



THE HIGHWAYS AGENCY

Part 3: Model Contract Document for Ground Investigation Contracts - England

Summary: This edition of the Model Contract Document for Ground Investigation - England, replaces the August 1997 edition.

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**VOLUME 5 CONTRACT DOCUMENTS
FOR SPECIALIST
ACTIVITIES**

**SECTION 3 GROUND
INVESTIGATION**

PART 3

MODEL CONTRACT DOCUMENT

SUMMARY

This edition of the Model Contract Document for Ground Investigation - England, replaces the August 1997 edition.

INSTRUCTIONS FOR USE

This is a replacement document to be incorporated into the manual.

1. Remove Part 3 of Volume 5, Section 3 of the MCHW and archive as appropriate.
2. Insert this new Part 3 into Volume 5, Section 3 of the MCHW.
3. Remove the Contents page dated August 1997 and insert Contents page dated August 1999.
4. Archive this sheet as appropriate.

Note: A quarterly index with a full set of Volume Contents Pages is available separately from The Stationery Office Ltd.

REGISTRATION OF AMENDMENTS

Amend No	Page No	Signature & Date of incorporation of amendments	Amend No	Page No	Signature & Date of incorporation of amendments

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**VOLUME 5 CONTRACT DOCUMENTS
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**SECTION 3 GROUND
INVESTIGATION**

PART 3

MODEL CONTRACT DOCUMENT

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1. INTRODUCTION

This Model Contract Document (MCD) is issued by the Highways Agency, an Executive Agency of the Department of Environment Transport and the Regions, as part of the Manual of Contract Documents for Highways Works. It is divided into two sections:-

- a) The first section, Chapter 2, contains the Instructions for Tendering and an outline Location and Brief Description of the Investigation.
- b) The second section, Chapters 3 to 7, forms the contractual part of the Model and contains actual or typical contract documentation. The material is presented in the normal sequence appropriate to a contract for a Ground Investigation Survey.

None of the material in the first section will form part of the contract. This material should be sent separately to tenderers with the letter of invitation to tender. This material must not be bound into tender documents.

However, any information or instruction to tenderers, however communicated, may, depending on individual circumstances, have contractual implications and it is therefore necessary to obtain prior approval from the Roads Procurement Policy Division of the Highways Agency, via operating units contracts sections, for any departures from the text contained in either section of this MCD.

The Guidance Notes are intended to assist users of the MCD in the preparation of contract documents.

ENQUIRIES:-

Enquiries on this MCD should be addressed to:- The Highways Agency, Roads Procurement Policy Development Division, Room 4/83, St Christopher House, Southwark Street, London, SE1 OTE. It would be helpful if these could be in writing and initially directed via the appropriate Highways Agency Contracts Section.

2. INSTRUCTIONS FOR TENDERING

Tenders must be submitted in accordance with the following instructions. Tenders not complying with these instructions in any particular may be rejected by the Employer whose decision in this matter shall be final.

1. (i) The tender document must be treated as private and confidential. Tenderers should not disclose the fact that they have been invited to tender or release details of the tender document other than on an "In Confidence" basis to those who have a legitimate need to know or whom they need to consult for the purpose of preparing the tender.

(ii) Tenderers shall not at any time release information concerning the invitation to tender and/or the tender documents for publication in the press or on radio, television, screen or any other medium.
2. Tenderers should note that the Contract will not include a Contract Price Fluctuations Clause.
3. Any queries arising from the tender documents which may have a bearing on the offer to be made should be raised with the Engineer as soon as possible (preferably in writing) and in any case not later than 14 days before the date for the return of tenders. The Employer will be ready to consider properly reasoned requests for an extension of the tender period.
4. Where it is desired to submit a tender involving alternative methods or modifications hereinafter called "proposals" this should be done by way of an alternative tender. But no alternative tender will be considered unless a tender based strictly on the documents without qualification is also submitted. Any alternative tender must also be free of qualifications and be fully priced to show clearly how and where costs would differ from the primary tender. The Tenderer should approach the Engineer to ascertain whether special criteria and requirements apply in respect of the alternatives or modifications he is contemplating. Any such approach will be treated in confidence but the following procedure must be followed. Tenderers must conform with the following procedure if making any proposals.
 - (i) No proposals will be considered unless the intention to make them has been notified in writing to the Engineer as early as possible and in any case not less than 2 weeks before the closing date.
 - (ii) The proposals shall be submitted in outline at this stage. Following receipt of this notification the Engineer will, after consultation with the Employer, give a preliminary opinion on the outline proposals. This opinion will not be binding on the Engineer or the Employer, but will be made to indicate whether it is worthwhile for the Tenderer to proceed with detailed proposals.
 - (iii) All proposals shall be submitted as a tender and explained sufficiently for them to be technically assessed. The cost of implementing the proposals and the time taken to complete them shall also be given.
 - (iv) Proposals shall be submitted at the same time and under the same conditions as the issued tender documents, as set out in Paragraph 10.
5. Tenderers attention is drawn to paragraphs 3.24 and 3.25 of the specification for the following
 - i) Accreditation of drillers
 - ii) UKAS accreditation

6. Tenderers will observe that tenders are invited for alternative times for completion of the whole of the Investigation.

- a. in weeks
- b. in weeks

Two sets of Bills of Quantities have been included for each period. Where the price for each alternative time is different the Tenderer must submit a fully itemised priced Bill of Quantities for each with his tender.

7. (i) Attention is directed to the Special Requirements in relation to:-

.....
and to the fact that it will be necessary when effecting the insurance required by Clause 23 of the Conditions of Contract to let the Insurers know of these Special Requirements.

8. (i) Tenderers are reminded of the arrangements for the disposal of hazardous material in the Specification.
- (ii) Tenderers are particularly reminded of the requirements of The Control of Pollution Act 1974, The Control of Pollution (Amendment) Act 1989 (relating to the identification of disposal sites and sources of fill) together with the provisions of the Environmental Protection Act 1990.

9. Tenderers' attention is directed to the Preamble to the Bill of Quantities and to Clause 3.4 of the Specification regarding the phasing of the Investigation in respect of existing services and supplies.

10. (i) The tender(s) should be made on the Form of Tender incorporated in the tender document. It should be signed by the Tenderer and submitted with the Bill of Quantities, which should be priced extended and totalled in ink, and accompanied by the Conditions of Contract, and the Specification to the address and by the date and time stated in paragraph 15 below.
- (ii) No unauthorised alteration or addition should be made to the Form of Tender, to the Bill of Quantities or to any other component of the tender document. Tenders must not be qualified in any other way, but must be submitted strictly in accordance with the tender document and these instructions. Tenders must not be accompanied by any covering letter or any statements that could be construed as rendering the tender equivocal and/or placing it on a different footing from other tenders.

11. It is the practice to publish the amount of the successful tender and the name of the Tenderer.

12. (i) Unit rates and prices and extensions must be quoted in pounds and whole pence. The terms 'nil' 'included' and/or '-' are not to be used, but should be indicated as '£0.00.' Figures must be inserted against each item in the Bill of Quantities (but see Paragraph 6). Before a contract is awarded, the Employer will write to any tenderer whose tender has required arithmetical adjustment.
- (ii) 'Credit' values in favour of the Engineer shall not be inserted against any item(s) in the Bill of Quantities.
- (iii) Tenderers should particularly note that the principles governing public procurement require that, as far as is reasonably possible, payments for Goods Works or Services are made after provision. Therefore any indication of a pricing strategy within a tender which provides for substantial payments at the outset of the Contract will be examined carefully to decide whether or not a tender in such form can be accepted. If in the opinion of the Employer such substantial early payments appear excessive in relation to the requirements of the Contract the Employer reserves the right to require the tenderer to spread such proportion of the costs as are considered excessive over the duration of the Contract. The Employer reserves the right to reject the lowest or any tender where in the opinion of the Employer early payments appear excessive.

13. The Employer does not bind himself to accept the lowest or any tender. It is the Employer's policy to make every effort to reach a decision on the award of any contract within 60 days of the closing date for submission of tenders. If the 60 day period appears likely to be exceeded, the Employer will initially seek to negotiate an extension of that period with Tenderers. However, if exceptionally this is not possible or delay appears likely to be excessive, the Employer may re-tender the work. Tenders must therefore remain open for acceptance for a minimum of 60 days from the tender return date.

14. (i) Tenderers should note that calculation of liquidated damages under clause 47 of the conditions will be based on the following formula:-

$$\text{Final Tender Price} \times 12.5\% \div 365 + \text{daily supervision cost} = \text{£}..... \text{ per day}$$

This daily figure reflects both loss of capital invested and extra administration costs incurred as a result of the delay in completion of the investigation. The Employer will insert the actual figure based on this formula in the Appendix to the Form of Tender following award and forward a copy of the Appendix to the successful Tenderer with the award letter. The amount for supervision costs for this investigation are expected to be [£...] per day.

(ii) Where a contract provides for sectional completion the figures to be derived for the various Section(s) of the Investigation are expressed as a percentage of the daily rate calculated in accordance with the formula given at 14(i) above. The percentage(s) to be used for the calculation of actual values for each Section are indicated in the Appendix to the Form of Tender at (B), below the schedule for Liquidated Damages. These percentages will be used by the Employer to insert in the schedule for Liquidated Damages in the Appendix to the Form of Tender actual values against each Section immediately prior to an award. A copy of the schedule as completed by the Employer will be forwarded to the successful Tenderer with the award letter.

15. Tenders should be sent by registered post, recorded delivery, or delivered by hand in a plain sealed envelope. Whichever method is used, the envelope, or any franking thereon, must not bear any marks, sign or reference which might identify the Tenderer. The envelope must be clearly marked as follows:-

'TENDER FOR
addressed to
.....
so as to arrive not later thanon

Tenders must not be sent by any other form of postal service.

16. Any drawings and other documents not returned with the tender(s) are to be sent to:-

.....
.....

17. Tenderers should note that the tender document includes a requirement for Section(s) of the Investigation to be completed before the Time for Completion of the Whole of the Investigation. (See Schedule 1.4 of the Specification).

18. Tenderers should note that the Date for Commencement of the Investigation will be notified to the Contractor in writing by the Engineer in accordance with Clause 41 of the Conditions of Contract. A period of some ... weeks may be expected to elapse between the date of award of the Contract and the Date for Commencement of the Investigation as notified by the Engineer.

19. Tenderers should note that tenders and supporting documents must be written in English and that any subsequent contract, which may or may not be entered into, its formation, interpretation and performance, shall be subject to and in accordance with English law.

20. Tenderers shall submit details of their existing insurance or insurance proposals for the Employer's approval with their tender as follows:-

- (i) Details of the terms of the insurance they propose to effect, or which they already hold and intend to use, to meet the requirements of Clause 23 of the Conditions of Contract, must be submitted. Where the insurance terms submitted for approval provide for an 'excess sum' (that being the portion of each claim for which, or below which, the insurer is not liable), Tenderers must include with their tenders a statement undertaking responsibility for dealing with third party claims, or parts of such claims, within the excess amount. Insurance provisions containing excess sums of more than £2,500 will not be approved.
- (ii) Details of any insurances they already hold or propose to effect to meet the requirements of Clause 21 of the Conditions of Contract. Where the insurance terms submitted for approval provide for an 'excess sum' (that being the portion of each claim for which, or below which, the insurer is not liable.) The Employer will allow the following levels of excess:-

- (a) Against the requirements of Clause 21 (a):-

- 1) Where the total sum of the tender is £100,000 or less - an excess of £2,500
- 2) Where the total sum of the tender is £100,001 to £999,999 - an excess of £5,000.

- (b) Against the requirements of Clause 21 (b):-

An excess sum of £2,500.

An excess sum of more than £2,500 will NOT be approved.

Tenderers must include with their tenders a statement undertaking responsibility for dealing with claims, or parts of such claims, within the excess amount.

- (iii) Questions about insurance terms may be raised with the Engineer in writing at the earliest possible opportunity and in any event before return of tenders. Tenderers should particularly note that failure to present the required insurance details as requested may delay consideration of the tender by the Employer. No contract will be awarded until existing insurances or insurance proposals have been inspected and approved.

21. The attention of Tenderers is directed to the provisions in the Contract for the erection and maintenance of temporary and permanent fencing (Clause 3.7 of the Specification) and to the obligations of the Contractor in respect of claims under Clause 22 of the Conditions of Contract. Such obligations will include responsibility for all claims arising in respect of penetration of livestock onto the Site.

22. Tenderers should note that to the extent that the Contractor will be required by the provisions of the Contract to carry out the Investigation by a particular method which necessarily involves the employment of a patented invention or process, the Contract carries implied authority for the use of that invention or process for the services of the Crown under Section 55 of the Patents Act 1977 so that such use does not amount to an infringement of the patent concerned. This instruction is not to be taken as an admission that the requirements of the Contract necessarily involve the employment of any patented invention or process, and no authority will be implied if the provisions of the Contract can be met by the use of non-patented inventions or processes.

23. Tenderers' attention is drawn to the arrangements for the calculation of the minimum amounts of Interim Certificates.

24. Arrangements for inspection of the Site which involve access to land the Employer does not own must be made through the Engineer, in order that prior permission is obtained from occupiers before going on to property. However, Tenderers should note that permission to enter private land during the tender period cannot be guaranteed. Whilst on the property care must be taken to minimise disturbance to the occupiers.

25. Tenderers' attention is drawn to the additional new clause (Clause 79) requiring the Contractors' and sub-contractors' goods vehicles to carry at all times an O-licence disc or documents appertaining to the operator's licence. Tenderers are advised that the Highways Agency will notify the Vehicle Inspectorate Agency (VI) of the commencement of works so that VI may carry out spot-checks on goods vehicles to ensure that they are operating legally.

26. The successful Tenderer must register the site under the Considerate Constructors Scheme. Tenderers must allow all costs for registering the site, including appropriate fee and for using best endeavours to comply with the Scheme's Code of Practice. The cost of this scheme is deemed to be included in the tender and no additional costs will be met by the Employer.

27. Adjudication: the Model Adjudication Procedure, published by the Construction Industry Council, second edition dated November 1998 will be used for this Contract. A list of proposed names of adjudicators is at Annex A. Tenderers should indicate with their tender whether any of the proposed adjudicators are acceptable and whether the proposed terms of appointment (at Annex B) are also acceptable. If proposed adjudicators are not acceptable tenderers should propose three names (including addresses and telephone numbers) with their tenders.

28. Adjudicator: in the event of a dispute, an appointment will be made jointly by the Employer and the Contractor from Annex A. If tenderers disagree with any of these proposals they must include their alternative proposals with their tender. Please note that the Employer and the Contractor shall each bear 50% of the costs of the adjudicator.

Annex A: List of Proposed Adjudicators

Annex B: Appointment of Adjudicator (see Chapter 7)

GUIDANCE NOTES FOR COMPILING INSTRUCTIONS FOR TENDERING

Nothing should be included in the Instructions for Tendering which may have influence upon the rates to be inserted in the Bill of Quantities or which is required to be contractual in any sense. The plural should be used only when alternative tenders are being invited.

PARAGRAPH 2. It is not generally anticipated that Ground Investigation Contracts will require Contract Price Fluctuation Provisions. Exceptionally, Contract Sections should consult RPP if such clauses are required.

PARAGRAPH 3. This instruction requires queries on tender documents to be raised with the Engineer within a specified period. The date may vary according to the tender and the tendering period but it should be at least 14 days before the date for return of tenders.

PARAGRAPH 4. The two weeks notice required under sub-paragraph (i) is intended for major modifications. This period should not be a barrier to the consideration of minor modifications.

When giving his opinion about engineering acceptability of the modifications, the Engineer should confirm in writing that this is his preliminary opinion and is not binding.

PARAGRAPH 4. Sub-paragraphs (iii) and (iv). OUs should obtain the Engineer's agreement to the checking proposals and to acceptance of responsibility for the alternative **method of working** and the Contractor's agreement to pay the cost of the check and of any necessary modifications to the **method of working**, before awarding the contract.

PARAGRAPH 6. Should be included ONLY in those cases where tenders for alternative times for completion are sought for the whole of the Investigation. Note this will require the issue of two sets of blank Bills of Quantities to each Tenderer.

PARAGRAPH 7.(i) This paragraph should be omitted if there are no Special Requirements in relation to any Statutory Bodies. The names of any bodies who are affected by the Investigation, and with whose Special Requirements the Contractor must comply, should be inserted; e.g. Railtrack, The British Coal Corporation, British Telecom plc etc. Any Special Requirements which other Statutory Bodies likely to be involved may wish to propose should be cleared with Operating Unit Contracts Sections before inclusion. Wherever available, Departmental standard requirements MUST be used.

PARAGRAPH 13. The minimum 60 day period is indicated to avoid misunderstandings.

PARAGRAPH 14.(i) Those preparing tender documentation for the Agency's schemes will particularly wish to note the procedures applying to the calculation of liquidated damages. The value of the lowest tender can reasonably be taken to represent the best market pre-estimate of the value of the Investigation to the Employer. The formula given produces the largest figure which can be applied as standard and need not be amended. Any case in which late completion would be more than normally damaging to the Employer must be referred to the local Operating Unit Contracts Section of the Agency by the Engineer before any invitation to tender is made. The Employer will insert the actual figure for Liquidated Damages in Column 1 of the table on the basis of the formula given, immediately prior to an award. A copy of the completed table is to be forwarded to the successful Tenderer under cover of the award letter.

PARAGRAPH 14.(ii) Should only be included where a requirement exists for sectional completion of the Investigation. The Engineer must insert, before tender invitation the appropriate percentages in (B) against each section given, below the table for Clause 47 Liquidated Damages in the Appendix to the Form of Tender. These percentages will be used by the Employer to insert in the table actual values against each section calculated from the daily Liquidated Damages figure produced from the final contract award price using the formula given, immediately prior to award. A copy of the completed table is to be forwarded to the successful tenderer under cover of the award letter.

PARAGRAPH 15. Should be completed as appropriate.

PARAGRAPH 16. Should be completed as appropriate.

PARAGRAPH 17. Should be included only when the document includes a requirement for Section(s) of the Investigation to be completed before the Time for Completion of the Whole of the Investigation. The number of the clause describing the requirement should be inserted. Each Section should be separately described and identified. The identification should be carried forward to the Appendix to the Form of Tender. (See Note under the heading 'Time for Completion (Section(s))').

PARAGRAPH 18. An estimate of the likely period between the award of contract and the Date for Commencement of the Investigation notified in writing by the Engineer under Clause 41 should be inserted in this paragraph.

PARAGRAPH 19. Should be included only in documents for contracts where the Agency's voluntary advertising threshold of £1m applies (or applies as subsequently amended). (See EEC Directive 71/305 as amended by 89/440).

PARAGRAPH 20. If insurance details in respect of Clauses 21 and 23 are not submitted with any tenders, they should be immediately requested and the tenderer reminded that delay in submission might postpone further consideration of his tender. Such details must be obtained before the award of any contract.

PARAGRAPH 21. The final sentence of this paragraph should be included only when applicable.

The Location and Brief Description of the Investigation should be issued to Tenderers separately with the Invitation to Tender and should not be bound into the tender document. It is important that no statements are included which could be construed as having a contractual effect, (for example by quoting any fixed date for the Commencement of the Investigation).

LOCATION AND BRIEF DESCRIPTION OF THE INVESTIGATION

(For tendering purposes and does not form part of the contract documents).

Name of Tenderer

HIGHWAYS AGENCY

Short Title of the Investigation:-
.....

- FORM OF TENDER
- CONDITIONS OF CONTRACT
- SPECIFICATION
- BILL OF QUANTITIES

Engineer for the Works:-

.....
.....
Date

3. FORM OF TENDER AND AGREEMENT

GROUND INVESTIGATION CONTRACT FOR

.....

FORM OF TENDER INCORPORATING
ANTI - COLLUSION CERTIFICATE
(NOTE: The Appendix forms part of the Tender)

To:-

Having examined the Drawings, Conditions of Contract, Specification and Bill of Quantities for the above-mentioned Investigation (and the matters set out in the Appendix hereto), we offer to carry out and complete the said Investigation in conformity with the said Drawings, Conditions of Contract, Specification and Bill of Quantities for such sum as may be ascertained in accordance with the Conditions of Contract.

We undertake to complete the Investigation comprised in the Contract within the time(s) stated in the Appendix hereto.

We understand that you are not bound to accept the lowest, most economically advantageous or any tender you may receive.

We further certify that this tender is made in good faith, and that we have not fixed or adjusted the amount of the tender by or under or in accordance with any agreement or arrangement with any other person. We also certify that we have not and we undertake that we will not before the award of any contract for the work:-

- (i)

(a)

communicate to any person [outside this consortium]other than the Secretary of State or a person duly authorised by him in that behalf the amount or approximate amount of the tender or proposed tender, except where the disclosure, in confidence, of the approximate amount of the tender was necessary to obtain insurance premium quotations required for the preparation of the tender;

(b)

enter into any agreement or arrangement with any person that he shall refrain from tendering or as to the amount of any tender to be submitted;
- (ii)

Pay, give or offer or agree to pay or give any sum of money or other valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done in relation to any other tender or proposed tender for the work, any act or thing of the sort described at (i) (a) or (b) above.

We also certify that the principles described in paragraph (i) and (ii) above have been, or will be, brought to the attention of all subcontractors, suppliers and associated companies providing services or materials connected with the tender and any contract entered into with such subcontractors, suppliers or associated companies will be made on the basis of compliance with the above principles by all parties.

In this certificate, words and expressions shall have the same meanings as are respectively assigned to them in the Conditions. The word “person” includes any persons and any body or association, corporate or unincorporate; “any agreement or arrangement” includes any transaction, formal or informal and whether legally binding or not; and “the survey” means the work in relation to which this tender is made.

Dated this day of 19

Signature In capacity of

Duly authorised to sign tenders for and on behalf of:-

Postal Address:-

Fax No:- Telephone No:-

APPENDIX TO THE FORM OF TENDER

(This replaces the form on page 34 of the ICE Conditions of Contract for Ground Investigations)

(Note:- Relevant Clause numbers are shown after the description)

Time To be Allowed For (Clause 14(5))

Provision/Approval of Testing Schedule weeks

Approval of Draft Report weeks

Approval of Final Report weeks

LIQUIDATED DAMAGES FOR DELAY:- (Clause 47)

		Column 1 see Clause 47(1)	Column 2 see Clause 47(2)	Column 3 see Clause 47(2)
For the Whole of the Investigation n	....Weeks	£..... per day	-	-
For the following Sections:				
Section ..... .....	.... Weeks	-	£..... per Day	£..... per Day
Section ..... .....	.... Weeks	-	£..... per Day	£..... per Day
Section ..... .....	.... Weeks	-	£..... per Day	£..... per Day

Column 1 Liquidated Damages for this contract have been calculated as follows:-

(A) Final tender price at **Award Date** x 12.5% + 365 + daily supervision cost = £..... per day

(A) The daily rates for Liquidated Damages in the schedule are completed by the Employer immediately prior to award of the Contract.

(B) Figures to be derived for each section of the contract in column 2 and 3 are expressed as a percentage of the daily rate at (a) above:-

Section 1%
Section 2%
Section 3%

Period of Maintenance (Clause 49(1)) Weeks

Highways Agency Specification and Method of Measurement for Ground Investigation (1997) adopted in preparation of Bills of Quantities (Clause 57).

Minimum Amount of Insurance:- (Clause 23(2)) £ (in respect of any one incident)

Time for Completion:- (Clause 43) Weeks
(subject to a maximum of) Weeks

Section 1 Weeks (*) (subject to a maximum of) Weeks
Section 2 Weeks (*) (subject to a maximum of) Weeks
Section 3 Weeks (*) (subject to a maximum of) Weeks

(*) to be inserted by the tenderer

Percentage of Value of Goods and Materials to be included
in Interim Certificates:- (Clause 60(2)(b)) 97%

Minimum Amount of Interim
Certificates:- (Clause 60(1)) (**) £

(**) To be calculated by the Employer using the following formula:-

Total sum of the accepted tender ÷ contract period (months) =
(£ sum) ÷ 4 = £ (minimum value of interim certificates).

Name of the Planning Supervisor (Clause 72(1)(b))
Address

Name of the Principal Contractor (Clause 72(1)(b))
Address

4. CONDITIONS OF CONTRACT

The Conditions of Contract referred to in the Tender shall be the Institution of Civil Engineers Conditions of Contract for Ground Investigation (First Edition) (October 1983) issued jointly with the Association of Consulting Engineers and the Federation of Civil Engineering Contractors, modified and added to as below:-

CLAUSE 1

Sub-clause (1)(a) is deleted and substituted by the following:-

(a) 'Employer' means
of
and includes the Employer's successors;

Sub-clause (1)(c): for the purposes of this clause:-

(c) 'Engineer' means
in place of the said

New sub-clause (1)(6) is added as follows:-

"Communications which under the Contract are required to be "in writing" may be hand written typewritten or printed and sent by hand post telex cable facsimile or other means resulting in a permanent record."

CLAUSE 13

Sub-clauses (4) (5) (6) and (7) are deleted and substituted by the following sub-clause:-

Continuation Required by Conditions

(4) If during the execution of Site Operations the Contractor encounters or expects to encounter ground or geological conditions which in his opinion make it necessary for the effectiveness of the Investigation or for the adequacy of the Report to continue the excavation of exploratory holes sampling or in situ testing to a greater depth than is included in the Schedules before Equipment is moved from the position of the exploratory hole or excavation then the Engineer or his representative shall be contacted immediately for further instructions.

CLAUSE 14

Sub-clause (1) is deleted and substituted by the following:-

Programme to be Furnished

(1) Within 14 days after the acceptance of his Tender the Contractor shall submit to the Engineer for his approval a programme showing the order in which he proposes to carry out the Investigation and thereafter shall furnish such further details and information as the Engineer may reasonably require in regard thereto. The Contractor shall at the same time also provide in writing for the information of the Engineer a description of the arrangements and methods which the Contractor proposes to adopt for the carrying out of the Investigation. The programme submitted by the Contractor pursuant to this sub-clause shall take into account the period or periods for completion of the

Investigation or different Sections thereof and the periods for approval or provision of testing schedules and the approval of reports which are provided for in the Appendix to the Form of Tender.

Sub-clause (5) is deleted and substituted by the following:-

Period For Approvals

(5) If the time taken by the Engineer to provide or approve the testing schedules, or to approve the Contractor's draft Report or final Report, exceeds the appropriate period shown in the Appendix to the Form of Tender, and as a result the Time for Completion of the whole of the Investigation or Section thereof is exceeded, the Engineer shall grant an extension of time in accordance with Clause 44 in respect of the time taken by him in excess of the appropriate period. The time taken by the Engineer in providing or approving these matters shall be calculated as follows:-

- (a) Where the Contract requires the Engineer to approve the Contractor's testing schedule, as the time elapsed between dispatch by the Contractor of his Schedule and receipt by him of the Engineer's disapproval or approval, or
- (b) Where the Contract requires the Engineer to provide the testing schedule, as the time elapsed between dispatch by the Contractor of his preliminary record of exploratory holes and the receipt by him of the Engineer's disapproval or approval, or
- (c) As the time elapsed between dispatch by the Contractor of his draft Report or final Report and receipt by him of the Engineer's disapproval or approval.

CLAUSE 22

Sub-clause (1)(b)(v) The following is inserted before 'injuries' in line one:-

'except as provided by sub-clause (3) of this Clause;'

The following sub-clause is added:-

Extension of Indemnity

(3) For the purpose of this Contract provisos (a) and (b)(v) to sub-clause (1) of this Clause shall not include any injury or damage to persons or property arising out of any accident involving a vehicle supplied by the Contractor for use by the Engineer and occurring when such vehicle is being driven by or is in the charge of the Engineer or any person authorised by it and in relation to this sub-clause proviso (a) to the said sub-clause (1) shall have effect with the insertion (for the removal of doubt) of the expression 'Engineer or the' before the second occurrence in that proviso of the word 'Employer'.

CLAUSE 27(1)

The existing sub-clause is deleted and substituted by the following:-

New Roads and Street Works Act 1991 - Definitions

(1) For the purpose of this Clause:-

- (a) the expression 'the Act' shall mean and include the New Roads and Street Works Act 1991 and any statutory modification or re-enactment thereof for the time being in force;

- (b) all other expressions common to the Act and to this Clause shall have the same meaning as that assigned to them by the Act.

CLAUSE 27(4)

The existing sub-clause is deleted and substituted by the following:-

Notices by Contractor to Employer

(4) The Contractor shall in relation to any part of the Investigation (other than Emergency Works) and subject to the compliance by the Employer with sub-clause (2) of this Clause give not less than 21 days' notice in writing to the Employer before:-

- (a) commencing any part of the Investigation in a Street (as defined by Section 48(1) of the Act); or
- (b) commencing any part of the Investigation in Controlled Land or in a Prospectively Maintainable Highway; or
- (c) commencing in a Street or in Controlled Land or in a Prospectively Maintainable Highway any part of the Investigation which is likely to affect the apparatus of any Owning Undertaker (within the meaning of Section 48(4) and (5) of the Act).

Such notice shall state the date on which and the place at which the Contractor intends to commence the execution of the work referred to therein.

CLAUSE 28

The existing Clause is deleted and substituted by the following:-

Patent Rights and Royalties

(1) The Contractor shall save harmless and indemnify the Employer from and against all claims and proceedings for or on account of use of any patent rights design trade-mark name or other protected rights in respect of any Constructional Plant machine work or material used for or in connection with the Investigation and from and against all claims demands proceedings damages costs charges and expenses whatsoever in respect thereof or in relation thereto.

CLAUSE 29

The following sub-clauses are added:-

Protection of Water Resources

(3) The Contractor shall be aware of the Statutory responsibilities of the Environment Agency for the protection of water resources. Notwithstanding this subject and without prejudice to any other provision of the Contract the Contractor shall take all necessary precautions in connection with any underground water resources (including percolating water) rivers streams ditches drains cuts culverts dykes sluices lakes ponds reservoirs docks channels creeks bays estuaries or arms of the sea and the like to prevent:-

- (i) any interference with the supply to or abstraction from such sources
- (ii) silting

- (iii) erosion of their beds or banks
- (iv) pollution of the water so as to effect adversely the quality or appearance thereof or cause injury or death to animal aquatic or plant life.

Avoidance of Dust and Debris Nuisance

- (4) The Contractor shall take all necessary measures to prevent damage loss injury or nuisance caused by:-
- (i) mud dirt stones or other material used or generated whilst carrying out the Investigation. This shall include but not be limited to ensuring that no fuel or lubricant mud dirt stones or other material is spilled or deposited on the highway whether or not it is open to traffic.
 - (ii) smoke or dust generated whilst carrying out the Investigation.

CLAUSE 30

The following sub-clause is added:-

Routeing of Vehicles

(4) Without prejudice to the foregoing provisions of this Clause the Contractor his sub-contractors and suppliers shall comply with the requirements given in the Contract for the routeing of their vehicles. The Contractor shall erect and maintain in good condition signs of a type approved by the Engineer giving effect to these routeing requirements.

CLAUSE 34

The existing Clause is deleted and substituted by the following:-

‘Not Used.’

CLAUSE 36

Sub-clause (3) second line, delete ‘Engineer’s instructions’ and substitute:- ‘contract’.

CLAUSE 42

Sub-clause (2) is deleted and substituted by the following:-

Entry

(2) Entry onto land required for the purpose of the Investigation and access thereto will be arranged with the owners and occupiers concerned by the Employer but the Contractor shall not enter onto such land or use such access without first complying with the requirements of the Contract. The Contractor shall provide at his own cost any additional accommodation outside the Site required by him for the purposes of the Investigation.

Add the following sub-clause:-

Refusal of Entry

(3) If access or entry onto land is refused the Contractor shall immediately notify the Engineer in writing giving the names and addresses of the interested parties.

CLAUSE 47

Sub-clause (1)(b) lines six to ten inclusive delete final sentence.

CLAUSE 48

Sub-clause (1) line five delete '14' and substitute:- '21'.

CLAUSE 57

The existing Clause is deleted and substituted by the following:-

Method of Measurement

Except where any statement or general or detailed description of the work in the Bill of Quantities expressly shows to the contrary Bills of Quantities shall be deemed to have been prepared and measurements shall be made according to the procedure set down in the Highways Agency Specification and Method of Measurement for Ground Investigation (1997).

CLAUSE 60

Sub-clause (1): the existing first paragraph is deleted and replaced with the following:

Monthly Payments

(1) Unless otherwise agreed the Contractor shall submit to the Engineer at monthly intervals commencing one month after the Date for Commencement of the Investigation pursuant to Clause 41 a statement (in such form if any as may be prescribed in the Specification) showing:-

Sub-clause (2) is amended as follows:-

between lines 11 and 12 insert new paragraph below:-

"The payments become due on certification with the final date for payment being 28 days after the date of delivery of the Contractor's monthly statement."

Sub-clause (3): delete the existing last sentence of Clause 60(3) and replace with the new last paragraph as follows:-

Final Account

Such balance shall subject to Clause 47 be paid to or by the Contractor as the case may require. The payment becomes due on certification. The final date for payment is 28 days later.

Sub-clause (4) is deleted and substituted by the following:-

Retention

(4) The retention to be made pursuant to sub-clause (2)(a) of this Clause shall be the sum equal to 5% of the amount due to the Contractor except that the amount accumulated in the hand of the Employer shall be reduced by the amount of any payment that shall have been made pursuant to sub-clause (5) of this Clause.

Sub-clause (5)(c) delete existing line 1 and replace with the following:-

The final date for payment for the other half of the retention money to be paid to the Contractor is 14 days.

Line 2 insert after 'Maintenance':-

'or within 14 days of the issue of a certificate for the completion of the whole of the Investigation (whichever is the later).'

Sub-clause (6) is deleted and substituted by the following:-

Interest on Overdue Payments

(6) In the event of failure by the Engineer to certify or the Employer to make payment in accordance with sub-clauses (2), (3) and (5) of this Clause the Employer shall pay to the Contractor interest upon any payment overdue thereunder. Unless the provisions of the Late Payment of Commercial Debts (Interest) Act 1998 otherwise require interest will be paid at a rate per annum equivalent to 1 per cent plus the average of the Base Lending Rates announced by Lloyds, Barclays, National Westminster and Midland Banks which are current on the date upon which such payment first becomes overdue. In the event of any variation in the said Base Lending Rates being announced whilst such payment remains overdue the interest payable to the Contractor for the period that such payment remains overdue shall be correspondingly varied from the date of each such variation.

Sub-clause (8): delete the existing Clause 60(8) and replace with new Clauses 60(8) and (9) below:-

(8) Every certificate issued by the Engineer pursuant to this Clause shall be sent to the Employer and on the Employer's behalf to the Contractor. By this certificate the Employer shall give notice to the Contractor specifying the amount (if any) of the payment proposed to be made and the basis on which it was calculated.

(9) Where a payment under Clause 60(2) or (3) is to differ from that certified or the Employer is to withhold payment after the final date for payment of a sum due under the Contract the Employer shall notify the Contractor in writing not less than one day before the final date for payment specifying the amount proposed to be withheld and the ground for withholding payment or if there is more than one ground each ground and the amount attributable to it.

CLAUSE 63

Sub-clause (1)(c) line three insert 'including ancillary works' after 'work'.

Clause 66 Settlement of disputes

The existing clause 66 is deleted and replaced with the following:

Adjudication

(1) Should any dispute or difference arise between the Employer and the Contractor under this Contract, either party may give notice ("Notice") in writing requiring the dispute to be considered by adjudication and the dispute shall thereafter be referred and considered in accordance with the said procedure.

(2) The Construction Industry Council's Model Adjudication Procedure, second edition dated November 1998, and any amendments or alterations thereto current at the date of Notice shall apply to any adjudication under this Contract.

Arbitration

(3) Neither party shall be entitled to serve Notice to Refer until the adjudicator has delivered his adjudication in accordance with the provisions of the said procedure. Thereafter, if either party is dissatisfied with the adjudication, except in connection with the enforcement of the adjudicator's decision, he may then invoke arbitration by serving a Notice to Refer (a "Notice to Refer") on the other party.

(4) The Notice to Refer shall list the matters which the issuing party wishes to be referred to arbitration.

(5) If a Notice to Refer has been served in writing by one party upon the other then the dispute shall be referred to arbitration by a single arbitrator to be agreed by the Employer and the Contractor or, failing any such agreement, to be nominated by any one of the following persons as the Employer shall, in his absolute discretion, direct:-

- (a) the President of the Institution of Civil Engineers or in his absence or unavailability his deputy;
- (b) the President of the Institution of Electrical Engineers or in his absence or unavailability his deputy;
- (c) the President of the Chartered Institute of Arbitrators or in his absence or unavailability his deputy;

(6) The Institution of Civil Engineers Arbitration Procedure (England and Wales) 1997 and any amendments or alterations thereto current at the date of Notice to Refer shall apply to any arbitration under this Contract.

(7) Any arbitration shall be in accordance with and subject to the provisions of the Arbitration Acts 1950 and 1996 or any statutory amendments or re-enactments for the time being in force.

CLAUSE 72

Construction (Design and Management) Regulations 1994

(1) In this clause

- (a) "the Regulations" means the Construction (Design and Management) Regulations 1994 or any statutory re-enactment or amendment thereof for the time being in force
- (b) "Planning Supervisor" and "Principal Contractor" mean the persons so described in regulation 2 (1) of the Regulations
- (c) "Health and Safety Plan" means the plan prepared by virtue of regulation 15 of the Regulations.

(2) Where and to the extent that the Regulations apply to the Site Operations and

- (a) the Engineer is appointed Planning Supervisor and/or
- (b) the Contractor is appointed Principal Contractor

then in taking any action as such they shall state in writing that the action is being taken under the Regulations.

(3) (a) Any action under the Regulation taken by either the Planning Supervisor or the Principal Contractor and in particular any alteration or amendment to the Health and Safety Plan shall be deemed to be an Engineer's instruction pursuant to Clause 13. Provided that the Contractor shall in no event be entitled to any additional payment and/or extension of time in respect of any such action to the extent that it results from any action lack of action or default on the part of the Contractor.

- (b) If any such action of either the Planning Supervisor or the Principal Contractor could not in the Contractor's opinion reasonably have been foreseen by an experienced contractor the Contractor shall as early as practicable give written notice thereof to the Engineer.

SPECIAL CONDITIONS

CLAUSE 73

The following Special Conditions form part of the Conditions of Contract.

CLAUSE 74

Corrupt Gifts and Payments of Commission

- (1) The Contractor or anyone employed by him or acting on his behalf shall not:

- (a) offer or give or agree to the giving to any person in the service of the Employer any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or execution of this or any other Contract with the Employer or for showing or forbearing to show favour or disfavour of any person in relation to this or any other Contract with the Employer; or
- (b) enter into this or any other Contract with the Employer in connection with which commission has been paid or agreed to be paid by him or on his behalf or to his knowledge, unless before the Contract is made particulars of any such commission and of the terms and conditions of any agreement for the payment thereof have been disclosed in writing to the Employer.

(2) Any breach of the above prohibitions or the commission of any offence under the Prevention of Corruption Acts 1889 to 1916 by the Contractor or anyone employed by him or acting on his behalf (whether such breach or offence is with or without the knowledge of the Contractor) in relation to this or any other Contract with the Employer shall entitle the Employer to enter upon the Site under Clause 63 and expel the Contractor therefrom and thereupon the provisions of Clause 63 shall have effect as if such breach or offence as aforesaid were expressed in Clause 63(1) as a ground therefor. In that case the Contractor shall not be entitled to payments on the Contract or Contracts beyond those (if any) provided for by Clause 63. In addition to the costs and expenses recoverable by the Employer as provided for in Clause 63 the Employer shall also be entitled to recover from the Contractor any other costs or losses incurred by the Employer consequent upon such entry and expulsion under this Clause and to receive from the Contractor such sums as in the opinion of the Employer represent the amount or value of any gift consideration paid or agreed to be paid in breach of this Clause.

(3) In every sub-contract of any part of the Investigation the Contractor shall incorporate such provisions as will impose on the sub-contractor liabilities similar to those imposed on the Contractor by this Clause and such provisions as will entitle the Contractor to determine the sub-contract on terms equivalent to those contained in Clause 63. In the event of any breach by the sub-contractor of any such provision the Contractor shall without prejudice to any of his obligations under this Contract take action in accordance with the terms of the sub-contract to exercise his rights against the sub-contractor. Failure by the Contractor to take action shall be grounds for the exercise by the Employer of his right under paragraph (2) of this Clause to enter the Site and expel the Contractor. When the Contractor exercises his rights against a sub-contractor in accordance with the Clause he shall make no claim nor agree to any claim being made on his behalf against the Employer in respect of any consequential delays and extra costs arising from the Contract.

(4) Any dispute to the amount recoverable by the Employer from the Contractor under this Clause shall be settled in the manner provided by Clause 66.

CLAUSE 75

Recovery of sums due from Contractor

When under the Contract any sum of money shall be recoverable from or payable by the Contractor such sum may be deducted from or reduced by the amount of any sum or sums then due or which at any time thereafter may become due to the Contractor under the Contract or any other contract with the Employer or with any Department or office of Her Majesty's Government.

CLAUSE 76

Contractor to comply with Special Requirements in relation to Statutory Bodies.

The Contractor shall comply with the Special Requirements in relation to:-

.....

as set out in the pages immediately following these Conditions of Contract. Compliance with such Special Requirements shall not relieve the Contractor of any of his other obligations and liabilities under the Contract and fulfilment of such other obligations and liabilities shall not relieve him of his responsibility to comply with the said Special Requirements.

CLAUSE 77

Possession of Railway Track

- (1) Notwithstanding sub-clause (6) of this Clause all communications between the Contractor and Railtrack in connection with the Special Requirements shall be through and/or correspondence copied to the Engineer.
- (2) Where any part of the Investigation has to be carried out during a period or periods of possession of any railway track(s) in accordance with the provisions in the Contract the Contractor shall plan and execute that part of the Investigation so that the whole of that part of the Investigation is carried out in one or more stages each such stage being so designed as not to exceed or overrun the period or periods of possession stated in or fixed pursuant to the terms of the Contract. If these allow the actual period or periods of possession to be varied or selected or fixed by the Engineer after consultation with Railtrack and the Contractor shall by such time as the Engineer shall have required and before commencing the said part of the Investigation give notification to the Engineer with full and detailed particulars of the period or periods of possession which are required by the Contractor the Engineer shall arrange with Railtrack for such period(s) of possession as he may consider necessary for the proper completion of that part of the Investigation by the Contractor in accordance with his obligations under the Contract.
- (3) The Contractor shall organise the execution of work during any period(s) of possession of railway track(s) such that he will be able to give up possession of the track(s) at the time prescribed for the end of the period(s) of possession and he shall so give up possession.
- (4) Save as provided for in sub-clause (5) of this Clause the Engineer shall be liable for and reimburse direct to Railtrack any expenses properly incurred by Railtrack in giving possession of the track(s) imposing speed restrictions providing necessary personnel carrying out ancillary works and/or in carrying out any other activity necessary for the execution of the Works in accordance with the Contract.
- (5) The Contractor shall be liable for all expenses of Railtrack in respect of any period or periods of possession fixed by the Engineer as aforesaid not being such a period or periods as in his opinion are necessary for the proper completion of that part of the Investigation by the Contractor in accordance with his obligations under the Contract

and such expenses together with any other expenses due to a failure by the Contractor in relation to Railtrack to comply with any of his obligations under the Contract shall (once certified by the Engineer) be recoverable from the Contractor as sums of money due to the Employer.

(6) The Contractor shall make his own arrangements with Railtrack in connection with any hire of Railtrack's plant access to the site temporary level crossings across track(s) or other property of Railtrack and/or any other of his requirements for the purposes of completing the Investigation in accordance with the Contract and any expenses relating to such arrangements shall be the liability of the Contractor.

CLAUSE 78

Privacy of Information

The Contractor shall not give information concerning the Investigation for publication in the Press or on radio, television, screen or any other medium without the written consent of the Engineer.

CLAUSE 79

Goods Vehicle Licence

Each goods vehicle used by the Contractor or his sub-contractors in connection with the contract shall display the vehicle licence disc relevant to the Goods Operator's licence under which the vehicle is operated or, in the absence of the an Operator's licence disc, the vehicle shall carry documentation giving the Operator's licence number, name and address.

CLAUSE 80

Year 2000

The Contractor warrants and represents that neither the provision, performance nor functionality of the Investigation will be adversely affected by dates prior to, during and after the year 2000. In particular:

- No value for current date will cause any interruption to the provision or performance of the Investigation;
- Roll-over between significant time demarcations including day, Week, year and century will be performed correctly;
- All date-based functionality will behave consistently and produce the desired results for all valid dates prior to, during and after the Year 2000;
- All items of hardware and software will calculate, manipulate and represent dates correctly for the purposes for which they are intended;
- Date elements in interfaces and data storage will permit specifying the century to eliminate date ambiguity;
- Where any date element is represented without a century, the correct century will be unambiguous for all manipulations involving the element; and
- The Year 2000 will be recognised as a leap year.

5. SPECIFICATION

REFER TO THE HIGHWAYS AGENCY SPECIFICATION DATED (1997)

6. BILL OF QUANTITIES

GENERAL SUMMARY OF BILL OF QUANTITIES

7. APPOINTMENT OF ADJUDICATOR

ADJUDICATOR'S APPOINTMENT (2)

THIS AGREEMENT is made on the day of -

BETWEEN:

- (1)
of
(the referring Party);
- (2)
of
(the other Party)
(together called the Parties) and
- (3)
of
(the Adjudicator).

A dispute has arisen between the Parties under a Contract between them dated in connection with

This dispute has been referred to adjudication in accordance with the CIC Model Adjudication Procedure (the Procedure) and the Adjudicator has been requested to act.

IT IS AGREED that:

- 1 The rights and obligations of the Adjudicator and the Parties shall be set out in this Agreement.
- 2 The Adjudicator confirms that he is independent of the Parties, and undertakes to use reasonable endeavours to remain so, and that he shall exercise his task in an impartial manner. He shall promptly inform the Parties of any facts or circumstances which may cause him to cease to be so independent.
- 3 The Adjudicator agrees to adjudicate the dispute in accordance with the Procedure.
- 4 The Adjudicator shall comply, and shall take all reasonable steps to ensure that any persons advising or aiding him shall comply, with the Official Secrets Act 1989. Any information concerning the Contract obtained either by the Adjudicator or any person advising or aiding him is confidential, and shall not be used or disclosed by the Adjudicator or any such person except for the purposes of this Agreement.
- 5 The Parties agree jointly and severally to pay the Adjudicator's fees and expenses as set out in the attached schedule and in accordance with the Procedure.

- 6 The Adjudicator is not liable for anything done or omitted in the discharge or purported discharge of his functions as adjudicator, unless the act or omission is in bad faith. Any employee or agent of the Adjudicator is similarly protected from liability.
- 7 This Agreement shall be interpreted in accordance with the law of England and Wales.

Schedule

1. The Adjudicator shall be paid £ per hour in respect of all time spent on the adjudication.
2. The Adjudicator shall be reimbursed the cost of legal or technical advice obtained in accordance with the Procedure and other extraordinary expenses necessarily incurred.
3. The Adjudicator is/is not* currently registered for VAT. Where the Adjudicator is registered for VAT, it shall be charged additionally in accordance with the rates current at the date of the work done.

Signed on behalf of the referring Party

.....

Signed on behalf of the other Party

.....

Signed on behalf of the Adjudicator

.....

* Delete as necessary

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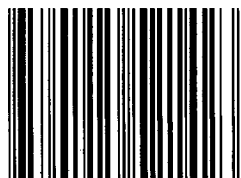
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