



## PHOTOMON

### Terms & Conditions

Northern Agricultural Catchments Council (ABN 15 441 877 135) (“NACC”, “we”) owns and operates Photomon a user friendly smartphone photo-monitoring application (the Photomon app) that allows users to document environmental change by taking and saving photos that have a consistent field of view. The services offered by NACC include the Photomon app, any Photomon branded URL, Photomon mobile services, the interactive public mapping portal focused on sustainable resource management known as NARvis and any other features, content, or applications offered from time to time by NACC in connection with the Photomon app (collectively, the “Photomon Services”). The Photomon Services are hosted in Australia.

Photomon is funded by Western Australia’s Department of Planning through the Coastwest program and the Federal Government’s Caring for our Country program (**Funding Partners**).

By accessing the Photomon Services you agree to the terms and conditions as updated from time to time (“Terms and Conditions”). You agree that NACC may change and update the Terms and Conditions from time to time and the most recent version of the Terms and Conditions posted on NACC’s website or available via the Photomon app will apply and bind you. We recommend that you review the Terms and Conditions regularly at [www.nacc.com.au](http://www.nacc.com.au).

The Terms of Use include the terms and conditions set out below and any other terms and conditions that appear in or are linked to Photomon

### CONDITIONS OF USE: GENERAL

#### Content on the Photomon Services

1. You are solely responsible for your conduct and any data, text, photos and other content (together "Content") that you post, submit, upload, display or otherwise make available (“post”) by using the Photomon Services including via your Login. You must not post any Content that is defamatory or malicious or infringes on any intellectual property right.
2. You warrant that you are authorised to post any Content posted by you to or using the Photomon Services.
3. You represent and warrant that you own all of the Content that you post on or using the Photomon Services.
4. You must not post any Content that contains images of children, is obscene, offensive, indecent, depicts nudity, sexual activity or violence, is unsuitable for children or that prevents other users from enjoying the Photomon Services.
5. You must not post any Content that may infringe on any property rights of a third party without first obtaining the consent of that third party. For example, you must not post any image or video of property belonging to a third party without obtaining the consent of that third party.
6. NACC is not responsible for any Content posted by third parties or for any material on any third party sites linked via the Photomon Services.

#### Donations



7. NACC is a not for profit organisation and relies on funding from the State and Federal Government's and the generosity of donors to develop and operate the Photomon Services.
8. If you would like to make a donation to NACC to further the development and operation of the Photomon app you can do so directly via the Photomon app.
9. If you make a donation to NACC, you acknowledge that your donation may be used by NACC for any purpose.
10. All donations to NACC are fully tax deductible and a tax receipt can be provided by NACC.

### Intellectual Property

11. In these Terms and Conditions, **Intellectual Property Rights** means all and any patents, patent applications, trade marks, service marks, trade names, registered designs, unregistered design rights, copyrights, know how, trade secrets, business names, domain names, internet addresses, telephone and fax numbers, post office boxes, rights in confidential information, and all and any other intellectual property rights, whether registered or unregistered, and including all applications and rights to apply for any of the same.
12. Subject to clause 13, NACC owns all Intellectual Property Rights in:
  - (a) the Photomon Services;
  - (b) all the content, data, graphics, photographs, images, trademarks, trade names, material, Operation Manual and other information NACC posts in or makes accessible via the Photomon Services including the Photomon logo; and
  - (c) all software forming part of, or used in connection with, the Photomon Services including all software code, source code, object code, binary code, executable code, modules, components, dynamic link libraries, executable programs, architectural models, process models, object models, database schemas, accompanying or associated media, business rules, algorithms, configurations, backups, updates, service packs, patches and hot fixes,  
**("Photomon Material")**.
13. NACC acknowledges that it does not own Intellectual Property Rights in:
  - (a) source code forming part of, or used in connection with, the Photomon Services which was obtained by the developer of the Photomon Services under an open source licence from any of the sources set out below:

EasyTableView <https://github.com/alekseyn/EasyTableView>;

JSONKit <https://github.com/johnzang/JSONKit>;

ASIHTTPRequest <http://allseeing-i.com/ASIHTTPRequest>;

actionbarsherlock: <http://actionbarsherlock.com/>;

Http-request: <https://github.com/kevinsawicki/http-request>;

Universal Image Loader for Android: <https://github.com/nostra13/Android-Universal-Image-Loader>;



Joda time: <http://www.joda.org/joda-time/>;

Roboguice: <https://github.com/roboquice/roboquice>;

Jackson json: <http://jackson.codehaus.org/>; or

- (b) dynamic link libraries provided by a handset manufacturer or embedded in the operating system.
14. You must not reproduce, customise, reverse engineer, decipher, decompile, modify, disassemble, incorporate the Photomon Material in whole or in part in any other software or product, or develop derivative works of the Photomon Material or allow others to do so or upload or re-post the Photomon Material to any other site on the internet without obtaining NACC's prior, written consent.
  15. For Content that is covered by Intellectual Property Rights, like your photos, subject to our privacy terms, set out in clauses 38 to 42 (inclusive) below, you grant NACC a non-exclusive, transferable, sub-licensable, irrevocable, royalty-free, worldwide license to use any Content that you post on or in connection with the Photomon Services to the full extent permitted by law.

### **Photomon Liability**

16. NACC prohibits conduct in breach of these Terms and Conditions. You agree that NACC is not responsible for the Content posted on the Photomon Services by other users and that you use the Photomon Services at your own risk.
17. NACC does not warrant guarantee or make any representation:
  - (a) that your use of the Photomon Services is legal;
  - (b) as to the performance of the Photomon Services;
  - (c) that the Photomon Services, or the server that makes the Photomon Services available online are free of software viruses, trojans or any malicious code;
  - (d) that the Photomon Services or any part of it will operate uninterrupted or are error-free;
  - (e) that errors and defects in the Photomon Services will be corrected; or
  - (f) that the Photomon Services will be updated.
18. NACC is not responsible for the storage, removal or deletion of any Content.
19. NACC and its respective officers, employees, contractors and agents have no liability for any costs, losses or damages of any kind, which you or anyone else may incur, arising whether directly or indirectly in connection with your use of the Photomon Services.
20. NACC is not liable to you for:
  - (a) loss of any Content;
  - (b) errors or omissions in the Photomon Services, or linked sites on the Photomon Services;
  - (c) delays to, interruptions of or cessation of the services provided in the Photomon Services, or linked sites;
  - (d) defamatory, offensive or illegal conduct of any user of the Photomon Services,



whether caused through negligence of the Photomon Services, its employees or contractors, or through any other cause.

21. You agree that you will bear the full cost of any necessary repair, correction and maintenance of any of your smartphone or computer software or hardware, which may be necessary as a consequence of you installing or using the Photomon Services.
22. You agree to at all times indemnify and keep indemnified NACC and its respective officers, employees, contractors and agents (each a "NACC Officer") from and against any loss (including reasonable legal costs and expenses) or liability incurred by any NACC Officer arising from any claim, demand, suit, action or proceeding by any person against any of those indemnified where such loss or liability arose out of, in connection with or in respect of any breach of these Terms and Conditions by you, your use of the Photomon Services or publication of or distribution of Content or information supplied by you.

### **Australian Consumer Law**

23. The Australian Consumer Law Schedule of the Competition and Consumer Act 2010 (Cth) provides consumer rights and remedies that may not be contracted out of, in part or wholly. Where those consumer rights and remedies apply to the provision of the Photomon Services to you and cannot be contracted out of, they apply and override any inconsistent provisions in these Terms and Conditions but only to the extent of the inconsistency.
24. Where you are entitled to a statutory right or term that NACC are not able to exclude but NACC are entitled to limit your remedy for a breach of that right or term, then NACC's liability for breach of that right or term is limited to (at NACC's election):
  - (a) in the case of goods NACC supplies, the repair or replacement of the goods or the supply of substitute goods (or payment of the cost of doing so); or
  - (b) in the case of services NACC supplies, the supplying of the services again, or the payment of the cost of having the services supplied again.

### **Termination of access**

25. NACC may terminate your access to the Photomon Services without giving you any explanation or justification for the termination of your access. You agree that NACC has no liability for any costs, losses or damages of any kind arising as a consequence of terminating your access to the Photomon Services.

### **Other**

26. These Terms and Conditions represent the entire agreement between you and NACC on the subject matter. All representations, communications and prior agreements in relation to the subject matter are merged in and superseded by these Terms and Conditions.
27. If any part of these Terms and Conditions are found to be void, unlawful, or unenforceable then that part will be deemed to be severable from the balance of these Terms and Conditions and the severed part will not affect the validity and enforceability of any remaining provisions.
28. These Terms and Conditions will be governed by and interpreted in accordance with the law of the Western Australia and you agree to the jurisdiction of the courts of Western Australia to determine any dispute arising out of these Terms and Conditions.
29. If you access the Photomon Services in a place outside Western Australia you agree



to comply with all laws in force in that place in addition to the Terms and Conditions and all laws in Western Australia. You must not, in the use of the Photomon Services, violate any laws in your jurisdiction (including but not limited to copyright laws).

### **Using the Photomon Services**

30. You must not abuse, harass, threaten, impersonate or intimidate other Photomon Services users.
31. You must not create or submit unwanted email or comments to any members of the Photomon Services.
32. You must not upload any viruses, trojans or malicious code to the Photomon Services.
33. You must not use the Photomon Services for commercial gain.
34. You must not use the Photomon Services for any illegal or unauthorised purpose or in violation of any law, including any intellectual property law.
35. You must respect the rights of third party property owners.

### **ADDITIONAL CONDITIONS OF USE: NACC PHOTO MONITORING PROGRAM**

36. NACC will use all best endeavours to attribute Content to its author.
37. Notwithstanding clause 36, NACC does not make any guarantee:
  - (a) that Content will be attributed to its author; or
  - (b) that any attribution made by NACC will be correct.

### **Your Privacy**

38. When you create an Account in connection with the Photomon Services NACC will ask you to provide certain personal information. You must not provide any false information to NACC.
39. The personal information provided by you, any Content you post on the Photomon Services and information regarding the way you access the Photomon Services from your computer, mobile phone or other device make up the "information" collected by NACC.
40. Subject to clause 32 you agree that NACC may use information provided to NACC by you or gathered by NACC in connection with the your use of the Photomon Services for NACC's technical development, product development, marketing, funding and support purposes, provided that NACC will not disclose any information that is identifiable as information relating to you.
41. When you post Content to NACC, certain Content, including photos posted by you to the Photomon Services and the details (for example the caption) attached those photos may be uploaded, and made available online, via NARvis. This allows other users of NARvis to view photos posted by you.
42. NACC undertakes to comply with the National Privacy Principles as set out in the Privacy Act (1988) in respect of all information collected by NACC.

### **Content on the Photomon Services**

43. NACC may remove any Content posted by you at any time without giving any explanation or justification for removing the Content.



### **Using the Photomon Services**

44. To use the Photomon Services you must create a user login (“Login”). You will be required to provide some personal information when you create your Account. We will collect and use your personal information in accordance with these Terms and Conditions.
45. You are responsible for keeping your password secure and must not share your password with anyone.