HDM-4 Version 2 End-User Licence Agreement Copyright (c) University of Birmingham Enterprise Limited. All rights reserved.

THIS END USER LICENCE AGREEMENT ("AGREEMENT") IS A LEGAL UNILATERAL CONTRACT BETWEEN YOU THE END USER (AS AN INDIVIDUAL PERSON OR SINGLE ENTITY) (hereinafter "YOU" or "you") AND UNIVERSITY OF BIRMINGHAM ENTERPRISE LIMITED TRADING THROUGH ITS OPERATING DIVISION HDMGLOBAL (hereinafter referred to as 'UOBE'). READ IT CAREFULLY BEFORE COMPLETING THE INSTALLATION PROCESS AND USING THE SOFTWARE. IT PROVIDES A LICENCE TO USE THE SOFTWARE AND CONTAINS WARRANTY INFORMATION AND LIABILITY DISCLAIMERS. BY INSTALLING AND USING THE SOFTWARE, YOU THE END USER ARE CONFIRMING ACCEPTANCE OF THE SOFTWARE AND AGREEING TO BECOME BOUND BY THE TERMS OF THIS AGREEMENT. IF YOU THE END USER DO NOT WISH TO DO SO, DO NOT COMPLETE THE INSTALLATION PROCESS. PROMPTLY RETURN THE ENTIRE PACKAGE TO THE PLACE WHERE YOU OBTAINED IT, FOR A FULL REFUND.

The aforesaid YOU and UOBE are hereinafter referred to individually as 'Party' and collectively as the 'Parties'.

WHEREAS

A   The World Road Association (hereinafter 'PIARC') holds the property rights of the software system HDM-4 in the interest of the stakeholders of the ISOHDM Project (International Study of Highway Development and Management) and has taken care at their request for co-financing and management of the software developments which led successively to versions 1.3 and 2.0 of HDM-4; and

B   PIARC has signed a Concession Agreement ('the Concession Agreement') dated 1 August 2010 with UOBE giving UOBE the exclusive rights to the sale of the Software (as defined below); and

C   UOBE fulfils its obligations under the Concession Agreement via the HDMGlobal consortium which is an operating division of UOBE; and

D   You hereby wish to purchase a Licence (as defined below) to the Software.

IT IS HEREBY AGREED as follows:

1.   Definitions

The words and phrases below shall have the following meanings:

(a) "Agreement" shall mean this End-User Licence Agreement
(b) "UOBE" means University of Birmingham Enterprise Limited, the technology transfer company of The University of Birmingham.
(c) "Demonstration Licence" means a Licence for you to use limited functions provided by the Software for an unlimited period as an unlimited number of User Seats. Under a Demonstration Licence, the Software may be used with a demonstration database only.
(d) "Documentation" means the documents comprising the Highway Development and Management Series in their final published form. The documentation includes any and all data files associated with any and all language editions of the electronic documents, and any derived hardcopy and softcopy renditions thereof.

(e) "Education Licence" means a Licence for you to use all functions provided by the Software for Educational Purposes only, for an unlimited period as one (1) User Seat.

(f) "Educational Purposes" means the use of HDMGlobal Controlled Products in formal vocational and professional teaching courses (for example by faculty and students of universities and technical training institutes), undergraduate and postgraduate project, thesis or research activities, and formal HDM-4 training activities. It does not include consulting activities conducted by professional researchers and educators, which are not primarily educational in nature or any other use of a commercial nature. End-User Products prepared for Educational Purposes, or during educational activities, may not be used for, nor shall they be distributed to any party for, any commercial purpose.

(g) "End-User Product" means a data storage or output file generated by you using the HDMGlobal Controlled Products. Examples of End-User Products include HDM-4 databases, demonstration databases, data export files, reports saved in export file formats, and any hardcopy or softcopy renditions thereof and the like.

(h) "Full Licence" means a Licence for you to use all functions provided by the Software for an unlimited period as one (1) User Seat.

(i) "HDMGlobal" means the operating division of UOBE responsible for managing the Concession Agreement and which for the purposes of this Agreement shall mutatis mutandis mean UOBE so that where UOBE is written then it may be interpreted to mean HDMGlobal and vice versa save where legal title and/or a claim related to this Agreement is concerned where UOBE solely shall be the designated legal party.

(j) "HDMGlobal Controlled Products" means the set of products, comprising the Software, example case study data sets, Documentation, training and dissemination resources, and other defined objects, which has been developed by or for HDMGlobal.

(k) "Licence" means an agreement between you and UOBE, which gives you permission to use the Software under defined conditions and limitations.

(l) "Licence Pack" means a package of Licences having limits set on the number of User Seats and/or the type of usage.

(m) "PIARC" means the World Road Association which has granted the Concession Agreement to UOBE for the management of HDM-4 through HDMGlobal.

(n) "Software" means the HDM-4 programs, associated executable and data files and report template files in any or all language editions supplied by HDMGlobal herewith, and any and all version upgrades and maintenance updates thereto.

(o) "Software Licence Key" means the sequence of letters/characters that is entered to verify the user's entitlement to use the Software

(p) "User Seat" means the instance of the Software which is issued under a Licence and unlocked for use by the user with the Software Licence Key. The User Seat may be transferred to another computer using the licence transfer mechanism included in the software.

1.2   In this Agreement, unless otherwise expressly provided or unless the context otherwise requires:

   1.2.1 References to the singular include the plural and vice versa.

   1.2.2 References to words denoting any gender shall include all genders.

   1.2.3 References to clauses refer to clauses of this Agreement.

   1.2.4 The headings of this Agreement are for ease of reference only.

   1.2.5 Any undertaking by a Party not to do an act or thing shall be deemed to include an undertaking not to permit or suffer such acts or thing to be done by another person.

   1.2.6 References to the Parties include their respective successors in title, permitted assigns and legal personal representatives.

2. Licence

In Consideration of the payment you have made this Agreement allows you to:

(a) Install and use the Software as one or more User Seats, in accordance with the Licence Pack limitations, and make one copy of the Software in machine-readable form solely for backup purposes. You must reproduce on any such copy all copyright notices and any other proprietary legends on the original copy of the Software.

(b) Install the Software on a storage device, such as a network server, and run the Software on an internal network, provided the number of concurrent users does not exceed the number of User Seats purchased. For other than a Demonstration Licence, a Licence Pack must be purchased to provide each such User Seat.

(c) If you have purchased a multiple Licence Pack for the Software, such as a four-pack Licence, you may concurrently use, or allow to be used by personnel of your organisation only, the number of User Seats of the Software authorised by that purchase.

(d) Make copies of an End-User Product and distribute those copies without limitation, except as limited when produced, for Educational Purposes.

3. Licence Packs

This agreement applies to the following Licence Packs.

(a) Demonstration   : one Demonstration Licence
(b) Education   : one Educational Licence or multiples thereof
(c) Full   : one Full Licence or multiples thereof

4. Licence Restrictions

Other than as set forth in Section 2, you may not make or distribute copies of the Software, or electronically transfer the Software from one computer to another or over a network. You may not decompile, reverse engineer, disassemble, or otherwise reduce the Software to a human-perceivable form. You may not rent, lease or sub-licence the Software or allow for it to be accessed or used by third parties.

You may not modify the Software, except in relation to predictive model calibration or adaptation adjustments. You may not create derivative works based upon the Software, EXCEPT BY PRIOR PERMISSION OF UOBE WHICH SHALL BE PROVIDED IN WRITING.

5. Upgrades

If this copy of the Software is an upgrade from an earlier version of the Software, it is provided to you on a Licence exchange basis. You agree by your installation and use of this copy of the Software to voluntarily terminate your earlier end-user Licence and that you will not continue to use the earlier version of the Software nor transfer it to another.

6. Ownership

The foregoing Licence gives you limited rights to use the Software. Although you own the media on which the Software is recorded, you do not become the owner of, and UOBE retains title to, the Software, the Documentation, any and all other HDMGlobal Controlled Products, and all copies thereof. All rights not specifically granted in this Agreement, including International Copyrights, are reserved by UOBE.

Any software, software component, document, publication or other related intellectual work produced by any person in violation of the terms and conditions of this Agreement becomes immediately the absolute and sole property of UOBE.

7. Transfer of Licence

You may permanently transfer all of your rights under this Agreement, provided that you retain no copies, that you transfer all of the Software (including all component parts, the media and printed materials, any upgrades, this Agreement, and, if applicable, the Software

Licence Key), and that the recipient agrees to the terms of this Agreement. If the Software is an upgrade, any transfer must include all prior versions of the Software.

8.   Limited Warranties
UOBE warrants that, for a period of sixty (60) days from the date of delivery (as evidenced by a copy of your receipt): (i) when used with a recommended hardware configuration, the Software will perform in substantial conformance with the documentation supplied with the Software; and (ii) that the media on which the Software is furnished will be free from defects in materials and workmanship under normal use.

EXCEPT AS SET FORTH IN THE FOREGOING LIMITED WARRANTY, UOBE DISCLAIMS ALL OTHER WARRANTIES OR CONDITIONS, EITHER EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OR CONDITIONS OF QUALITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT OF THIRD PARTY RIGHTS. IF APPLICABLE LAW IMPLIES ANY WARRANTIES WITH RESPECT TO THE SOFTWARE, ALL SUCH WARRANTIES ARE LIMITED IN DURATION TO SIXTY (60) DAYS FROM THE DATE OF DELIVERY.

UOBE DISCLAIMS ANY WARRANTY OF TITLE OR OTHER WARRANTIES FOR ANY THIRD PARTY OFFERINGS OR PRODUCTS. ALL SUCH WARRANTIES AND REPRESENTATIONS ARE EXCLUDED.

WITHOUT LIMITATION, NO WARRANTY IS GIVEN THAT THE HDMGLOBAL CONTROLLED PRODUCTS ARE ERROR FREE.

No oral or written information or advice given by PIARC or UOBE, their dealers, distributors, agents or employees shall create a warranty or in any way increase the scope of this warranty.

Furthermore, You acknowledge and accept that upon termination of UOBE's Concession Agreement with PIARC UOBE shall not be liable for the updating, maintenance, management, development or other ongoing commitment including but not limited to technical support for the Software. In addition, You shall hold from liability both PIARC and UOBE with regard to same.

9.   Exclusive Remedy
Your exclusive remedy under Section 8 is to return the Software to the place you acquired it, with a copy of your receipt and a description of the problem. UOBE or its distributors will use reasonable commercial efforts to supply you with a replacement copy of the Software that substantially conforms to the documentation, provide a replacement for defective media, or refund to you your purchase price for the Software, at its sole discretion.   UOBE shall have no responsibility if the Software has been altered in any way, if the media has been damaged by accident, abuse or misapplication, or if the failure arises out of use of the Software with other than a recommended hardware configuration.

10.   Limitations of Damages
UOBE ITS LICENSORS, DISTRIBUTORS AND AGENTS SHALL NOT BE LIABLE WITH REGARD TO THIS AGREEMENT FOR:
(A) ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOSS OF BUSINESS, LOSS OF PROFITS, FAILURE TO REALISE EXPECTED SAVINGS OR THE LIKE), (B) ANY CLAIM AGAINST YOU BY ANY OTHER PARTY, (C) ANY CLAIM THAT YOUR USE OF HDMGLOBAL CONTROLLED PRODUCTS AND/OR RELATED PRODUCTS THAT ARE PROVIDED INFRINGE ANY THIRD PARTY'S INTELLECTUAL RIGHTS, (D) ANY CLAIM BY YOU, OR (E) ANY DAMAGES ARISING

FROM YOUR FAILURE TO PERFORM YOUR RESPONSIBILITIES IN CONNECTION WITH THIS AGREEMENT, OR ARISING FROM ANY CAUSE OUTSIDE OF OUR CONTROL, INCLUDING BUT NOT LIMITED TO DELAY IN THE PERFORMANCE OF OUR OBLIGATIONS, OR MISUSE OF YOUR SOFTWARE LICENCE KEY AND/OR YOUR USE OF THE SOFTWARE OR ANY PART THEREOF.

THESE LIMITATIONS APPLY TO ALL CLAIMS IRRESPECTIVE OF THE CAUSE OF ACTION UNDERLYING THE CLAIM, INCLUDING, BUT NOT LIMITED TO BREACH OF CONTRACT, TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE OR MISREPRESENTATION), PRODUCT LIABILITY OR OTHERWISE, EVEN IF UOBE OR ITS REPRESENTATIVES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF A REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

YOU SHALL INDEMNIFY UOBE ITS OFFICERS, SERVANTS AND AGENTS AGAINST ALL COSTS, CHARGES, EXPENSES, ACTIONS, CLAIMS AND DEMANDS IN RESPECT OF ANY LOSS OR DAMAGE TO ANY PROPERTY ARISING IN ANY WAY OUT OF OR IN CONNECTION WITH THE USE OF THE SOFTWARE OR ANY PART THEREOF.

UOBE'S TOTAL LIABILITY TO YOU FOR ACTUAL DAMAGES FOR ANY CAUSE WHATSOEVER WILL BE LIMITED (EXCEPT AS REQUIRED BY LAW) TO THE LESSER OF $200 U.S. EQUIVALENT OR THE AMOUNT PAID BY YOU FOR THE SOFTWARE THAT CAUSED SUCH DAMAGE.

11. Basis of Bargain

The limited warranty, exclusive remedies and limited liability set forth above are fundamental elements of the basis of this Agreement between UOBE and you. UOBE would not be able to provide the Software on an economic basis without such limitations and you hereby agree that these are reasonable and fair and that you acknowledge that you will be prevented from claiming the contrary at any future date in the event of any dispute with UOBE concerning liability.

12. Severability

If any part of this Agreement is found void and unenforceable, it will not affect the validity of the balance of the Agreement, which shall remain valid and enforceable according to its terms.

13. Termination

Without prejudice to any other rights, UOBE may terminate this Agreement if you fail to comply with its terms and conditions. In such event you must destroy all copies of the Software and all of its component parts.

14. Variation to this Agreement

This Agreement may be modified only in writing signed by an authorised agent of UOBE. UOBE may at its sole discretion vary the terms of this Agreement in connection with the licensing of any upgrades or updates to you.

15. Law

This Agreement shall be read, construed and governed by the laws of England.

16. General

This Agreement contains the complete agreement between the parties with respect to the subject matter hereof, and supersedes all prior or contemporaneous agreements or understandings, whether oral or written. All questions concerning this Agreement shall be directed to: HDMGlobal, University of Birmingham Enterprise Limited, Birmingham Research Park, Vincent Drive, Edgbaston, Birmingham B15 2SQ, United Kingdom.