



The terms of use set out below (“Terms and Conditions”) govern the Client’s use of the Products, the Website and the Application, however accessed. By using the Products, the Website or the Application, the Client agrees to be bound by these Terms and Conditions without limitation. If the Client does not accept these Terms and Conditions in their entirety, the Client must not use the Products, the Website or the Application.

MNG reserves the right to update and amend these Terms and Conditions from time to time. MNG will communicate all changes on the Website and / or the Application. Unless otherwise stated, amendments will be effective thirty (30) days after posting of the amended Terms and Conditions.

## 1. DEFINITIONS

**Agreement** means each contract between MNG and the Client comprising or including these Terms and Conditions (including and any Schedule thereto) and all materials referred to in, or linked to by, these Terms and Conditions.

**Application** means the software entitled “MNG Access” made available by MNG for download to a mobile telephone or other computerised device.

**Business Day** means, in respect of each payment or other transaction or calculation which needs to be made or done under the Agreement or for the purposes of the Agreement, a day on which business by and between banks may be carried on in Western Australia.

**Client** means the person or entity to which the Licence is granted.

**Client Personnel** means officers, agents and employees of, and contractors to, the Client.

**Commencement Date** means that date on which the Client accepts these Terms and Conditions or commences using the Products, Website or Application (whichever occurs first).

**Composition with Creditors** is an agreement between a financially pressed debtor and two or more creditors whereby a specific partial payment is divided pro rata among the creditors in full satisfaction of their claims.

**Confidential Information** means any and all commercially sensitive information relating to a Party’s business including, but not limited to, know-how and trade secrets, however it does not include:

- a) information already known to the receiving Party at the time of disclosure by the other Party; or
- b) information in the public domain other than as a result of disclosure by a Party in breach of its obligations of confidentiality under the Agreement.

**Default Rate** means ten (10) percent per annum.

**Fee** means the annual fee for the Licence payable by the Client in accordance with the Fee Schedule.

**Fee Schedule** means the Fee schedule (as amended from time to time) published on the Website or otherwise provided to the Client by MNG.

**GST** means goods and services tax as defined in the *A New Tax System (Goods and Services Tax) Act 1999*.

**Invoice** means each invoice issued by MNG to the Client for the Fee (or part thereof).

**IPR** means any patent, trade mark, service mark, copyright, moral right, right in a design, know-how and any other intellectual or industrial property rights, anywhere in the world whether or not registered.

**Licence** has the meaning given in clause 3.1.

**MNG** means McMullen Nolan Group Pty Ltd ACN 009 363 311.

**Party or Parties** means MNG and / or the Client as the context requires.

**Personal Information** means information or an opinion about an individual as defined in section 6 of the *Privacy Act 1988 (Cth)* which is collected, used, disclosed, stored or handled by MNG for the purposes of the Agreement.

**Permitted Use** means the use of the Products, Website and Application by the Client in the ordinary course of carrying on the Client’s business and at all times excludes any Resale or unlawful purpose.

**Products** means plans, files, documents, surveys, imagery, scans, maps, output, know-how and / or other products (individually or collectively) howsoever produced in or in connection with the provision of access to and use of the Website and / or the Application and includes all associated IPR.

**Resale** means to distribute, transfer, sell, sub-licence or pass possession of any Products for the purpose of direct commercial benefit or gain by the Client.

**Term** means the period that has been agreed in writing by the Client and MNG, as at the Commencement Date, to be the term of the Agreement subject to any variation thereto agreed in writing.

**Third Party Providers** has the meaning given in clause 8.1.

**Users** means the number of Client Personnel, as specified in the Fee Schedule, permitted to use the Products, the Website and the Application under the Licence, which number shall be dependent on the Fee.

**Website** means the internet site at the domain [www.mngaccess.com.au](http://www.mngaccess.com.au) or any other internet site operated by MNG.



**2. AGE**

The Client represents and warrants that the Client is at least 18 years of age (if the Client is an individual) and that the Client whether a corporation, partnership or individual and whether acting in its own right or in its capacity as a trustee has the legal capacity to enter into a legally binding contract under applicable law for access to and use of the Products, Website and the Application.

**3. GRANT OF LICENCE**

- 3.1. MNG agrees, on the terms of this Agreement, to grant to the Client a limited, non-exclusive, non-transferable licence for the Term, for the Users, to access and use the Products, the Website and the Application for the Permitted Use (**Licence**).
- 3.2. Notwithstanding the Licence, the Products, the Website and the Application shall remain the property of MNG (or Third Party Providers).

**4. RESTRICTIONS ON RIGHT TO USE THE PRODUCTS, THE WEBSITE AND THE APPLICATION**

- 4.1. The Products, the Website and the Application may only be used for the Permitted Use.
- 4.2. The Licence is only granted to the Client. The Client must not transfer, resell, assign or sublicense any rights under the Licence or grant any third party access to the Products, the Website or the Application unless the Client has obtained the prior written consent of MNG.
- 4.3. The Products, the Website and the Application under the Licence are only to be used by the Users. The Client must ensure that the number of Client Personnel who have access to the Products, the Website and the Application never exceeds the number of Users specified in the Fee Schedule. If the Client exceeds the number of Users, the Client will be in breach of the Agreement.
- 4.4. The Client must ensure that all Client Personnel comply with the terms of the Agreement as if they were a party to it. The Client accepts full responsibility and liability for the acts and omissions of Client Personnel in relation to use of the Products, the Website and the Application.
- 4.5. In the Client's access to and use of the Products, the Website and the Application, the Client must not (without the prior written consent of MNG):
  - a) establish any link between the Website and any other URL;
  - b) attempt to undermine the security or integrity of MNG's computing systems or networks or, where the Website or the Application are hosted by a third party, that third party's computing systems or networks;
  - c) use, or misuse, the Products, the Website or the Application in any way which may impair the functionality of the Products, the Website or the Application or other systems used to deliver the Products, the Website or the Application or impair the ability of any other user to use the Products, the Website or the Application;
  - d) 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;
  - e) remove any content from the Website or the Application, other than that permitted under the terms of the Agreement;
  - f) falsify the true ownership of a Product or other material or information made available by MNG;
  - g) not attempt to gain unauthorised access to any materials other than those to which the Client has been given express permission to access or to the computer system on which the Website or the Application is hosted; and
  - h) use the Products, the Website or the Application otherwise than in accordance with the Agreement.



**5. ACCESS TO THE PRODUCTS, THE WEBSITE AND THE APPLICATION**

- 5.1. On and from the Commencement Date, the Client will be provided with access to the Website and the Application.
- 5.2. The Client must ensure that all usernames and passwords issued to the Client to access the Website and the Application are kept secure and confidential. The Client must immediately notify MNG of any unauthorised use of the Client's passwords or any other breach of security and MNG will reset the Client's password and the Client must take all other actions that MNG reasonably deems necessary to maintain or enhance the security of MNG's computing systems and networks and the Client's access to the Products, the Website and the Application.
- 5.3. The Licence and the Client's access to the Products, the Website and the Application will expire at the end of the Term and may be terminated in accordance with clause 12.

**6. PAYMENT OBLIGATIONS**

- 6.1. In consideration for the Licence, the Client agrees to pay MNG the Fee for the Term.
- 6.2. Subject to any special terms of payment specified in writing by MNG, the Client agrees to pay each Invoice in full within thirty (30) days from receipt of each Invoice.
- 6.3. All Fees exclude GST and other taxes unless expressly stated otherwise.
- 6.4. In addition to the Fee, the Client will pay any GST related to, or arising out of, the supply to the Client of the Licence, the Products, the Website or the Application and any other taxable supply arising under the Agreement.
- 6.5. The Client must on demand reimburse MNG for all costs, charges, expenses, fees, disbursements (including all reasonable legal costs on a solicitor and own client basis) paid or incurred by MNG or incidental to:
  - a) any breach, default or repudiation of the Agreement by the Client (including the fees of all professional consultants properly incurred by MNG in consequence of, or in connection with, any such breach, default or repudiation); and
  - b) the exercise or attempted exercise of any right, power, privilege, authority or remedy of MNG under or by virtue of the Agreement.
- 6.6. Where any, or any part of any, Fee or other moneys payable by the Client under the Agreement is not paid to MNG in the manner required by the Agreement on or before its due date for payment default interest will be payable on the outstanding amount in accordance with clause 6.7.
- 6.7. Default interest will be calculated at the Default Rate for the period for which such outstanding amount is overdue. Accordingly, default interest will accrue on and from the date following the due date for payment of the outstanding amount up to and including the date of its payment. It will be computed on a daily basis for actual days elapsed and will be compounded on the last day of each month.

**7. CLIENT WARRANTIES**

The Client warrants that:

- a) any information the Client supplies to MNG in respect of the Agreement is complete and correct;
- b) the Client will immediately notify MNG upon becoming aware of any usage of the Products, the Website or the Application beyond the Permitted Use or other term of the Licence; and
- c) the Client will comply with all relevant laws relating to the Client's use of the Products, the Website and the Application.



## 8. THIRD PARTY PROVIDERS

- 8.1. MNG utilises third party service providers (“**Third Party Providers**”) in order to provide the Products, the Website and the Application. The Client agrees to comply with all requirements and restrictions that Third Party Providers may impose directly, or indirectly, on MNG, in relation to their respective products and / or services, at the time of, or subsequent to, the date of the Agreement.
- 8.2. The Client acknowledges that the Licence is subject to, and conditional upon, adequate delivery of products and services by the Third Party Providers. In accordance with clause 14. 3, MNG’s liability is reduced to the extent that loss or damage of any kind is caused, or contributed by, Third Party Providers. For the Client’s convenience, MNG has set out in the Schedule links to the terms and conditions of certain Third Party Providers with which the Client is required to comply. The Client further acknowledges that, by entering into the Agreement, the Client agrees to comply with the respective terms and conditions of Third Party Providers, which currently include the Third Party Providers set out in the Schedule. Third Party Providers and their terms of supply may change from time to time during the Term.

## 9. ACKNOWLEDGEMENT

The Client acknowledges that:

- a) The Products, the Website and the Application are provided by MNG “as is” with no warranty including as to performance or suitability for purpose.
- b) The Products are provided by MNG, and / or Third Party Providers, subject to the disclaimers stated on / in the Products.
- c) The:
- (i) Products obtained by the Client via the Website and / or the Application (including data supplied or obtained without the accompaniment of a valid transmittal note); and
  - (ii) interactive mapping system available via the Website and the Application,
- are “uncontrolled” and are provided by MNG (and Third Party Providers) for information purposes only. MNG provides no warranty or guarantee concerning the accuracy of these items and they should not be relied upon to make any decisions including as to the purchase or financing the acquisition of property. MNG shall not be responsible for any loss or damage arising from the Client’s use or reliance on the same.
- d) If the Client requires a “controlled” copy of a Product the Client should contact MNG directly.
- e) MNG’s ability to provide the Products, the Website and the Application is subject to its agreements with Third Party Providers which:
- (i) agreements may expire or terminate; or
  - (ii) Third Party Providers may not provide the services or products under such agreements,
- in which case, MNG may not be able to, and will have no obligation to, provide some or all of the Products, the Website and the Application either on a timely basis or otherwise.
- f) MNG does not warrant that the use of the Products, the Website and the Application will be uninterrupted or error free. Amongst other things, the operation and availability of the systems used for accessing the Products, the Website and the Application, including public telephone services, computer networks and the internet, can be unpredictable and may from time to time interfere with or prevent access to the Products, the Website and the Application. MNG is not in any way responsible for any such interference with, or prevention of, the Client’s access to or use of the Products, the Website and the Application.
- g) MNG has no responsibility to any person other than the Client and nothing in the Agreement confers, or purports to confer, a benefit on any person other than the Client.
- h) It is the Client’s sole responsibility to determine that the Products, the Website and the Application meet the needs of the Client’s business and are suitable for the purposes for which they are used.



## **10. CONFIDENTIALITY AND PRIVACY**

- 10.1. A Party will not, without the prior written approval of the other Party, disclose the other Party's Confidential Information.
- 10.2. A Party will not be in breach of clause 10.1 to the extent to which it is legally compelled to disclose the other Party's Confidential Information.
- 10.3. Each Party must take all reasonable steps to ensure that its employees and agents, and any sub-contractors engaged for the purposes of the Agreement, do not make public, disclose or use for any purpose other than the performance of the Agreement the other Party's Confidential Information.
- 10.4. MNG maintains a privacy policy that sets out the Parties' obligations with respect to Personal Information. The Client should read that policy on the Website and / or the Application. The Client will be taken to have accepted that policy when the Client uses the Products, the Website or the Application.

## **11. INTELLECTUAL PROPERTY RIGHTS**

- 11.1. Nothing in the agreement constitutes a transfer of any IPR. MNG reserves all rights not expressly granted to the Client.
- 11.2. The Client:
  - a) acknowledges that the MNG (or Third Party Providers) own all IPR in the Website, the Application and the Products; and
  - b) will not directly or indirectly do anything that would or might invalidate or put in dispute MNG's (or Third Party Providers) title in the Website, Application and Products.
- 11.3. If to the knowledge of the Client any person makes any claim alleging that any of the Website, Application and Products infringes any IPR of any person, the Client must promptly notify MNG in writing and:
  - a) must not make any admission or take any action in relation to the claim without MNG's written consent;
  - b) must permit MNG to have control over any and all investigations, negotiations, settlement and dispute resolution proceedings relating to the claim; and
  - c) must cooperate with, assist and act at all times in accordance with the reasonable instructions of MNG, in relation to the claim and any consequent investigations, negotiations, settlement and dispute resolution proceedings.
- 11.4. The Client must not modify or copy:
  - a) the layout of the Website or the Application;
  - b) any computer software or code contained in the Website or the Application.

## **12. TERMINATION AND EXPIRY**

- 12.1. The Agreement commences on the Commencement Date and continues until expiry of the Term unless terminated earlier in accordance with the terms of the Agreement or renewed or extended by agreement in writing between the Parties. For the sake of clarity, the terms of this Agreement shall apply to any extension or renewal of the Term.



12.2. MNG may by notice in writing to the Client terminate the Agreement if:

- a) the Client fails to perform or observe any of the covenants or provisions of the Agreement and (if capable of remedy) such default continues for more than five (5) Business Days after notice in writing from MNG requiring the Client to remedy the same;
- b) the Client, or any guarantor of the Client, negotiates for or enters into a Composition with Creditors generally;
- c) being an individual the Client dies, becomes permanently incapacitated, or has a trustee appointed;
- d) being an individual the Client commits any act of insolvency;
- e) being a body corporate or other legal person, the Client or any guarantor of the Client calls any meeting of its creditors or has a liquidator, provisional liquidator, official manager, mortgagee's agent, receiver or administrator as to all or any of its assets appointed or enters into any liquidation (or commits any other act of insolvency); or
- f) the financial position of the Client, or some other fact or circumstance, leads MNG to believe on reasonable grounds that the Client is likely to materially fail to complete its obligations under the Agreement.

12.3. Regardless of anything else in the Agreement, MNG has the right, in its absolute discretion and upon giving the Client thirty (30) Business Days' notice in writing, to terminate the Agreement and the Licence. If the Agreement is terminated pursuant to this clause 12.3 (but not otherwise), the Client shall be entitled to a pro rata refund of the Fee (if that Fee was paid by the Client in advance) based on the unexpired portion of the Term.

### **13. CONSEQUENCE OF TERMINATION**

13.1. If the Agreement expires under clause 12.1, or is terminated under clause 12.2 or 12.3:

- a) the Licence immediately terminates and the Products, the Website and the Application will no longer be available for the Client's access or use;
- b) the Client must, if requested by MNG, immediately destroy, delete or return to MNG all Products; and
- c) the Client must immediately pay any outstanding Fees or other monies owing to MNG under the Agreement.

13.2. After expiry or termination of the Agreement, clauses 3-6 (inclusive), 8, 10, 11, 13-16 (inclusive), 24 and 26 will still be binding on the Client.

### **14. WARRANTY AND LIABILITY**

14.1. To the maximum extent permitted by law, MNG shall not be liable for, and excludes liability for, any loss (including indirect, special, incidental or consequential loss) or damage or injury of any kind whatsoever caused to the Client or its customers arising from or in connection with the Products, the Website or the Application whether such loss or damage was caused by an act, default, omission or negligence by MNG or otherwise.

14.2. The total aggregate liability of MNG (including special, indirect or consequential damages, which damages will be deemed to include loss or revenue, loss or profit and opportunity loss) in respect of any act or omission of MNG in connection with its obligations under the Agreement will not exceed the amount of the Fee, even if MNG has been advised by the Client as to the possibility of such losses being incurred.



14.3. The Client acknowledges that MNG relies on the services of Third Party Providers in order to supply the Products, the Website and the Application. Without limiting the above, and for the avoidance of doubt, to the fullest extent permitted by law, MNG will not be liable for any loss, damage, or cost of any kind, to the extent to which it is caused, or contributed to, by any Third Party Provider.

**15. CONSUMER GUARANTEES**

The Client warrants and represents that the Client is acquiring the right to access and use the Products, the Website and the Application for the purposes of a business and that, to the maximum extent permitted by law, any statutory consumer guarantees or legislation intended to protect non-business consumers in any jurisdiction do not apply to the supply of the Products, the Website and the Application or the Agreement.

**16. INDEMNITY**

The Client hereby fully indemnifies, and agrees to hereafter hold MNG, its agents and affiliates and all Third Party Providers, fully indemnified, against all liability or loss whatsoever, including consequential damage, costs, charges and expenses (including legal costs on a solicitor / client indemnity basis), to the extent to which it arises directly or indirectly from or in connection with:

- a) any breach of the Client's obligations under the Agreement;
- b) the Client's negligence;
- c) any violation of law or regulation arising from the Client's use of the Products, the Website or the Application;
- d) any actual or alleged infringement by the Client of the intellectual property, privacy or confidentiality rights of any third party (including a Third Party Provider); and
- e) any act or omission by any of the Client Personnel which, if done or omitted to be done by the Client, would be a breach of the Client's obligations under the Agreement.

**17. AUTHORITY**

If these Terms and Conditions are accepted by a person on behalf of the Client, that person warrants by his or her acceptance that he or she has authority to agree to the Terms and Conditions on behalf of the Client.

**18. ACCRUED RIGHTS**

Termination of the Agreement is without prejudice to any rights and obligations of MNG accrued up to and including the date of termination. On termination of the Agreement the Client will remain liable for any accrued charges and amounts which become due for payment before or after termination.

**19. HELP DESK**

In the case of technical problems the Client must make all reasonable efforts to investigate and diagnose problems before contacting MNG. If the Client still needs technical help, please check the support provided by MNG on the Website and the Application or failing that email MNG at support@mngaccess.com.au.

**20. ENTIRE AGREEMENT**

The Agreement supersedes and extinguishes all prior agreements, representations (whether oral or written), and understandings and constitutes the entire agreement between the Client and MNG relating to the Licence, Products, the Website and the Application and any other matters dealt with in the Agreement.

**21. WAIVER**

If MNG waives any breach of the Agreement by the Client, this will not constitute a waiver of any other breach. No waiver will be effective unless made in writing.



**22. ALTERATION OF TERMS AND CONDITIONS**

MNG reserves the right to update and amend these Terms and Conditions from time to time. MNG will communicate all changes on the Website and / or the Application. Unless otherwise stated, amendments will be effective thirty (30) days after posting of the amended Terms and Conditions.

**23. NO ASSIGNMENT**

MNG may assign or otherwise transfer its rights under the Agreement. The Client may not assign or otherwise transfer any rights under the Agreement to any other person without MNG's prior written consent.

**24. GOVERNING LAW AND JURISDICTION**

The Agreement is governed by the laws of Western Australia, without giving effect to any principles of conflicts of laws. The Client agrees to the jurisdiction of the courts of Western Australia to determine any dispute arising out of the Agreement.

**25. SEVERABILITY**

If any part of the Agreement is found to be void, unlawful, or unenforceable then that part will be deemed to be severed without affecting the validity and enforceability of the remaining provisions.

**26. NOTICES**

The Client's notices to MNG must be sent by registered mail to 2 Sabre Crescent, Jandakot, Western Australia 6164. MNG will send notices to the Client via the email address the Client provided at the time of setting up an account, or by registered mail. Notices sent by registered mail will be deemed received five days following the date of mailing.





**SCHEDULE**

**Third Party Providers**

a) Landgate

MNG utilises Landgate for the supply of cadastral information and imagery. By entering into the Agreement, the Client agrees to Landgate's terms of service as they may apply to the Client's access to and use of the Products, Website and Application.

<https://www0.landgate.wa.gov.au/>

b) Google

MNG utilises Google for the supply of maps and imagery. By entering into the Agreement, the Client agrees to Google's and Map data's terms of service as they may apply to the Client's access to and use of the Products, Website and Application.

<https://www.google.com.au/permissions/geoguidelines.html>

c) Spookfish

MNG utilises Spookfish for the supply of imagery. By entering into the Agreement, the Client agrees to Spookfish's terms of service as they may apply to the Client's access to and use of the Products, Website and Application.

<https://www.spookfish.com/>

d) Department of Environment, Land, Water and Planning (DELWP)

MNG utilises DELWP for the supply of cadastral information and imagery. By entering into the Agreement, the Client agrees to DELWP's terms of service as they may apply to the Client's access to and use of the Products, Website and Application.

<http://www2.delwp.vic.gov.au/>

<http://delwp.vic.gov.au/environment-and-wildlife/biodiversity/victorian-biodiversity-atlas/terms-and-conditions>