



Terms and Conditions

1. PARTIES

These Terms & Conditions apply between West Aus Scanning Pty Ltd (ACN 693 780 335) as trustee for the Allistair Higgs Family Trust trading as WA Scanning (**Supplier**) and any client (**Client**) engaging the Supplier's services.

(Jointly together '**the Parties**' and **Party** means either one of them)

2. OPERATION OF AGREEMENT

- (a) The Supplier is a provider of non-invasive location and scanning services utilising industry-standard methods and equipment to assist in the identification of underground utilities and structures.
- (b) The Supplier agrees to provide the Services and the Client agrees to pay the Fee for the Services in accordance with this Agreement.

3. TERM

3.1 The Term of this Agreement will be:

- (a) if the Services are supplied on a single occasion, a term limited to the single supply; or
- (b) if the Services are supplied on more than one occasion, an ongoing term from the Commencement Date to a maximum of three (3) years or otherwise when this Agreement ends in accordance with clause 17.

(Term)

3.2 If clause 3.1(b) applies to the Term, the Parties may extend this Agreement for a further term as agreed between the Parties, by providing at least thirty (30) days written notice prior to completion of the Term.

3.3 Unless otherwise agreed by the Parties in writing, an extension of the Term under clause 3.2 is to be on the same terms and conditions as this Agreement.

4. SERVICES

4.1 The Supplier will provide the Services at the times and in the manner as described in this Agreement and perform the Services in accordance with generally accepted industry standards in compliance with all Legal Requirements applicable to the provision of the Services.

5. FEE AND PAYMENT

5.1 The Supplier will provide the Client with a Quote for the Services prior to the Commencement Date. All prices are quoted exclusive of GST. The Supplier may apply additional reasonable charges for a delay or variation to the Services.

5.2 The Supplier will issue the Client with an invoice upon completion of the Services or termination of the Agreement.

5.3 The Client must pay the invoice in full within fourteen (14) calendar days from the date of issue, unless agreed otherwise in writing by the Parties. Payment must be made by credit card or electronic transfer.

5.4 If the Client fails to make full payment when due, the Supplier may charge interest of 2% per month on the unpaid amount, compounded monthly and calculated each day that the payment is late, which will be due and payable by the Client to the Supplier.

5.5 The Client is liable for all reasonable costs incurred by Supplier in recovering overdue amounts, including debt collection, agency fees, legal costs and court fees.

- 5.6 The Fees are subject to adjustment on each Review Date in accordance with the Adjustment of Fees outlined in Schedule 1.
- 5.7 If the Supplier wishes to adjust the Fees, the Supplier must give the Client written notice at least 10 Business Days before the relevant Review Date, setting out the proposed Adjustment Amount to the Fees in accordance with the calculation in Schedule 1 together with supporting evidence

6 BOOKINGS, CANCELLATION AND DELAYS

- 6.1 A booking request is not binding unless and until it is confirmed by the Supplier in writing.
- 6.2 The Client must pay the Supplier a cancellation fee equal to the greater of:
- (a) 50% of the Fees in the accepted Quote; and
 - (b) the minimum charge for 3 hours at the applicable hourly rates specified in Schedule 1,
- if
- (c) the Client cancels the Services less than 24 hours before the scheduled commencement time; or
 - (d) the Supplier attends the Sites and is unable to perform the Services because the Client has failed to provide access to the Site or has failed to prepare the Site in accordance with the Supplier's reasonable requirements previously notified by the Client.
- 6.3 Should there be delays or factors beyond the Supplier's control including but not limited to weather conditions, Site inaccessibility, equipment failure, employee illness or the Client change the scope of work after the Quote is accepted, and as a result of those changes, the Supplier will require different equipment and more or less time to complete the Services, the Supplier may reschedule the Services, extend the time for the performance, or issue a revised Quote, on a time and material basis at the rates set out in Schedule 1.

7 OBLIGATIONS AND WARRANTIES

- 7.1 The Client warrants that:
- (a) it can legally provide access to the Site where the Services are to be performed and provides authorisation to the Supplier to carry out the Services on the Site;
 - (b) it will make the Site available to the Supplier for the Services on the agreed date and time, ensuring that the Supplier has safe and unobstructed access;
 - (c) it has disclosed all relevant Site information, including but not limited to, known hazards, past works, drawings or underground infrastructure;
 - (d) it has obtained or will obtain, necessary permissions, permits and approvals and will notify Before You Dig Australia prior to excavation;
 - (e) it will notify the Supplier in writing of any changes to the Services or access restrictions as soon as practicable;
 - (f) it will comply with all applicable work health and safety requirements prior to and during the Services; and
 - (g) it will provide the Supplier with travel plans and cost/traffic management schedules where directed by the Supplier.
- 7.2 The Supplier warrants that it:
- (a) will provide, at its own cost, any required materials, tools, vehicles, plant or personal protective equipment that are needed to carry out the Services, which are of good quality, fit for purpose and ensure they are maintained in safe, working order and be responsible for replacement of any such plant and materials;
 - (b) currently has an Australian Business Number and is registered for the GST in accordance with the GST Law.
 - (c) will deal with any Personal Information acquired from the Client under or in connection with this Agreement in accordance with all Privacy Laws;
 - (d) has all the required licences and qualifications to perform the Services;

- (e) has the appropriate skills, experience and know-how to perform the Services to industry standards;
- (f) has all the necessary capabilities in terms of workforce, facilities, tools and equipment to perform the Services to the industry standard; and
- (g) will comply with all applicable Legal Requirements, permits, licences and Australian standards.

8 LIMITATIONS AND EXCLUSIONS

8.1 The Client understands and acknowledges:

- (a) the results of the Services are dependent on site conditions, access, the state and quality of information available and the inherent limitation of the equipment, methodology and technology used by the Supplier;
- (b) Site conditions, including but not limited to, soil composition, moisture, depth, reinforcement density, electrical or signal interference, obstructions covering, surface treatment and inaccessibility may reduce the accuracy, reliability or completeness of the Service results;
- (c) the Services are intended to assist in identifying subsurface or embedded utilities, conduits, reinforcement and other obstructions, but do not guarantee that all such items will be identified, located, detected or accurately mapped;
- (d) the Supplier is not responsible for latent, concealed, inaccurately mapped, undocumented or inaccessible infrastructure to the extent that it could not reasonably be identified or located by the Supplier using the Services and methodology agreed under this Agreement;
- (e) the Client remains responsible for all decisions concerning excavation, drilling, cutting, coring, penetration or similar works carried out in reliance on or in connection with the Services;
- (f) the Client must not rely solely on the Services and must implement its own independent verification, risk assessment and safe work practices before undertaking any excavation, drilling, cutting, coring, penetration or similar works; and
- (g) nothing in the Services relieves the Client or its contractors from complying with applicable laws, permits, utility clearance requirements and prudent industry safety practices.

9 WORK HEALTH AND SAFETY

9.1 The Supplier must in carrying out the Services:

- (a) Comply with all applicable work health and safety laws including the *Work Health and Safety Act 2020 (WA)* and *Work Health and Safety Regulations 2022 (WA)*;
- (b) take reasonable steps to carry out the Services safely;
- (c) ensure its personnel are properly trained and competent to perform the Services;
- (d) manage risks arising from the Services so far as is reasonably practicable;
- (e) immediately notify the Client of any incident, injury, hazard or safety issue arising during the performance of the Services; and
- (f) comply with any reasonable safety direction given by the Client in relation to the Site.

9.2 The Client must:

- (a) so far as is reasonably practicable, ensure that the Site and any facilities, equipment or infrastructure provided by the Client are safe and without risks to health and safety for the Supplier in accordance with the *Work Health and Safety Act 2020 (WA)* and *Work Health and Safety Regulations 2022 (WA)*;
- (b) provide the Supplier with any relevant information known to the Client regarding hazards, risks, Site conditions, emergency procedures, and applicable safety requirements at the Site;
- (c) consult and cooperate with the Supplier, so far as is reasonably practicable, regarding work health and safety matters that may affect the performance of the Services;

- (d) promptly notify the Supplier of any incident, hazard or safety issue at the Site that may affect the Supplier or the performance of the Services; and
- (e) comply with all applicable Legal Requirements relating to work health and safety in connection with the Site and the Client's activities.

10 INDEMNITY AND LIMIT OF LIABILITY

10.1 Subject to clauses 10.2 and 10.4, each Party (**Indemnifying Party**) indemnifies the other Party and its officers, employees, agents or contractor (**Indemnified Party**) against all Loss, suffered or incurred to the extent of

- (a) personal injury, illness or death or any person;
- (b) loss or damage to property or tangible property; or
- (c) any Claims by a third party in respect of any matter described in paragraph (a) or (b),

to the extent caused by the indemnifying party's breach of this Agreement, negligence, or wrongful act or omission in connection with this Contract.

10.2 Clause 10.1 does not apply to the extent the Loss or Claim was caused or contributed to by the breach of this Agreement, negligence, or wrongful act or omission in connection with this Agreement or Services.

10.3 To the extent permitted by law, the maximum liability of either Party arising out of or in connection with Agreement or the Services, whether in contract, tort (including negligence) under statute or otherwise, will be limited to the amount actually recovered under any insurance policy required to be maintained under this Agreement or where insurance does not apply, shall be limited to an amount equal to the total Fees paid or payable to the supplier.

10.4 Notwithstanding any clause, to the maximum extent permitted by law, neither Party is liable for any indirect or Consequential Loss arising out of the provision of the Services.

11 INSURANCE

11.1 The Supplier must at its own costs, obtain and maintain with reputable insurers all insurances required by law and the insurances set out in Schedule 1 for the term of this Agreement and, where applicable, for any period specified in Schedule 1 after the Agreement.

11.2 The Client is responsible for maintaining its own insurance in respect of its business, premises and property and Site.

12 INTELLECTUAL PROPERTY

12.1 The Supplier owns the Intellectual Property Rights in any report, plan, drawing, data, image, record or other material created by the Supplier in connection with the Services.

12.2 The Client may use the Scanning Report and other documents supplied under this Agreement for its own internal purposes and for the relevant Site or project but does not obtain ownership of any Intellectual Property Rights in those materials.

13 CONFIDENTIAL INFORMATION

13.1 The Parties acknowledge and agree that the information contained in the Agreement is Confidential Information and that Confidential Information may be shared to provide the Services.

13.2 Neither Party must use Confidential Information for any purpose other than the performance of the obligations under the Agreement or disclose Confidential Information to any third party, except in accordance with the Agreement.

13.3 A Party may disclose Confidential Information to a third party, if the Party has obtained prior written approval, or disclosure is necessary for the conduct of any legal proceedings arising in relation to the Agreement, compelled by a court required by law.

13.4 All Confidential Information remains the property of the disclosing Party and must be returned on expiration or termination of the Agreement on request.

14 PRIVACY

14.1 Each Party acknowledges that, in providing the Services under this Agreement, it may collect, receive or have access to Personal Information.

14.2 Each Party must:

- (a) keep the Personal Information secure and protect it from unauthorised access, use, disclosure, loss or modification
- (b) not access, use, disclose or share the Personal Information except:
 - (i) as required by law; or
 - (ii) with the prior written consent of the person to whom the Personal Information relates; and
- (c) promptly notify the other Party of any actual or suspected data breach, loss of Personal Information, or unauthorised access, use or disclosure of Personal Information, and provide reasonable assistance in relation to the incident.

15 FORCE MAJEURE

- 15.1 A party is not liable to the other Party, and is not in breach of this Agreement, for any delay or failure to perform its obligations under this Agreement to the extent that the delay or failure is caused by a Force Majeure Event, provided that the affected Party promptly notifies the other Party and uses reasonable endeavours to mitigate the effects of the Force Majeure Event.
- 15.2 For the avoidance of doubt, a Force Majeure Event shall not relieve the Client of its obligation to pay the Supplier for:
 - (a) Services performed before the Force Majeure Event; and
 - (b) any other costs or expenses reasonably incurred by the Supplier in connection with the Services.
- 15.3 Either Party may end this Agreement immediately by written notice if the Force Majeure Event continues for more than one (1) month. In such event, the Client shall pay the Supplier for all Services performed up to the date of termination of the Agreement, together with reasonable non-recoverable costs incurred by the Supplier

16 DISPUTE RESOLUTION

- 16.1 Before initiating any legal proceedings in relation to a dispute or Claim arising from or connected to this Agreement, the Parties must first attempt to resolve the matter through good faith negotiations within a reasonable timeframe.
- 16.2 If the dispute remains unresolved, the Parties are required to engage in mediation prior to commencing any court action. The costs of mediation shall be shared equally between the Parties.
- 16.3 Notwithstanding the existence of a dispute, the Supplier shall continue to carry out its obligations in accordance with this Agreement.

17 TERMINATION

- 17.1 This Agreement will end on the Expiry Date or otherwise as terminated in accordance with this clause.
- 17.2 The Supplier may terminate this Agreement, at any time, by giving five (5) Business Days' written notice to the Client.
- 17.3 The Client may terminate this Agreement by giving the Supplier ten (10) Business Days' written notice of termination.
- 17.4 Either Party may terminate this Agreement with immediate effect by giving written notice of termination upon the happening of any of the following events:
 - (i) if there is a failure to observe any term of this Agreement and failure to remedy the breach within fourteen (14) Business Days after receiving a notice specifying the breach and requiring it to be remedied; or
 - (ii) if either Party commits a material breach of this Agreement which is incapable of rectification; or
 - (iii) if either Party enters into a deed of arrangement or an order is made for it to be wound up; or
 - (iv) if an administrator, receiver or receiver/manager or liquidator is appointed to either Party pursuant to the *Corporations Act 2001* (Cth); or
 - (v) if either Party would be presumed to be insolvent by a court in any of the circumstances referred to in the *Corporations Act 2001* (Cth).

18 GENERAL

18.1 Governing Law

This Agreement is governed by and shall be construed in accordance with the laws of the State of Western Australia. The Parties agree to submit to the non-exclusive jurisdiction of the courts exercising jurisdiction in Western Australia and any court having jurisdiction to hear appeals from these courts.

18.2 Counterparts

The Agreement may be executed in counterparts. All counterparts together constitute the Agreement.

18.3 Severability

In the event that any of the provisions of this Agreement are held to be invalid or unenforceable in whole or in part, all other provisions will nevertheless continue to be valid and enforceable with the invalid or unenforceable parts severed from the remainder of the Agreement.

18.4 Waiver

A default, delay or omission by either Party of any of the provisions of this Agreement will not operate as a waiver of any subsequent breach of the same or other provisions.

18.5 Variation

Any variations to the Agreement must be in writing and signed by the Parties.

18.6 Assignment

Neither party may assign, delegate or otherwise transfer its obligations under this Agreement without the prior written consent of the other party which will not be unreasonably withheld.

19 DEFINITIONS AND INTERPRETATION

19.1 Within this Agreement:

Adjustment Amount means the amount calculated under Schedule 1.

Agreement means the agreement between the Supplier and the Client and shall consist of the following documents:

- (a) the Quote; and
- (b) these Terms and Conditions and Schedule 1.

Before You Dig Australia means the organisation formerly known as Dial Before You Dig, which acts as a centralised point of contact for individuals and entities to access information about underground assets prior to commencing excavation works.

Business Day means a day other than a Saturday, Sunday or public holiday in Western Australia.

Claim means any claim, liability, loss, damage, demand, lien, cause of action of any kind, obligation, costs, royalty, fees, assessments, penalties, fines, judgment, interest and award, whether arising by law, contract, tort, voluntary settlement or otherwise.

Commencement Date means the date in the Schedule 1.

Concrete Scanning: means the use of ground penetrating radar (**GPR**) and other non-destructive methods to detect objects, voids, and reinforcement within concrete structures.

Confidential Information means any information, whether or not marked as confidential, received, held or developed by the Supplier or the Client and which is not publicly available and relates in any manner to the operations of the Client or the Supplier or their clients or suppliers.

Consequential Loss means any Loss that does not arise naturally, including but not limited to the costs of replacing any real or personal property, special losses or any loss of profit, revenue, contract, business, business reputation, goodwill, opportunity, or facilities or services.

Expiry Date means the date the Services will cease to be performed as stated in Schedule 1.

Fee means the amount charged by the Supplier to the Client for the Services as contained in the Quote.

Force Majeure Event means an event beyond a person's reasonable control which by the exercise of due diligence could not have been prevented or reasonably foreseen by that party and includes, but is not limited to an act of God, cyclone, hurricane, flood, fire or earthquake, or war, revolution, embargo, riot, act of terrorism, or civil disturbance.

GST means a goods and services tax, or similar value added tax, levied or imposed under the GST Law.

GST Law means the same as in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Intellectual Property means all intellectual property rights existing anywhere in the world, including any patent, design right, copyright, trademark, trade secret, Confidential Information, business and company names or other rights whether existing under statute, at common law, in equity or otherwise and all rights in any applications for or registrations of the rights described.

Legal Requirements means any Australian statute, ordinance, regulation or by-law, orders, awards, commission and proclamations of the Commonwealth and or the State of Western Australia and includes certificates, licences, consent, permits, approvals and requirements of organisations having jurisdiction applicable to the Services, standards, codes and guidelines applicable to the Services, including any Fees or charges payable in connection.

Loss means any loss, damage, liability, interest, claim, expense, outgoing, penalty, fine or cost of any kind;

Personal Information means the same as the definition provided under the Privacy Law.

Personnel means the Supplier's employees, subcontractors (including subcontractors personnel), agents and representatives of or persons engaged by the Supplier.

Privacy Law means the *Privacy Act 1988* (Cth) and the *Privacy and Responsible Information Sharing Act 2024* (WA) where applicable.

Quote means the quote provided by the Supplier to the Client.

Scanning Report means the name of the report provided by the Supplier to the Client.

Site means the physical location at which the Services are to be carried out.

Services means those Services defined in the Quote to which these Terms and Conditions are annexed and includes Service Locating, Concrete Scanning, ground penetrating radar (GPR), Scanning Report, and related works.

Service Locating means the process of identifying and marking the approximate location of underground utilities, services or structures using non-invasive technologies including but not limited to ground penetrating radar and electromagnetic field locating.

In this Agreement:

- (a) headings are for convenience only and do not affect the interpretation of this Agreement;
- (b) words denoting the singular number include the plural and vice versa; and
- (c) no rule of construction applies to the disadvantage of a Party because that Party was responsible for the preparation of this document or any part of it.

Schedule 1 – Contract Specifics

1. **Commencement Date:**

2. **Expiry Date:** Completion of the Services in accordance with clause 3.1

3. **Fee Schedule:**

Item	Fee amount	Description
Hourly Rate	As set out in the Quote	
Minimum Charge (total 3 hours)	As set out in the Quote	0.5 hours for mobilisation (metropolitan Perth jobs only- outside Perth Metro Jobs will incur additional travel hours) 0.5 hours for reporting and 2 hours on Site.
After Hours Rate	As set out in the Quote	After hours are applicable from 17:00 to 07:00 of the following day.
Disbursements	As set out in the Quote or at cost	Any additional costs reasonably incurred in connection with the Services, including but not limited to travel, accommodation, site access costs, parking, permits, and other third party expenses.

4. **Adjustment of Fees**

4.1 **Definitions**

In this clause:

Current Labour Index Number means the index number for the Labour Index published for the Current Reference Period.

Current Materials Index Number means the index number for the Materials Index published for the Current Reference Period.

First Review Date means the first anniversary of the Commencement Date.

Labour Index means Australian Bureau of Statistics Wage Price Index, Australia, Private sector, Western Australia.

Labour Index Number means the index number for the Labour Index published for the Base Reference Period.

Materials Index: Australian Bureau of Statistics Consumer Price Index, Perth, All groups.

Materials Index Number means the index number for the Materials Index published for the Base Reference Period.

Proportions means: Labour Proportion: 85% and Materials Proportion: 15%

Reference Period means the most recent period for which the relevant index was published before the Base Date.

Subsequent Review Date means each anniversary of the Commencement Date after the first Review Date.

4.2 Calculation

The Adjustment Amount for a review period is the sum of the Labour Adjustment and the Materials Adjustment, calculated as follows:

Labour Adjustment

= Fee × Labour Proportion ×
[(Current Labour Index Number – Labour Index Number) / Labour Index Number]

Materials Adjustment

= Fee × Materials Proportion ×
[(Current Materials Index Number – Materials Index Number) / Materials Index Number]

Adjustment Amount

= Labour Adjustment + Materials Adjustment

Adjustment Percentage

= Adjustment Amount / Fee

5. Required insurances:

Workers Compensation Insurance as required by law for all employees engaged in connection with the Services

Public liability insurance for an amount of not less than \$20 million per occurrence covering liability for personal injury, death, and loss of or damage to property arising out of or in connection with the Services, including the Supplier's presence on Site.

Professional indemnity insurance for an amount of not less than \$1,000,000 per claim to an aggregate of no more than \$2,000,000 during the insurance period, if the Services include advisory, design, consulting or other professional services, to be maintained during the Term and for 7 years after the expiry of termination of the Agreement.

Motor vehicle insurance as required by law for any vehicle used in connection with the Services or brought onto the Client's site.

Plant, equipment or property insurance for the Supplier's own plant, tools, equipment and materials used in connection with the Services, where relevant for their full replacement value.