 2022, Nearmap filed a motion with the Court seeking leave to amend its answer to add a defence of patent misuse to EagleView's patent infringement claims. The Court has not yet ruled on Nearmap's motion. On 1 and 2 November 2022, in response to Nearmap's *inter partes* review petitions, the U.S. Patent Trial and Appeals Board instituted trials as to all challenged claims of three EagleView patents, because Nearmap has demonstrated a reasonable likelihood of success in proving that at least one challenged claim in each EagleView patent is unpatentable.

Despite these matters and Nearmap's beliefs as to the prospects of the claims, an adverse resolution could require Nearmap to pay significant damages, and prevent Nearmap from selling certain products, which would adversely impact Nearmap's United States business, operations, financial condition, results and reputation. That said, the allegations are not presently having an operational impact on Nearmap's business.

#### **FY23 TRADING UPDATE**

(Note: All figures are in Australian dollars).

##### ACV performance

Nearmap and its customers continue to navigate the highly volatile global macroeconomic challenges, including the impact of higher inflation and interest rates. These conditions are presenting challenges to some customers and Nearmap has become aware of the possible churn or downgrade of two customers during the first half of FY23, of potentially ~\$6 million.

In light of these events, Nearmap expects to add net incremental ACV of between \$12.8 million and \$17.4 million during 1H FY23 (i.e. from 30 June 2022 closing ACV portfolio of \$167.6 million, to 31 December 2022) on a constant currency basis<sup>1</sup>. This range is reflective of the likely upper and lower end impact from a churn or downgrade of the two clients noted above.

Based on our trading performance in 1H of FY23 in both our core markets and reflecting on our expected 1H FY23 ACV range, Nearmap expects that FY23 closing ACV portfolio to be between \$195 million and \$208 million (on a constant currency basis<sup>1</sup>), depending on market conditions in 2H FY23 and noting a likely positive skew to the second half. This implies an annual growth rate of 16.3% to 24.1% from FY22 to FY23 (on a constant currency basis<sup>1</sup>).

##### Cash position

In light of the broader economic uncertainties impacting customers and noted by other technology companies globally, Nearmap has further prioritised cash preservation through cost management, primarily through the deferral of previously planned hiring activity during 1H FY23, as well as a focus on cash collections (which are expected to be one-off in nature).

Given these measures, Nearmap currently anticipates an FY23 closing cash balance of between \$71 million and \$76 million (previously \$66 million to \$71 million), excluding litigation and Scheme transaction costs.

Litigation related costs are currently expected to be between \$9 million and \$11 million for FY23, excluding any claims recently received. As noted in the Scheme Booklet, if the Scheme is not implemented, transaction related costs of approximately \$2.78 million are expected to be payable by Nearmap.

Authorised by:

Board of Nearmap Ltd

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<sup>1</sup> Constant currency based on FY22 year-end USD exchange rate of A\$1 = US\$0.6889



About Nearmap | [nearmap.com](https://nearmap.com)

Nearmap (ASX: NEA) provides easy, instant access to high resolution aerial imagery, city-scale 3D content, AI data sets, and geospatial tools. Using its own patented camera systems and processing software, Nearmap captures wide-scale urban areas in Australia, New Zealand, the United States and Canada several times each year, making current content instantly available in the cloud via web app or API integration. Every day, Nearmap helps thousands of users conduct virtual site visits for deep, data driven insights—enabling informed decisions, streamlined operations and better financial performance. Nearmap was founded in Australia in 2007 and is one of the largest aerial survey companies in the world.

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

#### NEARMAP.COM

For further information please contact:  
Penny Diamantakiou, Chief Financial Officer  
Level 4, Tower One, International Towers,  
100 Barangaroo Avenue, Barangaroo NSW 2000  
T: +61 2 8076 0700 | F: +61 2 8076 0701  
E: [investor.relations@nearmap.com](mailto:investor.relations@nearmap.com)  
ABN 37 083 702 907