



Road Services Terms of Business

1 Interpretation

1.1 Definitions

Agreement	these road services terms of business and any Order agreed between the parties.
Charges	the charges payable by the Client for the Services by WDM, as set out in the Order or otherwise agreed in writing between the parties.
Client	the client referred to in the Order, to whom WDM has agreed to provide the Services in accordance with this Agreement.
Client Materials	all materials, maps, drawings, specifications and data supplied by the Client to the WDM.
Effective Date	the date on which the Client instructs WDM to proceed with the Services.
Force Majeure Event	any circumstance not within a party's reasonable control including, without limitation: acts of God, adverse weather conditions, fog, landslide, flood, drought, earthquake or other natural disaster; road closure, events which restrict access to areas; epidemic or pandemic; terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations; any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent; collapse of buildings, fire, explosion or accident; and any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party seeking to rely on this clause, or companies in the same group as that party); and interruption or failure of utility service.
Intellectual Property	copyright, patents and all other intellectual property rights of any nature whatsoever, whether registered, capable of registration or not, in any part of the world and including all applications and the right to apply for any such rights.
Order	the order form, purchase order, invoice or other document agreed between the parties or issued by WDM to the Client setting out details of the commercial agreement between the parties.
PMS	pavement management system (meaning a software program used to aid engineering and highway management decisions).
Reports	any reports, plans or other data, documents, information, or materials (in whatever form) provided, developed or created by WDM in connection with the Services, including the results obtained from the Services.
Representative	any individual assigned by WDM to provide particular Services (whether a director, employee or consultant of WDM or otherwise).
Services	the services that WDM has agreed to provide to the Client in accordance with the relevant Order or as otherwise agreed in writing between the parties, as described in Schedule 1.
Services Start Date	the day on which WDM begins providing the Services, as set out in the Order or as otherwise agreed in writing between the parties.
Software	the computer program or programs in respect of which WDM has granted to the Client a non-exclusive, non-transferable right to use on the terms and conditions of the Software Licence Agreement.
Software Licence Agreement	the software licence agreement entered into by WDM and the Client to use WDM's software.
Survey Location	the specific location or highway network in respect of which the Client requests WDM to provide the Services.
Consultancy Terms	the terms setting out WDM's consultancy terms of business.
WDM	W.D.M Limited (company number 00403583).
WDM IPRs	any Intellectual Property rights owned by or licensed to WDM that have not been created specifically in respect of the Services.

1.2 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time. A reference to a statute or statutory provision includes any subordinate legislation made from time to time under that statute or statutory provision.

1.3 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term

preceding those terms.

- 1.4 A reference to **writing** or **written** includes email.

2 Commencement and term

- 2.1 Any instruction given by the Client to WDM to proceed with the provision of Services shall be treated as constituting an acceptance by the Client of this Agreement. This Agreement shall commence on the Effective Date and shall continue, unless terminated earlier in accordance with its terms, until the Services have been completed and WDM has received payment in full for the Services.

3 Supply of services

- 3.1 The parties may agree in writing from time to time, following a request from the Client, that WDM will supply Services to the Client. WDM shall supply the Services to the Client from the Services Start Date in accordance with the Order or as otherwise agreed between the parties in writing.
- 3.2 In supplying the Services, WDM shall:
- 3.2.1 perform the Services with reasonable care and skill;
 - 3.2.2 use reasonable endeavours to perform the Services in accordance with any service description made available to the Client by WDM;
 - 3.2.3 use reasonable endeavours to meet any performance dates agreed between the parties in writing but any such dates shall be estimates only and time for performance by WDM shall not be of the essence;
 - 3.2.4 observe all reasonable health and safety rules and regulations and security requirements that apply at any of the Survey Locations and have been communicated to WDM, provided that WDM shall not be liable under this Agreement if, as a result of such observation, it is in breach of any of its obligations under this Agreement;
 - 3.2.5 take reasonable care of all Client Materials in its possession and make them available for collection by the Client on reasonable notice and request, always provided that WDM may destroy the Client Materials if the Client fails to collect the Client Materials within a reasonable period after termination of this Agreement; and
 - 3.2.6 appoint a manager for the Services. That person shall have authority to contractually bind WDM on all matters relating to the Services. WDM may replace that person from time to time where reasonably necessary in the interests of WDM's business.
- 3.3 Unless otherwise agreed by the parties, there shall be no obligation on WDM to:
- 3.3.1 provide to the Client with any advice or interpretation of the Reports; or
 - 3.3.2 produce video footage or provide the Client with any video footage created in relation to the Services and/or the Reports.
- 3.4 Notwithstanding clause 3.3, in the event that WDM provides advice or interpretation of Reports or video footage to the Client, this will bear additional costs to the Client and any advice or interpretation will be subject to the Consultancy Terms;
- 3.5 Prior to carrying out the Services, WDM will endeavour to inform the Client if the quality of the Services or Reports is likely to be affected or that WDM may have to make reasonable adjustments to the Services or Reports for reasons which non-exclusively include: adverse seasonal conditions, adverse weather conditions or lighting restrictions. In such circumstances, WDM accepts no responsibility and will not be in breach of this Agreement for any limited results if the Client requests that the Services are still carried out by WDM.

4 Client's obligations

- 4.1 The Client shall:
- 4.1.1 co-operate with WDM in all matters relating to the Services;
 - 4.1.2 provide, for WDM, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to the Client's premises, office accommodation, data and other facilities as required by WDM or any of them;
 - 4.1.3 provide, in a timely manner, such information as WDM may require, and ensure that it is accurate and complete in all material respects;
 - 4.1.4 provide WDM with all information requested by WDM in relation to the Survey Location including, but not limited to a copy of the applicable highway referencing system, details of roads, precise routes required, and other agreed parameters such as number of lanes;
 - 4.1.5 inform WDM of all health and safety and security information in connection with the Survey Location which may affect or restrict WDM in the performance of the Services;
 - 4.1.6 inform WDM of all relevant information which may restrict WDM in accessing the Survey Location and providing the Services as soon as the Client becomes aware of such restrictions, which may include (but may not be limited to) any road closures, parking restrictions, bus lanes, low emission zones or bridges. In such circumstances, WDM shall not be liable for any failure to perform or delay in performing all or part of the Services as a result of any such restrictions;
 - 4.1.7 reimburse WDM in full for any charges, fines, tickets or taxes incurred by WDM to enable WDM to access the Survey Location or to provide the Services;

- 4.1.8 if the Client requests that WDM provide the Reports via the Client's PMS, provide WDM with the full system requirements and any other information WDM may require.
- 4.2 If WDM's performance of its obligations under this Agreement is prevented or delayed by any act or omission of the Client, its agents, subcontractors, consultants or employees, WDM shall:
 - 4.2.1 not be liable for any costs, charges or losses sustained or incurred by the Client that arise directly or indirectly from such prevention or delay;
 - 4.2.2 be entitled to payment of the Charges despite any such prevention or delay; and
 - 4.2.3 be entitled to recover any additional costs, charges or losses WDM sustains or incurs that arise directly or indirectly from such prevention or delay.

5 Intellectual property

- 5.1 In producing any Reports for the Client, WDM shall not knowingly infringe the Intellectual Property of any third party, but does not guarantee that the Reports and/or their use by the Client (to the extent permitted by this Agreement) will not infringe the Intellectual Property of a third party.
- 5.2 Unless otherwise specified in this Agreement, the Intellectual Property in all Reports shall belong to the Client, but nothing in this Agreement shall be deemed to prohibit or restrict WDM from re-using or exploiting for whatever purpose it thinks fit any generic expertise or know-how acquired by it or its Representatives in the course of providing the Services.
- 5.3 If any Reports provided to the Client as part of the Services contain WDM IPRs, the WDM IPRs will remain with WDM, but to the extent that WDM has agreed to make available any such WDM IPRs, the Client shall be able to use such Reports for those of its own internal purposes anticipated by the Order.
- 5.4 To the extent that the Client makes available any Reports to any third party, the Client shall ensure that the relevant third party is made aware that any use of such Reports by the relevant third party is at its own risk and that WDM does not owe any duty of care or otherwise accept any responsibility to that third party in connection with the Reports in question.

6 Charges and payment

- 6.1 In consideration for the provision of the Services, the Client shall pay WDM the Charges in accordance with this clause 6.
- 6.2 All amounts payable by the Client exclude amounts in respect of value added tax (VAT), which the Client shall additionally be liable to pay to WDM at the prevailing rate (if applicable), subject to receipt of a valid VAT invoice.
- 6.3 WDM shall submit invoices for the Charges plus VAT if applicable to the Client following the provision of the Services which will include any fines, tickets, taxes or any other costs incurred by WDM in provision of the Services.
- 6.4 The Client shall pay each invoice due and submitted to it by WDM, within 30 days of receipt, to a bank account nominated in writing by WDM, unless otherwise agreed by the parties in writing.
- 6.5 If the Client fails to make any payment due to WDM under this Agreement by the due date for payment, then, without limiting WDM's remedies under clause 8 (Termination):
 - 6.5.1 the Client shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
 - 6.5.2 WDM may suspend all Services until payment has been made in full.
- 6.6 All amounts due under this Agreement from the Client to WDM shall be paid by in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

7 Limitation of liability

- 7.1 Unless otherwise expressly stated in writing, WDM does not give any warranty, other than those specified in clause 3.2, or similar assurance in respect of any Services provided under this Agreement, and all warranties, conditions or other terms implied by statute, common law or otherwise are excluded to the fullest extent permitted by law.
- 7.2 Where the Order envisages that particular Services are to be provided by particular dates or within particular timescales, WDM shall use its reasonable endeavours to meet such dates or timescales, but time shall not be of the essence.
- 7.3 In respect of any claim by the Client relating to the provision of the Services (whether for breach of contract, negligence or otherwise), the Client shall notify WDM in writing (giving full details of the claim) within twelve (12) months of the date on which the Services in question were or should have been provided, and shall afford WDM a reasonable opportunity to remedy the breach or failure in question, failing which all liability in respect of such claim shall be excluded.

- 7.4 WDM shall not be liable to the Client in respect of, and shall not be deemed to be in breach of this Agreement as a result of, any failure or delay in complying with its obligations in connection with this Agreement to the extent that such failure or delay is caused by:
- 7.4.1 any failure on the part of the Client to comply with its own obligations under this Agreement; and/or
- 7.4.2 any circumstances beyond the reasonable control of WDM, including (but specifically not limited to) the sickness or incapacity of any Representatives or other personnel.
- 7.5 WDM shall not be liable to the Client (whether for breach of contract, negligence or otherwise) for any:
- 7.5.1 loss of or corruption to data or computer files; or
- 7.5.2 loss of anticipated savings or revenues; or
- 7.5.3 loss of profits (whether actual or anticipated); or
- 7.5.4 loss of contracts or business opportunities; or
- 7.5.5 loss of goodwill or damage to reputation; or
- 7.5.6 indirect, special or consequential loss or damage; or
- 7.5.7 loss arising from any claim made by any third party to the extent relating to or comprising any loss or damage of the kind referred to in the previous parts of this clause;
which arises out of or in connection with this Agreement.
- 7.6 The total aggregate liability of WDM under or in connection with this Agreement shall not in any event exceed the following limits
- 7.6.1 for any and all claims in respect of which WDM's liability is covered by professional indemnity insurance, the sum of £500,000 (five hundred thousand pounds). This figure has been carefully selected as a reasonable allocation of the overall level of insurance cover that WDM anticipates it is likely to have in place from time to time; or
- 7.6.2 for all other claims, an amount equal to the total fees payable for the Order.
- 7.7 The Client's remedy in respect of any issue or claim relating to the Services (whether for breach of contract, negligence or otherwise) is against WDM and accordingly none of the Representatives or any other individuals employed or engaged by WDM directly or indirectly in relation to the Services shall be liable personally to the Client in relation to any negligence in the provision of the Services or otherwise under or in connection with this Agreement.
- 7.8 Nothing in this Agreement shall operate to limit or exclude the liability of WDM to the Client for any death or personal injury caused by the negligence of WDM or any of its employees or agents, or for any other matter in respect of which liability cannot lawfully be limited or excluded.

8 Termination

- 8.1 Unless terminated early under clause 8.2, this Agreement shall continue in force until:
- 8.1.1 the Services have been completed and payment for the Services has been received in full; or
- 8.1.2 this Agreement has been terminated by WDM after giving to the Client at any time not less than 30 days' notice of termination (or such other period of notice as may be agreed in writing between the parties).
- 8.2 Without affecting any other right or remedy available to it, either party to this Agreement may terminate it with immediate effect by giving written notice to the other party if:
- 8.2.1 the other party commits a material breach of any term of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
- 8.2.2 the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;
- 8.2.3 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- 8.2.4 the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under this Agreement has been placed in jeopardy.
- 8.3 The Client may cancel any Services for any reason with immediate effect by given written notice to WDM provided that WDM has not commenced the Services. In the event that the Client cancels any Services after WDM has commenced provision of the Services, the Client shall pay WDM the relevant Charges in respect of the Services in accordance with clause 6.
- 8.4 Without affecting any other right or remedy available to it, WDM may terminate this Agreement with immediate effect by giving written notice to the Client if:
- 8.4.1 the Client fails to pay any amount due under this Agreement on the due date for payment; or
- 8.4.2 there is a change of control of the Client.
- 8.5 On termination of this Agreement for whatever reason:

- 8.5.1 the Client shall immediately pay to WDM all of WDM's outstanding unpaid invoices and interest and, in respect of Services supplied or commenced but for which no invoice has been submitted, WDM may submit an invoice, which shall be payable immediately on receipt;
- 8.5.2 any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this Agreement shall remain in full force and effect; and
- 8.6 Termination or expiry of this Agreement shall not affect any of the rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of this Agreement which existed at or before the date of termination or expiry.

9 Force majeure

- 9.1 Neither party shall be in breach of this Agreement nor liable to the other for any delay in performing, or failure to perform, any of its obligations under this Agreement (other than an obligation to make payment) to the extent that such failure or delay results from a Force Majeure Event. In these circumstances the affected party shall be entitled to a reasonable extension of the time for performing its obligations.

10 Assignment and other dealings

- 10.1 The Client shall not assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights and obligations under this Agreement without WDM's prior written consent.

11 Confidentiality

- 11.1 Each party shall safeguard and keep confidential any and all confidential information that it may acquire in relation to the business or affairs of the other party. Neither party shall use or disclose the other party's confidential information except to the extent that such use or disclosure is necessary for the purposes of performing its obligations or exercising its rights under this Agreement. Each party shall ensure that its officers and employees and any other persons to whom the other party's confidential information is disclosed comply in respect of that information with the provisions of this Clause 11.
- 11.2 The obligations on a party set out in Clause 11.1 shall not apply to any information to the extent that such information:
- 11.2.1 is publicly available or becomes publicly available through no act or omission of that party;
 - 11.2.2 which was in the possession of the receiving party prior to the information being disclosed by the disclosing party to the receiving party;
 - 11.2.3 which was obtained from a third party who is free to disclose the same; and/or
 - 11.2.4 is required to be disclosed by law.
- 11.3 The obligations in this Clause 11 shall continue in force notwithstanding the termination of this Agreement.

12 Entire agreement

- 12.1 This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 12.2 Each party acknowledges that in entering into this Agreement it does not rely on and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this Agreement.

13 Variation

- 13.1 No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

14 Waiver

- 14.1 No delay or failure on the part of either party in enforcing any provision in this Agreement is to be treated as a waiver or as having created a precedent or in any way as having prejudiced that party's rights under the Agreement. The rights and remedies provided in this Agreement are cumulative and are additional to any rights or remedies provided by law.

15 Severance

- 15.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under clause 15.1 shall not affect the validity and enforceability of the rest of this Agreement.

16 Notices

- 16.1 Any notice under this Agreement shall be in writing and shall be sent by pre-paid, first class, recorded delivery post or hand delivery to the address for the relevant party as stated in the Order or otherwise notified to the other party for this purpose. Any such notice shall be deemed to have been duly received (provided it was sent to the proper address):
- 16.1.1 if despatched by first class, recorded delivery post – 48 hours from the time of posting (subject only to any delays caused by industrial action affecting the postal service);
- 16.1.2 if delivered by hand – at the time of actual delivery;
provided that in each case if the deemed receipt time occurs either on a day that is not a working day or after 5:00pm on a working day, then the notice shall not in fact be deemed to have been received until 10:00am on the next working day.

17 Third party rights

- 17.1 Unless it expressly states otherwise, this Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

18 Publicity

- 18.1 Neither party shall, without the prior written consent of the other, make any public announcement regarding this Agreement.

19 Governing law

- 19.1 This Agreement, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by, and construed in accordance with the law of England and Wales.

20 Jurisdiction

- 20.1 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement or its subject matter or formation.

Schedule 1

Services

- 1 WDM shall carry out highway condition surveys at the request of the Client which may consist of:
 - 1.1 Scanner Surveys;
 - 1.2 Deflectograph Surveys;
 - 1.3 Visual Condition Surveys;
 - 1.4 SCRIM® Surveys;
 - 1.5 Multi-function road monitors; or
 - 1.6 Footway Surveys.
- 2 The Reports will be processed in accordance with standard rule sets and supplied in HMDIF format.
- 3 The Reports may be either:
 - 3.1 uploaded to the Software, provided that the Client's use of the Software shall be subject to the terms of the Software Licence Agreement; or
 - 3.2 subject to the Client providing WDM with all of the necessary system requirements, where the Client has requested that the Reports be supplied for access on the Client's PMS, provided to the Client by the method reasonably specified by WDM (which may include via hard drive, email or secure file transfer).