

**General Conditions of Contract**

**Road Asset Management Contract (RAMC) – Gen 2**

**January 2020**

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Item	Topic/details	Information		
12.	Guaranteed Amount for Asset Management Works including First and Second Phase Projects (Clause 19)	Metropolitan Region: <b>Year 1: First Phase Projects</b> <b>Year 2: [To be inserted]</b> <b>Year 3: [To be inserted]</b> <b>Year 4: [To be inserted]</b> <b>Year 5: [To be inserted]</b> The amounts specified in this Item 12 represent the actual minimum amount available for Asset Management Projects in the relevant Year and are not subject to adjustment based on the present value of those amounts at the Date of Award.		
13.	Limit of Liability Contractor's maximum aggregate liability to the Principal under or in connection with this Contract in any one Year (Clause 21 and Clause 29A.2)	[To be inserted]		
14.	Public Liability and Product Liability Insurance (Clause 22)	Limit: <i>[\$50,000,000]</i> per claim and <i>[\$50,000,000]</i> in the aggregate for Product Liability		
15.	Limit of professional indemnity insurance (Clause 23)	Limit: <i>[\$10,000,000]</i> per claim and : <i>[\$10,000,000]</i> in the aggregate.		
16.	Period for maintaining professional indemnity insurance (Clause 23)	Until <i>[6]</i> years after the end of the Term		
17.	Motor vehicle insurance (Clause 25)	Limit: <i>[\$20,000,000]</i> Maximum excess: <i>[\$100,000]</i>		
17A.	Lane rental charges (Clause 27.7A)	<b>Road Tier</b>	<b>Lane rental charges for the first hour</b>  \$ per 15 minutes, or part thereof	<b>Lane rental charges for the second and subsequent hours</b>  \$ per hour, or part thereof
		Tier 7	<i>[TBA]</i>	<i>[TBA]</i>
		Tier 6	<i>[TBA]</i>	<i>[TBA]</i>
		Tier 5 and below	<i>[TBA]</i>	<i>[TBA]</i>
		<b>Road Tier</b>	<b>Shoulder rental charges for the first hour</b>  \$ per 15 minutes, or part thereof	<b>Shoulder rental charges for the second and subsequent hours</b>  \$ per hour, or part thereof
		Tier 7	<i>[TBA]</i>	<i>[TBA]</i>
		Tier 6	<i>[TBA]</i>	<i>[TBA]</i>
		Tier 5 and below	<i>[TBA]</i>	<i>[TBA]</i>

Item	Topic/details	Information	
		Role	Name
18.	Key Personnel (Clause 32.2)	Network Steward	[TBA]
		Asset Manager	[TBA]
		Routine Maintenance Manager	[TBA]
		Programmed Maintenance Manager	[TBA]
		Communications Officer	[TBA]
		Environmental Representative	[TBA]
		Contractor's Representative	[TBA]
19.	Principal Supplied Materials (Clause 32.6)	Description: Principal supplied materials may be supplied by agreement for the various individual projects included within the Asset Management Work. These may include bitumen, detector loops, linemarking, signs, etc. Location for collection: To be advised by the Principal, once the materials are agreed as per Clause 32.6.	
20.	Time for Lodgement (of payment claims) (Clause 37.1)	[TBA] day of the month, or as agreed between the Parties	
21.	Defects Liability Period (Clause 53.7)	[TBA] months	

## Part A – Contract overview and fundamentals

### 1 Definitions and interpretation

#### 1.1 Definitions

In the Contract, except where the context otherwise requires:

Term	Definition
Activity	Means an individual activity of Routine Maintenance Work.
Adjustment Events	Are defined in Clause 62.2.
Affected utilities	Has the meaning in Clause 27.8(a).
Annual Work Program or AWP	Has the meaning in Clause 15.1A.
Apprentices, trainees and/or cadets	Means any employees engaged in a formal apprenticeship as provided for in State vocational education and training legislation or a cadetship or scholarship incorporating formal tertiary or technical education that results in a nationally recognised building and construction qualification.
Asset Information	Means any document, information, data, report, material, sample, whatever its form: <ul style="list-style-type: none"> <li>a) Regarding the Road Infrastructure or its surroundings</li> <li>b) Regarding the condition of the Road Infrastructure or the historical data relating to: <ul style="list-style-type: none"> <li>i. Maintenance work required to maintain the Road Infrastructure</li> <li>ii. Incident Response Activities.</li> </ul> </li> <li>c) Regarding a Site or its surroundings or regarding the subsurface conditions (including topographical, geological, environmental and hydrological conditions) or subsurface services at a Site or its surroundings.</li> </ul>
Asset Management Plan	Has the meaning: <ul style="list-style-type: none"> <li>a) TAMP (as per Clause 14.4), or on the condition that the CTAMP is accepted by the Principal's Representative (as per Clause 14.5(b))</li> <li>b) CTAMP (as per Clause 14.5).</li> </ul>
Asset Management Services	Means all services required to undertake all monitoring, reporting, planning and analysis required under the Contract in relation to the programming, sequencing and prioritisation of Asset Management Work including all activities required to: <ul style="list-style-type: none"> <li>a) submit Asset Management Plans in accordance with Clause 15</li> <li>b) submit Project Proposals in accordance with Clause 17, and</li> <li>c) submit Planned Routine Maintenance Recommendations in accordance with Clause 18.3.</li> </ul>
Asset Management Services Fee	Has the meaning in Appendix B: Compensation and Performance Framework (Revision 1).
Asset Management Group (AMG)	Has the meaning given in Appendix J
Asset Management Work	Means the Programmed Maintenance Work, Rehabilitation Maintenance Work and Minor Improvement Work which may be First Phase Projects and / or Second Phase Projects.

Term	Definition
Authority	Means all Commonwealth, State and local government councils, parliaments, departments, offices, bodies and instrumentalities and all public or statutory bodies, corporations, instrumentalities, authorities, persons or entities which in any way govern, regulate, control or effect any aspect of the work under Contract or Works.
Business Day	<ul style="list-style-type: none"> <li>• For the purposes of the Principal's Representative responding to a payment claim in accordance with Clause 37, has the meaning given in the Payments Act; and</li> <li>• For all other purposes, means a day which is not a Saturday, Sunday, bank holiday or public holiday in the location described in Item 1B of the key information.</li> </ul>
Certificate of Practical Completion	Has the meaning in Clause 53.5
Change in Law	<p>Means:</p> <ul style="list-style-type: none"> <li>a) The amendment, repeal or change of any Law,</li> <li>b) The enactment of any new Law,</li> <li>c) A judgement of a relevant court of law which changes a binding precedent on the interpretation or application of any Law.</li> </ul> <p>Which occurs after the Date of Award but excluding:</p> <ul style="list-style-type: none"> <li>a) Any amendment, repeal or change of the <i>Income Tax Assessment Act 1936</i> (Cth), GST Legislation or the <i>Income Tax Assessment Act 1997</i> (Cth),</li> <li>b) Any amendment, repeal or change of the WHS Act or WHS Regulation,</li> <li>c) Any amendment, repeal, change or enactment of any Law which, as at the Date of Award: <ul style="list-style-type: none"> <li>i. Was published or of which public notice had been given, or</li> <li>ii. A party experienced and competent in the delivery of works similar to the Works would have reasonably foreseen or anticipated.</li> </ul> </li> </ul>
Claim	Includes any claim, demand, action, proceeding or suit which the Contractor may make or bring against the Principal or any of its agents or employees relating to the construction of the Contract or as to any fact, matter or thing arising out of or in connection with the Contract or the work under the Contract including (without limitation) any claim, demand, action, proceeding or suit seeking the payment of money or any costs, expenses, loss or damages on any ground whatsoever including (without limitation) pursuant to the Contract, on a quantum merit basis, for unjust enrichment, in tort and insofar as is permitted by law pursuant to any other principle of law.
Community Engagement Plan	Means the plan required under Clause 13.1.
Compensation and Performance Framework	Is set out in Appendix B: Compensation and Performance Framework (Revision 1).
Conformance Report	Has the meaning in Clause 37.1(b).
Consequential Loss	<p>Means:</p> <ul style="list-style-type: none"> <li>a) Indirect or consequential loss or damage of any nature, or</li> <li>b) Loss of profit, revenue, business, contracts or anticipated savings, except any liquidated damages or lane rentals payable under the Contract which may have been calculated with reference to or otherwise includes such loss.</li> </ul>

<b>Term</b>	<b>Definition</b>
Constructional Plant	Means appliances and things used in the execution of the work under the Contract but not forming part of the Works.
Contract	Means the agreement between the Principal and the Contractor, comprising the documents referred to in Clause 3.1
Contract Delivery Team (CDT)	Means the CDT established in accordance with Clause 10.
Contract Leadership Team (CLT)	Means the CLT established in accordance with Clause 9.
Contract Objectives	Means the objectives set out in Clause 2.3.
Contract Plan	Has the meaning in Clause 13.1(b).
Contract Reset Event	Means: a) A Qualifying Change in Law, or b) Any other matter, event or circumstance determined by the CLT or the Principal (as the case may be) as being a matter, event or circumstance to which Clause 2A shall apply.
Contractor	Means the person identified as the Contractor in the Formal Instrument of Agreement
Contractor's Representative	Means the person appointed in writing by the Contractor under Clause 12
Contractor's Tactical Asset Management Plan or CTAMP	Has the meaning in Clause 14.5.
Corporations Law	Means the <i>Corporations Act 2001</i> (Cth), associated legislation and regulation and any additional or substituted legislation
Corporate Overhead	Has the meaning in Appendix B: Compensation and Performance Framework (Revision 1).
Cure Plan	Has the meaning in Clause 40.1B.
Current Project Program	Has the meaning in Clause 53.4
Date of Award	Means the date of the Letter of Acceptance.
Date of Practical Completion	Means for each Project: a) The date evidenced in a Certificate of Practical Completion as the date upon which the Project reached Practical Completion, or b) Where another date is determined by a binding recommendation of the expert under Clause 44.2A or in any arbitration or litigation as the date upon which the Project reached Practical Completion.
Day	Means calendar day.
Dayworks Rates	Means the rates in Tender Schedule M7.
Defects Liability Period	Has the meaning in Clause 53.8.
Design Brief	Means the brief prepared by the AMG in accordance with Clause 15.2 for each Second Phase Project.
Design Services	Means all design and related work required to be carried out by the Contractor in order to prepare designs and as constructed drawings for each of the Second Phase Projects in accordance with Clause 16.1.

Term	Definition
Design Services Fee	Means the fee for the Design Services to be determined by reference to Clause 2.5 of Appendix B: Compensation and Performance Framework (Revision 1) and agreed in accordance with Clause 15.3.
Detailed Requirements for Contract Plans	Are set out in Appendix D: Detailed Requirements for Contract Plan (Revision 1).
Direct Costs	Has the meaning in Appendix B: Compensation and Performance Framework (Revision 1).
Discretionary Limits	Means the limits which apply in respect of the Routine Maintenance Schedule of Rates items and which are set out in Attachment 7 to Appendix B: Compensation and Performance Framework (Revision 1) (Tender Schedule M2), as adjusted from time to time in accordance with the Contract.
Draft Annual Work Program or Draft AWP	Has the meaning in Clause 15.1A.
Forward Work Program or Draft FWP	Has the meaning in Clause 15.1.
Drawings	Mean the Principal's Standard Drawings and the Project Specific Drawings.
dTlMs	Means the Deightons Total Infrastructure Management System software to be used to assess and monitor the Road Infrastructure.
End Date	Means the date specified in Item 1A of the Key Information.
Engineering Innovation Policy	Means the Principal's policy titled 'Engineering Innovation within the Department of Transport and Main Roads', as amended from time to time.
Environmental Management Plans	Means the Environmental Management Plan (Construction) EMP-C and the Environmental Management Plan (Maintenance) EMP-M required under Clause 13 and defined in Appendix L.
Environmental Requirements	Means the EMP-C and EMP-M and all permits, clearances, licenses and other requirements related to the protection of the environment and imposed on the work under the Contract by any Statutory Requirement.
Excepted Risk	<p>Means the following risks causing loss or damage to the Works:</p> <ul style="list-style-type: none"> <li>a) Any negligent act or omission of the Principal's Representative, the Principal or others for whom it is responsible</li> <li>b) Any risk specifically excepted elsewhere in the Contract</li> <li>c) War, invasion, act of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power, martial law or confiscation by order of any Authority, or a "terrorist act" (as defined in Section 5 of the <i>Terrorism Insurance Act 2003</i> (Cth))</li> <li>d) Ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel not caused by the Contractor or those for whom it is responsible</li> <li>e) Use or occupation of any part of a Site by the Principal or others for whom it is responsible (but not including use by the public of a Site), and</li> <li>f) Defects in the design of the Works, other than design provided by the Contractor.</li> </ul>

Term	Definition
Extension Period	Means either or all of the First Extension Period, Second Extension Period and Third Extension Period, as the context requires.
Extension Period Guaranteed Second Phase Projects Amount	Has the meaning in Clause 2.1A(d).
Fee Proposal	Has the meaning in Clause 15.3.
Final Annual Works Program or Final AWP	Is the program of Asset Management Work issued by the CLT in accordance with Clause 17.4.
First Extension Period	Means a period beginning at midnight on the End Date and ending 12 months after that date.
First Phase	Has the meaning given in Clause 14.2(a)(i).
First Phase Project	Means the individual packages of Asset Management Work to be carried out in the First Phase, as described further in Appendix N and in Item 2 of the Key Information.
Force Majeure	<p>Means one of the following events:</p> <ul style="list-style-type: none"> <li>a) A Category 3 or above cyclone.</li> <li>b) Tidal inundation as a result of a tidal surge in excess of 4.5 m (above LAT).</li> <li>c) Explosion, earthquake, landslide, wildfire or other natural disaster.</li> <li>d) Loss, destruction or damage arising from nuclear weapons material.</li> <li>e) Ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel (and for the purpose of this definition, combustion includes any self-sustaining process of nuclear fission).</li> <li>f) War, invasion, act of foreign enemy, hostilities (whether war is declared or not), civil war, rebellion, revolution, insurrection, military or usurped power, confiscation or destruction or requisition by order of the Government or any public authority.</li> <li>g) A "terrorist act" (as defined in Section 5 of the <i>Terrorism Insurance Act 2003</i> (Cth)), which prevents the party seeking to rely on the occurrence of such an event from carrying out its obligations under the Contract, but only to the extent that the event or circumstance: <ul style="list-style-type: none"> <li>i. Is not within the control of the party seeking to rely on the occurrence of such an event, and</li> <li>ii. Is not reasonably able to be avoided by the party seeking to rely on the occurrence of such an event by the exercise of reasonable diligence or effort,</li> </ul> </li> </ul> <p>but does not include:</p> <ul style="list-style-type: none"> <li>A) Breakdown of plant, machinery or equipment,</li> <li>B) Inclement weather that does not constitute an event under paragraph (a), (b) or (c), or</li> <li>C) Strikes, lockouts or industrial disputes.</li> </ul>
Form(s)	Means the forms available on the Principal's website, as amended from time to time.
Formal Instrument of Agreement	Means the formal instrument of agreement included in the Contract.
Geographical Limits	Has the meaning in Appendix A

<b>Term</b>	<b>Definition</b>
GST	Means the goods and services tax imposed under the GST Legislation. A reference to an amount of GST is reference to the GST liability in respect of the supply in question.
GST Legislation	Means the <i>A New Tax System (Goods and Services Tax) Act 1999</i> , associated legislation and any additional or substituted legislation providing for a value added tax, consumption tax, retail tax or other goods and services tax.
Guaranteed Asset Management Works Projects Amount	Means the amount specified in Item 12 of the Key Information.
Guaranteed Second Phase Projects Amount	Has the meaning in Clause 19.
Handover Date	Means that date in Item 1 of the Key Information.
Hazard Intervention Limit(s)	The 'Hazard Intervention Limits' are set out in the Maintenance Levels of Service in Appendix B: Compensation and Performance Framework (Revision 1). The 'Hazard Intervention Limit' represents the level at which a defect becomes a Hazard, and must be repaired or made safe immediately.
Initial Term	Means the period from the Date of Award until the End Date, subject to earlier termination in accordance with this Contract.
Intellectual Property Right	Means any patent, registered design, trademark or name, copyright or other protected right.
Interface Arrangements	Are set out in Appendix C.
Intervention Limit(s)	Means the 'Safety Intervention Limits' set out in the Maintenance Levels of Service in Appendix B: Compensation and Performance Framework (Revision 1). Defects recorded on the backlog, must be prioritised and programmed to be repaired before the Safety Intervention Limit is reached. Defects already at the (Safety) Intervention Limit when identified, must be repaired within the Response Times set out in Appendix B: Compensation and Performance Framework (Revision 1).
Key Information	Is set out at the start of this Contract.
Key Personnel	Has the meaning in Clause 32.2.
Key Result Areas	Has the meaning in Appendix B: Compensation and Performance Framework (Revision 1).
Law	Means: a) Statutory Requirements, and b) Common law and principles of equity.
Letter of Acceptance	Means a letter of acceptance issued by the Principal to the Contractor accepting the Contractor's tender in respect of the Works
Maintenance Levels of Service	Are set out in an attachment to Appendix B: Compensation and Performance Framework (Revision 1).
Maintenance Management Plan	Means the plan required under Clause 13.1.
Maintenance Responsibility Limits	Are set out in Appendix A.

Term	Definition
Margin	Has the meaning in Appendix B: Compensation and Performance Framework (Revision 1).
Minor Improvement Work	<p>Means:</p> <ul style="list-style-type: none"> <li>a) Work with the primary aim of improving the Road Infrastructure.</li> <li>b) In respect of the First Phase Projects, the work set out in Appendix N and which is identified as Minor Improvement Work.</li> <li>c) In respect of the Second Phase Projects, the work set out in the relevant Project Proposal accepted by the Principal in accordance with Clause 17.3.</li> </ul>
Month	Means calendar month.
Network Schedule Total	<p>Is the aggregate of:</p> <ul style="list-style-type: none"> <li>a) <b>Network Schedule Total (SoR Items)</b>, being the financial limit that applies for each Year in respect of Routine Maintenance Schedule of Rates Items (but excluding the prime cost items), as adjusted from time to time in accordance with the Contract.</li> <li>b) <b>Network Schedule Total (LS Items)</b>, being the aggregate of the Routine Maintenance Lump Sums in the relevant Year.</li> <li>c) <b>Network Schedule Total (Planned Routine Maintenance)</b>, being the financial limit that applies for each Year in respect of the Planned Routine Maintenance Work.</li> <li>d) <b>Network Schedule Total (Prime Costs)</b>, being the aggregate of the prime cost items specified in Routine Maintenance Schedule of Rates.</li> </ul>
NGER Legislation	Means the <i>National Greenhouse and Energy Reporting Act 2007</i> (Cth).
Non-Compliance Event	Means a breach of the Contract by the Contractor which is not a substantial breach under Clause 40.2 or an insolvency event under clause 40.11.
Non-Compliance Notice	Has the meaning in Clause 40.1A.
Notification Level	<p>Means the 'Notification Levels' set out in the Maintenance Levels of Service in Appendix B: Compensation and Performance Framework (Revision 1).</p> <p>Defects which meet or exceed the Notification Level, must be recorded on the backlog, prioritised and programmed for repair before the (Safety) Intervention Limit is reached.</p>
Other Documents	Means the documents listed in Item 3 of the Key Information.
Payments Act	Means the <i>Building and Construction Industry Payments Act (2004)</i> (Qld). But on commencement by proclamation of the Building Industry Fairness (Security of Payment) Act 2017 (Qld) means the Building Industry Fairness (Security of Payment) Act 2017 (Qld) and any relevant regulations and includes any amendments to that Act and those regulations.
Performance Measurement Plan	Means the plan required under Clause 13.1.
Performance Report	Means the report required under Clause 37.1 setting out the details required under Appendix B: Compensation and Performance Framework (Revision 1).
Person	Includes a firm or body corporate or unincorporated or an individual.
Planned Routine Maintenance Recommendations	Has the meaning set out in Clause 18.3.

Term	Definition
Planned Routine Maintenance Work	Means the items of work specified in the Planned Routine Maintenance Work Schedule of Rates, provided that where an item of work is specified in the Planned Routine Maintenance Work Schedule of Rates and either the: a) Routine Maintenance Lump Sums, or b) Routine Maintenance Schedule of Rates, that item of work is only Planned Routine Maintenance Work where the tolerance level specified in Planned Routine Maintenance Work Schedule of Rates for the relevant item of work is exceeded.
Planned Routine Maintenance Work Schedule of Rates	Is set out in Attachment 8 to Appendix B: Compensation and Performance Framework (Revision 1) (Tender Schedule M3).
Practical Completion	Is, for each Project, that stage in the carrying out and completion of the work under the Contract when the Works the subject of that Project are complete and suitable to be used for their intended purpose, except for minor defects.
Prestart Conference	Has the meaning given in Clause 6.
Pre-construction Testing	Means the testing activities set out in Attachment 9 to Appendix B: Compensation and Performance Framework (Revision 1) (Tender Schedule M4) and any other related testing designated in a Design Brief.
Pre-construction Testing Fee	Means the fee for Pre-construction Testing to be determined by reference to Clause 2.6 of Appendix B: Compensation and Performance Framework (Revision 1) agreed in accordance with Clause 15.3.
Principal	Means the State of Queensland acting through the Department of Transport and Main Roads.
Principal's Representative	Means the person appointed in writing by the Principal under Clause 11.
Principal's Standard Drawings	Means the Standard Drawings available in the Principal's website, as amended or updated from time to time by the Principal.
Principal's Technical Specifications	Means the Technical Specifications available in the Principal's website, as amended or updated from time to time by the Principal.
Principal's Tactical Asset Management Plan or TAMP	Has the meaning given in Clause 14.4.
Principal Supplied Material	Has the meaning given in Clause 32.6.
Programmed Maintenance Work	Means: a) Work with the primary aim of preserving the Road Infrastructure, b) In respect of the First Phase Projects, the work set out in Appendix N and which are identified as Programmed Maintenance Work, and c) In respect of the Second Phase Projects, the work set out in relevant Project Proposal accepted by the Principal in accordance with Clause 17.3.
Project	Means each of the First Phase Projects and the Second Phase Projects.
Project Contract Sums	Means the amount or amounts accepted by the CLT or Principal in respect of each Second Phase Project in accordance with Clause 17.4.

Term	Definition
Project Program	Means the program of activities and items of work for each Project to be submitted under Clause 53.3 or, in the case of the Second Phase Projects, submitted as part of the relevant Project Proposal submitted under Clause 17.3.
Project Proposal	Has the meaning given in Clause 17.1.
Project Specific Drawings	<p>Means:</p> <p>a) In respect of the First Phase Projects:</p> <ul style="list-style-type: none"> <li>i. The drawings set out in Appendix N</li> <li>ii. Any other drawings relating to the First Phase Projects that are referred to in the Contract</li> <li>iii. Any modification of such drawings notified to the Contractor by the Principal's Representative, and</li> <li>iv. Such other drawings relating to the First Phase Projects as may from time to time be supplied to the Contractor by the Principal's Representative, or the use of which has been permitted by the Principal's Representative, for the purposes of the Contract.</li> </ul> <p>b) In respect of the Second Phase Projects, the drawings approved in accordance with Clause 16.2 and any modifications approved under Clause 17.</p>
Project Specific Specifications	<p>Means:</p> <p>a) In respect of the First Phase Projects:</p> <ul style="list-style-type: none"> <li>i. The specifications set out in Appendix N,</li> <li>ii. Any other specifications relating to the First Phase Projects that are referred to in the Contract,</li> <li>iii. Any modification of such specifications notified to the Contractor by the Principal's Representative, and</li> <li>iv. Such other specifications relating to the First Phase Projects as may from time to time be supplied to the Contractor by the Principal's Representative, or the use of which has been permitted by the Principal's Representative, for the purposes of the Contract.</li> </ul> <p>b) In respect of the Second Phase Projects, the specifications approved in accordance with Clause 16.2 and any modifications approved under Clause 17.</p>
Public Utility Plant	Means any railway, monorail, tramway, viaduct, aqueduct, conduit, water channel, pipeline (water, stormwater, gas, sewerage or otherwise), fixed mechanical conveyor, tower, pole, cable (electrical, fibre optic, telecommunications or otherwise), electrical installation or telecommunications plant that is on, in, over, under or adjacent to the Site. However, the term does not include Constructional Plant.
Qualifying Change in Law	Means a Change in Law occurring after the Date of Award which increases or decreases the cost to the Contractor of performing the work under the Contract other than a Change in Law in relation to Tax.
Quality Plan	Means the plan required under Clause 13.1.
RPEQ	Means a Registered Professional Engineer of Queensland.
Reallocation	Means a reallocation of the Network Schedule Total (Schedule of Rates (SoR) Items) in accordance with Clause 61.2.
Reallocation Notice	Has the meaning given in Clause 61.2.
Relationship and Stewardship Charter	Is the charter developed and agreed to by the parties under Clause 2.5.

Term	Definition
Rehabilitation Maintenance Work	<p>Means:</p> <ul style="list-style-type: none"> <li>a) Work to restore the structural integrity of part of the Road Infrastructure,</li> <li>b) In respect of the First Phase Projects, the work set out in Appendix N and which are identified as Rehabilitation Maintenance Work, and</li> <li>c) In respect of the Second Phase Projects, the work set out in relevant Project Proposal accepted by the Principal in accordance with Clause 17.3.</li> </ul>
Relationship Principles	Means the principles set out in Clause 2.4.
Request for Extension	Means a request for extension under Clause 2.1A.
Responsible Authority	Has the meaning given in Clause 27.8(a)(ii).
Response Time	Means the response times specified in the Maintenance Levels of Service for responding and rectifying nominated categories of defects.
Road Infrastructure	<p>Means the road and ancillary infrastructure (including road pavements and surface treatments, busways, bikeways, signs, line markings, drainage channels and structures, roadside facilities, rest areas, vegetation and plantings and earthworks) that are within the Geographical Limits and as identified or described in the Maintenance Responsibility Limits in Appendix A and:</p> <ul style="list-style-type: none"> <li>a) In respect of Routine Maintenance Work, includes the blue network marked in Attachment 1 to Appendix A, and</li> <li>b) In respect of the Asset Management Services and Asset Management Works, includes the blue and green network marked in Attachment 1 to Appendix A.</li> </ul>
Routine Maintenance Lump Sums	Are set out in Attachment 6 to Appendix B: Compensation and Performance Framework (Revision 1) (Tender Schedule M1).
Routine Maintenance Lump Sum Items	<p>Means the items of work which correspond to the Routine Maintenance Lump Sums or which are otherwise necessary to carry out the Routine Maintenance Work but excluding:</p> <ul style="list-style-type: none"> <li>a) The Planned Routine Maintenance Work,</li> <li>b) The Routine Maintenance Schedule of Rates Items, or</li> <li>c) Prime cost items identified in the Routine Maintenance Schedule of Rates.</li> </ul>
Routine Maintenance Schedule of Rates	Is set out in Attachment 7 to Appendix B: Compensation and Performance Framework (Revision 1) (Tender Schedule M2).
Routine Maintenance Schedule of Rates Items	<p>Means the items of Routine Maintenance Work set out in the Routine Maintenance Schedule of Rates but does not include:</p> <ul style="list-style-type: none"> <li>a) The Planned Routine Maintenance Work, or</li> <li>b) Prime cost items identified in the Routine Maintenance Schedule of Rates.</li> </ul>
Routine Maintenance Work	<p>Means:</p> <ul style="list-style-type: none"> <li>a) All maintenance work and related services necessary to maintain the Road Infrastructure such that the Intervention Limits specified in the Maintenance Levels of Service are not exceeded, and</li> <li>b) The Incident Response Activities.</li> </ul>
Second Extension Period	Means a period beginning at midnight on the date on which the First Extension Period ends and ending 12 months after that date.
Second Phase	Has the meaning given in Clause 14.2(a)(ii).

<b>Term</b>	<b>Definition</b>
Second Phase Project	Means a project which the Principal determined shall be delivered by the Contractor.
Second Phase Start Date	Means the date specified in Item 2B of the Key Information.
Site	Means: a) In respect of Routine Maintenance Work, any lands and places upon which the Contractor is required to perform Routine Maintenance Work, and b) In respect of the Asset Management Work, means the area specified in the Project Proposal or the relevant Project Specific Drawings for the First Phase Projects and Second Phase Projects, which will be made available to the Contractor to carry out the Asset Management Work.
Specifications	Means the Supplementary Specifications, the Principal's Technical Specifications and the Project Specific Specifications.
Stewardship Principles	Means the principles set out in Clause 2.4A.
Substitute CLT Member	Has the meaning given in Clause 9.1(f).
Supplementary Specifications	Are the Supplementary Specifications attached to or listed in Appendix M for routine maintenance activities and Appendix N for Project works, as amended or updated from time to time by the Principal.
Statutory Requirements	Includes: a) Orders or awards of any Authority, ordinances, rules, guidelines, regulations, acts, by-laws and proclamations that may be applicable in connection with the performance of the work under the Contract, b) Certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction in connection with the performance of the work under the Contract, and c) Fees and charges payable in connection with the foregoing.
Subcontractor	Includes a supplier or hirer of materials, plant or equipment.
Supply	Has the meaning given in the GST Legislation.
Tax	Means a tax, levy, duty, rate, impost, charge, deduction or withholding (and any related penalty, fine, fee or interest) imposed, levied or assessed by an Authority. It includes stamp duty, GST and any transaction taxes and duties.
Temporary Works	Means works used in the execution of the work under the Contract but not forming part of the Works.
Term	Means the Initial Term and any Extension Period granted under Clause 2.1D, subject to earlier termination in accordance with this Contract.
Third Extension Period	Means a period beginning at midnight on the date on which the Second Extension Period ends and ending 12 months after that date.
Traffic Management Plan	Means the plan required under Clause 13.1
Transition Arrangements	Are set out in Appendix G
Transition Out Plan	Means the plan required under Clause 13.1.

Term	Definition
Up-skill	Means to train workers engaged on the site of the works where such training culminates in a nationally recognised building and construction competency or qualification. Up-skilling must be provided by a training organisation that is registered with a State or Territory Training Authority.
Urgent Measures	Means immediate temporary measures to alleviate the adverse effect of a Non-Compliance Event or a safety issue, pending a permanent cure being achieved.
WHS Act	Has the meaning given in Clause 30.1.
WHS Regulation	Has the meaning given in Clause 30.1.
Wilful Misconduct	Means an intentional or reckless act or omission by a party, or sanctioned by a party, which constitutes a breach of this Contract, fraud or unconscionable conduct.
Work under the Contract	Means the work which the Contractor is or may be required to execute under the Contract and includes services, variations, remedial work, Constructional Plant and Temporary Works, and: a) Routine Maintenance Work, b) Programmed Maintenance Work, c) Rehabilitation Maintenance Work, d) Minor Improvement Work, e) Asset Management Services, f) Design Services, and g) Pre-construction Testing.
Workplace Health and Safety Management Plan	Means the plan required under Clause 13.1.
Workplace Relations Management Plan	Is the Contractor's Workplace Relations Management Plan approved by the Australian Building and Construction Commissioner in accordance with Part 6 of the <i>Tendering and Performance of Building Work 2016</i> (Cth). The Workplace Relations Management Plan, updated from time to time in accordance with this Contract, will be included into the Contract as Appendix F.
Works	Means the whole of the work to be executed in accordance with the Contract, including variations provided for by the Contract, which must be handed over to the Principal.
Year	Means each financial year of the Term and in respect of the first year of the Term, means the period from the Handover Date until 30 June of that financial year.

## 1.2 Interpretation

- a) The law governing the Contract, its interpretation, any agreement to arbitrate and the conduct of any arbitration or litigation, is the law of the State of Queensland.
- b) Unless otherwise provided, prices are in Australian currency and payments shall be made in Australian currency at the place stated in Item 4 of the Key Information.
- c) Communications between the Principal, the Principal's Representative and the Contractor shall be in the English language.

- d) Measurements of physical quantities shall be in Australian legal units of measurement within the meaning of the *National Measurement Act 1960* (Cth), as amended from time to time.
- e) Any provision of the Contract which purports to or has the effect of limiting or excluding a liability of the Principal shall be construed as limiting or excluding that liability only to the extent permitted by law.
- f) The clause headings and subheadings in the Contract are for convenience only and shall not be used in the interpretation of the Contract.
- g) Words in the singular include the plural and words in the plural include the singular, according to the requirements of the context.
- h) Words importing a gender include every gender.
- i) Where a provision in the Contract states that the Principal or the Principal's Representative 'may' do something, it shall be read as permitting, but not obliging, the Principal or the Principal's Representative (as applicable) to do that thing.
- j) The meaning of general words is not limited by specific examples introduced by 'including', 'for example,' or similar expressions.

## **2 Nature of Contract**

### **2.1 Term and phases**

- a) This Contract commences on the Date of Award and continues for the Term.
- b) The Contractor's obligations in respect of each period within the Term are set out in the Contract and the Transition Arrangements.

#### **2.1A Request for extension**

- a) If the Contractor wishes to extend the Initial Term for the First Extension Period it must give the CLT and the Principal written notice no less than 6 months prior to the end of the third Year of the Initial Term.
- b) Subject to the Initial Term having been extended for the First Extension Period in accordance with Clauses 2.1B, 2.1C and 2.1D, if the Contractor wishes to extend the Term for the Second Extension Period it must give the CLT and the Principal written notice no less than 6 months prior to the end of the fourth Year of the Term.
- c) Subject to the Term having been extended for the First Extension Period and Second Extension Period in accordance with Clauses 2.1B, 2.1C and 2.1D, if the Contractor wishes to extend the Term for the Third Extension Period it must give the CLT and the Principal written notice no less than 6 months prior to the expiry of the First Extension Period.
- d) Following receipt of a written notice from the Contractor under Clause 2.1A (**Request for Extension**), the Principal will provide written notice to the Contractor of the Guaranteed Second Phase Projects Amount that will apply during the relevant Extension Period (**Extension Period Guaranteed Second Phase Projects Amount**).

### **2.1B Performance assessment**

- a) Following the receipt of a Request for Extension the CLT will:
  - i. assess the Contractor's performance in each of the Key Result Areas for the period up until the date of receipt of the relevant notice
  - ii. determine whether the Contractor has achieved 'outstanding', 'satisfactory' or 'unsatisfactory' performance in each of those Key Result Areas for that period, or
  - iii. refer the assessment and determination to the Principal if the CLT is unable to reach a unanimous decision in relation to both of the matters in Clause 2.1B(a)(i) and (ii).
- b) The CLT may require the Contractor to provide written submissions in relation to the Contractor's performance in each of the Key Result Areas, and in connection with any issue relevant to the Contractor's Request for Extension.
- c) The Contractor must provide written submissions to the CLT within 14 days of any such request.

### **2.1C Conditions Precedent**

- a) The Contractor's entitlement to an extension under Clause 2.1D is conditional upon:
  - i. the CLT or the Principal, as the case may be, having reached an assessment and determination under Clause 2.1B(a) that the Contractor has achieved for the relevant period a rating of 'outstanding' performance in at least four Key Result Areas, and a minimum of 'satisfactory' performance in the remaining Key Result Areas, and
  - ii. the Contractor not being or having been in breach or substantial breach of the Contract.

### **2.1D Grant of extension**

- a) Within 5 months of receiving a Request for Extension, and subject to the matters in Clauses 2.1B and 2.1C, the CLT will:
  - i. recommend the Principal grant the relevant Extension Period
  - ii. reject the Request for Extension, or
  - iii. refer the Request for Extension to the Principal if the CLT is unable to reach a unanimous decision.
- b) The Principal shall within 30 days of:
  - i. receiving a recommendation from the CLT under Clause 2.1D(a)(i), or
  - ii. referral of a Request for Extension under Clause 2.1B(a)(iii),in its sole discretion grant the relevant Extension Period or reject the Request for Extension.
- c) If the Principal grants the relevant Extension Period under Clause 2.1D(b)(ii) then the Extension Period Guaranteed Second Phase Projects Amount notified under Clause 2.1A(d) is a Guaranteed Second Phase Projects Amount for the purposes of the Contract.

## **2.2 Performance and payment**

The Contractor shall during the Term execute and complete the work under the Contract in accordance with the Contract, including executing and completing the:

- a) Routine Maintenance Work
- b) Programmed Maintenance Work
- c) Rehabilitation Maintenance Work
- d) Minor Improvement Work
- e) Asset Management Services, and
- f) Design Services, when requested.

in accordance with this Contract.

The Compensation and Performance Framework sets out the basis for calculating the payment to be made by the Principal to the Contractor for the execution of each category of work under the Contract.

## **2.3 Objectives**

The parties acknowledge that the Principal's main objectives under this Contract are to:

- a) create a framework under which the Contractor has a high level of stewardship in respect of the Road Infrastructure
- b) to provide a safe and serviceable network for all road users and workers
- c) to create a sustainable network by adopting an asset management methodology to holistically manage the network using:
  - i. asset maintenance
  - ii. asset preservation, and
  - iii. asset rehabilitation.
- d) to obtain optimum value from the existing funding through effective management and innovation.

The parties also acknowledge that the actions required to achieve the objectives include (but are not limited to):

- a) making 'best for network' decisions and ensuring the Principal is fully informed, through the creation of a collaborative environment which promotes openness and mutual respect between the parties
- b) anticipating and managing customer needs and expectations through proactive community engagement
- c) planning and undertaking Routine Maintenance Work in the context of programmed works
- d) providing a rapid and effective response to incidents and emergencies that occur in relation to the work under the Contract, and
- e) assisting the Principal in responding to incidents, emergencies and extreme weather events on the network.

## **2.4 Relationship Principles**

The Contractor and the Principal jointly commit to the following principles in performing their obligations under the Contract:

- a) act as stated in this Contract and in the spirit of mutual trust and co-operation for the benefit of the work under the Contract
- b) at all times deal with each other reasonably, fairly and in good faith
- c) adopt a 'no surprises' philosophy through communicating and expeditiously reconciling any matter that may affect the proper execution and timely completion of the work under the Contract
- d) be dedicated to achieving agreed common goals and the Contract Objectives
- e) ensure that they provide and endeavour to ensure their subcontractors, consultants and advisors provide substantial and competent responses to reasonable requests for information from the other party in a timely manner, and
- f) at all times carry out their duties and obligations in a manner consistent with the Relationship and Stewardship Charter developed and agreed under Clause 2.5.

The Principal must ensure that the Principal's Representative, Principal's Representative's delegates and its representatives on the CLT, CDT and AMG observe the Relationship Principles.

The Contractor must ensure that the Contractor's Representative and its representatives on the CLT, CDT and AMG observe the Relationship Principles.

### **2.4A Stewardship Principles**

In the context of the Contract, "Stewardship Principles" are a broad set of values, attitudes and behaviours required of the Contractor to effectively manage the Road Infrastructure on the Principal's behalf. The parties acknowledge and agree that the key "Stewardship Principles" applying include:

- a) Putting the Principal's customers first and being responsive to them.
- b) Performing the work under the Contract in the best interests of the Principal as the owner as well as the users of the Road Infrastructure, including responding to directions by the Principal in a timely manner.
- c) Being responsible and accountable for the outcomes resulting from the management of the Road Infrastructure.
- d) Managing the Road Infrastructure diligently, efficiently and effectively with limited direction from the Principal.
- e) Working collaboratively with the Principal to deliver the work under the Contract in a way tailored to best meet the Principal's evolving needs.
- f) Acting with integrity and transparency in the performance of the work under the Contract and all other obligations under the Contract.
- g) Ability to communicate and cooperate with other service providers for example public utility companies, adjoining contractors, particularly noting that another service provider will be carrying out responsive maintenance activities including responding to incidents, emergencies and extreme weather events on the same network.

- h) Keep up to date with changes in legislation and standards, policies and technology.

The Principal must ensure that the Principal's Representative, Principal's Representative's delegates and its representatives on the CLT, CDT and AMG observe the Stewardship Principles.

The Contractor must ensure that the Contractor's Representative and its representatives on the CLT, CDT and AMG observe the Stewardship Principles.

## **2.5 Embedding the Relationship Principles and Stewardship Principles**

To facilitate the understanding of, and commitment to, the Relationship Principles and Stewardship Principles by all employees and staff the parties will, as part of the Prestart Conference under Clause 6, agree a charter setting out how the parties will implement and uphold the Relationship Principles and Stewardship Principles (**Relationship and Stewardship Charter**).

## **2.6 Relationship 'health checks'**

- a) The parties will, through the CLT, constantly monitor the adherence of the parties and their staff to the Relationship Principles and Stewardship Principles.
- b) At intervals of not more than six months, the Principal's Representative will convene a workshop to review the commitment of each party and their staff to the Relationship Principles and Stewardship Principles and the Relationship and Stewardship Charter.

## **2A Contract Reset Events**

- a) Subject to the Contractor being granted an extension of the Term for the First Extension Period under Clause 2.1D, the CLT shall, within 6 months of the commencement of the fourth Year of the Initial Term, assess and determine whether any Contract Reset Events have occurred during the first three Years of the Initial Term.
- b) If the CLT determines that a Contract Reset Event has occurred, the CLT shall direct the Contractor to provide written details of:
  - i. The impact of the Contract Reset Event on:
    - a the work under the Contract
    - b the cost to the Contractor of providing the work under the Contract
    - c the CTAMP.
  - ii. The adjustment required to the Compensation and Performance Framework, and
  - iii. Any other details that the CLT or the Principal directs the Contractor to provide.
- b) The Contractor must provide the information required under Clause 2A(b) within 20 business days of receipt of the request.
- c) If the CLT is unable to unanimously agree whether a Contract Reset Event has occurred, the Principal will, in its sole discretion, determine whether a Contract Reset Event has occurred. If the Principal determines that a Contract Reset Event has not occurred the Contractor will have no Claim.
- d) If the CLT or the Principal (as the case may be) determines that a Contract Reset Event has occurred, the CLT shall determine the adjustments (if any) that are required to be made to the Compensation and Performance Framework.

- e) If the CLT is unable to unanimously agree the adjustments (if any) to be made to the Compensation and Performance Framework, the Principal will, in its sole discretion, determine any adjustment to be made.
- f) The Contractor must take all reasonable steps to avoid or minimise the need for any adjustment to the Compensation and Performance Framework as a consequence of any Contract Reset Event, and if the CLT or Principal determines a Contract Reset Event has occurred and an adjustment to the Compensation and Performance Framework, must take all reasonable steps to mitigate any such costs arising out of or in connection with a Contract Reset Event.
- g) In determining any adjustment required to the Compensation and Performance Framework as a result of a Contract Reset Event, the CLT (or Principal, if applicable), may have regard to whether the Contractor has complied with Clause 2A(g).
- h) If the CLT or Principal has determined an adjustment is required to the Compensation and Performance Framework, any adjustment will take effect on and from the fifth Year of the Initial Term and any relevant Extension Period.

### **3 Contract documents**

#### **3.1 Order of precedence of documents**

The Contract is comprised of the following documents:

- a) the Formal Instrument of Agreement
- b) Letter of Acceptance
- c) Notice to Tenderers by date of issue – the later the date higher the precedence
- d) these General Conditions
- e) Appendix A to Appendix N, and
- f) the Other Documents.

Any ambiguity or discrepancy between the documents set out above is to be resolved and interpreted according to the order in which the documents are listed, with documents higher in the list having higher priority.

#### **3.2 Discrepancies**

The several documents forming the Contract are to be taken as mutually explanatory of one another. If either party discovers any ambiguity or discrepancy in any document prepared for the purpose of executing the work under the Contract, that party shall notify the Principal's Representative in writing of the ambiguity or discrepancy. In the event of an ambiguity or discrepancy being discovered and brought to the attention of the Principal's Representative, or discovered by the Principal's Representative, the Principal's Representative shall direct the Contractor as to the interpretation to be followed by the Contractor in carrying out the work under the Contract.

If the direction causes the Contractor to incur more or less cost than the Contractor could reasonably have anticipated at the time of tendering, the difference shall be valued as a variation under Clause 55.5 (in the case of Asset Management Work) or Clause 62.3 (in the case of Routine Maintenance Work).

### **3.3 Dimensions**

Where any discrepancy exists between figured and scaled dimensions, the figured dimensions shall prevail.

### **3.4 Supply of documents by Principal**

Documents supplied to the Contractor by the Principal shall remain the property of the Principal and shall be returned by the Contractor to the Principal on demand in writing. The documents shall not, without the prior written approval of the Principal, be used, copied or reproduced for any purpose other than the execution of the work under the Contract.

### **3.5 Availability of documents**

Whilst work under the Contract is being performed, one complete set of Drawings, Specifications and other written information supplied by the Principal, the Principal's Representative and the Contractor shall be kept by the Contractor at the relevant Site or other location approved in writing by the Principal. These documents must be available at all times for reference by the Principal, the Principal's Representative or any persons nominated in writing by either of them.

## **4 Contractor's obligations and warranties**

### **4.1 Contractor's primary obligation**

The Contractor shall be solely responsible for the execution and completion of the work under the Contract in accordance with:

- a) the provisions of this Contract
- b) the Drawings, and
- c) the Specifications,

and acknowledges that the Principal is relying upon the advice, skill and judgement of the Contractor in carrying out work under the Contract.

### **4.2 Contractors' warranties**

The Contractor warrants that it has and it shall be deemed to have:

- a) examined carefully and to have acquired actual knowledge of the contents of the Contract documents and any other information made available in writing by the Principal or any other person on the Principal's behalf to the Contractor in connection with the Contract
- b) examined all information relevant to the risks, contingencies and other circumstances which could affect the performance of the work under the Contract and which was obtainable by the making of detailed enquiries (to the extent expected of a competent and experienced contractor)
- c) done everything a competent and experienced contractor would have done to inform itself fully as to the physical conditions or obstructions upon and below the surface of the Sites, or which may affect its performance of the Contract and obtained all necessary information as to risks, contingencies and other circumstances which could have an effect on the performance and cost of executing the work under the Contract

- d) informed itself of the nature of the work and materials necessary for the execution of the work under the Contract and the means of access to and facilities at the Sites and transport facilities for deliveries to or from the Sites
- e) informed itself as to the availability and cost of labour including, without limitation, the costs of complying with obligations imposed by any agreement between the relevant building industry unions and employers relating to the execution of construction and building work nationally and in the State or Territory in which the Works are situated and the materials required
- f) satisfied itself as to the correctness and sufficiency of the components of compensation included in Appendix B: Compensation and Performance Framework (Revision 1) to cover the corresponding costs of complying with all its obligations under the Contract and of all matters and things necessary for the due and proper performance and completion of the work under the Contract
- g) informed itself of all requirements of the Authorities in relation to the work under the Contract generally, and without limiting the generality of the foregoing, in relation to measures necessary to protect the environment from any adverse effect or damage arising from execution of the work under the Contract
- h) entered into this Contract based on its own investigations, interpretations, deductions, information and determinations and the Contractor acknowledges that it is aware that the Principal has entered into the Contract relying upon this acknowledgment and warranty, and
- i) obtained all appropriate professional and technical advice on all matters and circumstances with respect to the matters referred to in Clauses 4.2(a) to 4.2(g).

#### **4.3 Contractors' liabilities and obligations unaffected**

Failure by the Contractor to do all or any of the things it is deemed to have done under Clause 4.2 will not relieve the Contractor of any of its obligations or liabilities under the Contract, including without limitation, its obligation to perform and complete the work under the Contract in accordance with the Contract.

#### **4.4 Asset Information**

- a) The Principal does not warrant or make any representation with respect to:
  - i. the completeness, accuracy or adequacy of any Asset Information provided to the Contractor by or on behalf of the Principal, or
  - ii. any interpretations, deductions, opinions or conclusions set out in any such Asset Information.
- b) Any Asset Information provided to the Contractor by or on behalf of the Principal shall not form part of the Contract.
- c) Subject to Clause 56:
  - i. the Principal shall not be liable to the Contractor for any Claim arising out of or in relation to Asset Information provided to the Contractor by or on behalf of the Principal

- ii. the Contractor shall not be relieved of any of its obligations or liabilities, if the Contractor encounters conditions, including subsurface conditions and subsurface services, which differ from the conditions shown in or indicated by any Asset Information provided to the Contractor by or on behalf of the Principal, and
- iii. the Contractor accepts all risk arising out of its use of or reliance upon any Asset Information provided to the Contractor by or on behalf of the Principal.

## **5 Security**

### **5.1 Purpose**

The security is for the purpose of ensuring the due and proper performance of the Contract by the Contractor (including, but not limited to, the satisfaction of any debts due or which may become due from the Contractor to the Principal and any claims which the Principal has or may have against the Contractor as a consequence of any act, omission, default or negligence of the Contractor).

### **5.2 Provision of security**

Within 14 days of the Date of Award, the Contractor shall lodge with the Principal and shall during the Term maintain security in an amount equal to the amount specified in Item 10 of the Key Information. Where the Principal has recourse to the security in accordance with Clause 5.5, the Contractor must either:

- a) provide additional security to ensure the total security held is equal to the amount specified in Item 10 of the Key Information, or
- b) provide a replacement security of the amount specified in Item 10 of the Key Information (in which case, on receipt of the replacement security the Principal will return the balance of any security to which it has not had recourse under Clause 5.5).

### **5.3 Form of security**

The security shall in each case be made up of:

- a) one or more unconditional irrevocable bank guarantees in the form of Form C7840 (or otherwise approved by the Principal in its absolute discretion) and from a bank or banks which comply with the requirements set out in Item 11 of the Key Information, or
- b) one or more unconditional irrevocable insurance bonds in the form of Form C7843 (or otherwise approved by the Principal in its absolute discretion) and from an insurance company or insurance companies which comply with the requirements set out in Item 11 of the Key Information.

The approval or otherwise of a bank or an insurance company for the purposes of this Clause 5.3 shall be in the absolute discretion of the Principal.

If an insurance company which has given an insurance bond under this Clause 5.3 fails to maintain a rating equal to or better than that set out in Item 11 of the Key Information, the Contractor shall, forthwith upon being requested by the Principal to do so, substitute that insurance bond:

- i) with a bank guarantee in the same amount and in the form prescribed in Clause 5.3(a) and from a bank approved by the Principal, or

- ii) with an insurance bond in the same amount and in the form prescribed in Clause 5.3(b) and from a different insurance company approved by the Principal.

The costs of and incidental to providing each security (including, without limitation, all stamp duty and other taxes payable in respect of the security) shall be borne by the Contractor.

Security may be subject to an expiry date which is not earlier than four months after the end of the Term.

#### **5.4 Conversion of security**

Without derogating from the Principal's obligations under Clause 5.5, the Principal may convert into money at any time any part of the security, and the Principal may do so whether or not it is entitled to exercise a right under the Contract in respect of the security.

The Principal shall not be liable in any way for any loss occasioned by the conversion of any security into money whether that conversion is done pursuant to Clause 5.4 or any other clause.

#### **5.5 Recourse to security**

The Principal may have recourse to the security where the Principal has become entitled to exercise a right under the Contract in respect of any such security, including for the purposes under Clause 5.1.

#### **5.6 Release of security**

Within 90 days after the end of the Term, the Principal will return to the Contractor any security to which the Principal has not had recourse under Clause 5.5.

#### **5.7 Interest on security**

The Principal shall own any interest earned on any security which is cash or which is converted into money.

The Principal does not hold any such security or converted moneys upon any trust for the Contractor or any other party.

#### **5.8 Deed of Guarantee, Undertaking and Substitution**

The Contractor shall, if requested by the Principal in writing, lodge with the Principal within 14 days after that request having been made a Deed of Guarantee, Undertaking and Substitution in the form of Form C7848 duly executed by the Contractor and that other corporation for the performance of the obligations and the discharge of the liabilities of the Contractor under or arising out of the Contract.

For the purpose of Clause 5.8, the terms 'corporation' and 'subsidiary' have the meanings defined in the Corporations Law.

Where the Contractor is two or more legal entities, the Principal may request that the Contractor provide a Deed of Guarantee, Undertaking and Substitution in accordance with this Clause 5.8 in respect of each legal entity comprising the Contractor.

## **Part B – Governance and Contract Plans**

### **6 Prestart Conference**

Prior to the Handover Date, the Contractor shall contact the Principal's Representative in order to arrange a Prestart Conference.

The Prestart Conference shall be attended by all members of the CLT, CDT and the AMG and is intended to provide a forum for the parties to:

- a) develop and agree the Relationship and Stewardship Charter
- b) establish lines of communication and clarify all relevant responsibilities and delegations
- c) discuss arrangements for submission and review of the Contract Plan in accordance with Clause 13
- d) discuss arrangements for records and reporting, including access by the Principal's Representative, submission of test results and all reports required under the Contract and disposition of records upon completion of the Contract
- e) discuss arrangements for all administrative requirements, including information and documents which the Contractor is obliged to submit to the Principal's Representative, and
- f) deal with any other matters nominated by the Contractor or Principal.

### **7 Governance, leadership and management**

#### **7.1 Overview levels of management and leadership**

- a) The work under the Contract will be subject to overall strategic guidance and leadership by the Contract Leadership Team established by and functioning in accordance with Clause 9.
- b) The day-to-day affairs of the work under the Contract will be managed and delivered by the Contractor, with the Contract Delivery Team established in accordance with Clause 10 to provide a forum for the administration of the Contract.
- c) The AMG, established and operating in accordance with Appendix J, will:
  - i. assist the Principal to assess and monitor the overall health of the Road Infrastructure and to oversee the development and finalisation of the planned sequencing and priority of the Asset Management Work; and
  - ii. assist the Principal to develop the Asset Management Plan on a best for network basis, including the CTAMP, the Draft FWP and the Draft AWP.

### **8 Not used**

### **9 Contract Leadership Team (CLT)**

#### **9.1 Establishment and representation**

- a) The CLT is established with an overall responsibility to provide guidance and leadership with respect to the work under the Contract and to provide a forum for regular and formal interaction between senior executives of the Principal and the Contractor.

- b) The CLT will consist of up to three senior representatives from the Principal and up to three senior representatives from the Contractor (**CLT Members**).
- c) The Principal's Representative and the Contractor's Representative shall be permanent invitees to meetings of the CLT.
- d) Members of the AMG and CDT may attend meetings of the CLT at the discretion of the CLT to provide detailed advice and background information.
- e) At the Date of Award the CLT Members are those persons nominated in Item 5 of the Key Information.
- f) A party may replace its CLT Member(s) at any time by giving notice in writing to the other party at least 24 hours prior to the change in representation (**Substitute CLT Member**).
- g) Unless otherwise agreed by the CLT, the members of the CDT and AMG may not act as a CLT Member.

## **9.2 Duties and accountabilities of the CLT**

The CLT's duties are to:

- a) set policy and give philosophical and strategic direction for the work under the Contract within the boundaries set out in the Contract, including by establishing the Relationship and Stewardship Charter
- b) provide leadership and set a visible example of senior management's commitment to the Contract Objectives, the Relationship Principles, the Stewardship Principles and the Relationship and Stewardship Charter
- c) ensure a transparent governance framework is developed and deployed across the work under the Contract
- d) ensure obligations under the Contract are delivered or performed
- e) ensure reporting to the Principal is timely, accurate and comprehensive
- f) initiate or approve the commitment of resources to the work under the Contract and provide corporate support as necessary
- g) approve the components of the Asset Management Plan in accordance with Clause 15
- h) ensure a culture necessary to achieve all KRAs is created and sustained
- i) ensure directions from Principal's Representative (under the Contract) are implemented
- j) monitor the performance of the Contractor and implement appropriate measures to correct undesirable trends
- k) support the formation and operation of the AMG
- l) issue directions, approvals and decisions as required by the Contract
- m) make recommendations to the Principal in relation to changes to the Maintenance Levels of Service, and
- n) attempt to resolve any differences or issues that are referred to it under Clause 44.2.

### **9.3 Meetings**

- a) Unless the parties agree otherwise, the CLT will meet at least once every month.
- b) At least one CLT Member (or Substitute CLT Member where applicable) from each party must be present to enable the CLT to hold a meeting or make a decision. Attendance may be by telephone or video link.
- c) The CLT will arrange for a secretary (CLT Secretary) to record minutes of all resolutions of the CLT and all actions arising out of each CLT meeting. A copy of the minutes will be forwarded to each CLT Member as soon as practical after each meeting.
- d) Decisions of the CLT must be unanimous.

## **10 Contract Delivery Team (CDT)**

### **10.1 Establishment and representation**

- a) The CDT is established to provide a forum for the administration of the Contract and for regular discussions regarding issues arising in connection with the work under the Contract, including the exchange of information and initial discussions between the Principal's Representative and the Contractor's Representative in relation to any decisions, directions or instructions required or permitted under the Contract.
- b) The Contractor remains responsible for the delivery of the work under the Contract.
- c) At the Date of Award, the members of the CDT are the Principal's Representative, the Contractor's Representative and those persons nominated in Item 6 the Key Information.
- d) Subject to Clause 11 and Clause 12, a party may replace its CDT member(s) at any time by giving notice in writing to the other party at least 24 hours of the change of the representative.

### **10.2 Meetings**

- a) The CDT will meet as often as the CDT members see fit or as directed by the CLT, but not less than monthly.
- b) The CLT will determine who will chair CDT meetings and the CLT may appoint the chairperson on a rotational basis.
- c) The CDT will arrange for recording of minutes of all resolutions and actions arising out of each CDT meeting. A copy of the minutes will be forwarded as soon as practical after each meeting to each CDT member and, unless directed otherwise by the CLT, to each CLT Member.

## **10A Communication and Operational Control**

### **10A.1 Minimum requirements**

The Contractor must ensure that the Contractor has a single point of contact, that:

- a) is located at the Contractor's on-site office, or other location that is approved by the Principal's Representative
- b) is available 24 hours a day, 7 days a week
- c) is able to dispatch and activate resources at short notice to respond to hazards

- d) is able to dispatch and activate resources to respond to emergencies and incidents at short notice as directed
- e) is able to promptly log the time, location and status of community enquiries, complaints and incidents (and in any event no later than one hour after the enquiry, complaint or incident)
- f) is able to provide real time information to the Principal on the Contractor's crew location, details and progress of activities, and anticipated completion time for all activities.

The information in e) and f) of this Clause 10A.1 must be available for the Principal's Representative to access and view at any time.

## **11 Principal's Representative**

The Principal must ensure that at all times there is a Principal's Representative and that in the exercise of the functions of the Principal's Representative under the Contract, the Principal's Representative:

- a) abides by the Relationship Principles and Stewardship Principles
- b) acts within the time prescribed under the Contract or where no time is prescribed, within a reasonable time, and
- c) arrives at a reasonable measure or value of work, quantities or time.

At the Date of Award the Principal's Representative is the person specified in Item 8 of the Key Information.

If pursuant to a provision of the Contract enabling the Principal's Representative to give directions, the Principal's Representative gives a direction, the Contractor shall comply with the direction.

In this Clause 11 'direction' includes agreement, approval, authorisation, certificate, decision, demand, determination, explanation, instruction, notice, order, permission, rejection, request or requirement.

Except where the Contract otherwise provides, a direction may be given orally but the Principal's Representative shall as soon as practicable afterwards confirm it in writing. If the Contractor requests in writing that the Principal's Representative confirm an oral direction in writing, the Contractor shall not be bound to comply with the direction until the Principal's Representative confirms it in writing.

The Principal's Representative may from time to time appoint a delegate to exercise any functions of the Principal's Representative under the Contract, but not more than one delegate shall be delegated the same function at the same time. The appointment of a Principal's Representative's delegate shall not prevent the Principal's Representative from exercising any function.

## **12 Contractor's Representative**

The Contractor shall personally superintend the execution of the work under the Contract or, at all times during which any activities relating to the execution of the work under the Contract are taking place, have a competent representative present on the Site and, if required by the Principal's Representative, at other places at which activities relating to the execution of the work under the Contract are taking place.

The Contractor must ensure that at all times there is a Contractor's Representative and that the Contractor's Representative abides by the Relationship Principles and Stewardship Principles.

At the Date of Award the Contractor's Representative is the person specified in Item 9 of the Key Information. The Contractor shall not replace the Contractor's Representative without the written approval of the Principal's Representative, such approval not to be unreasonably withheld.

Matters within the knowledge of the Contractor's Representative shall be deemed to be within the knowledge of the Contractor.

### **13 Contract Plan**

#### **13.1 Preparation and submission of Contract Plan**

Within 28 days of the Date of Award (or such other date agreed in writing by the Principal's Representative), and in any case as a condition precedent to being granted access to the Road Infrastructure on the Handover Date, the Contractor must submit to the Principal's Representative the following plans which comply with the requirements of Appendices D, B, J and L (as applicable):

- i) Quality Plan
  - ii) Environmental Management Plan – Maintenance (EMP-M)
  - iii) Workplace Health and Safety Management Plan
  - iv) Traffic Management Plan
  - v) Community Engagement Plan
  - vi) Maintenance Management Plan
  - vii) Contractor's Tactical Asset Management Plan – Stage 1 (CTAMP – Stage 1)
  - viii) Risk Management Plan,
  - ix) Performance Measurement Plan,
  - x) Establishment Plan, and
  - xi) Transition Out Plan.
- a) At least 28 days prior to commencing any Asset Management Work and in any case as a condition precedent to being granted access to a Site for carrying out a Project, the Contractor must submit the information and plans required under Clause 53.1.
  - b) Within 5 months of the Handover Date, the Contractor must submit to the Principal's Representative, the completed Contractor's Asset Management Plan, (including the CTAMP Stage 1 and Stage 2), which complies with Appendix J, for review under Clause 14.5.
  - c) The Contract Plan collectively includes:
    - i. the plans submitted by the Contractor under Clause 13.1(a), subject to the review of those plans by the Principal's Representative under Clause 13.2
    - ii. the Workplace Relations Management Plan
    - iii. the Project specific plans or augmented plans submitted by the Contractor under Clause 53.1, including the Environmental Management Plan – Construction (EMP-C) and traffic guidance scheme for each Project, and
    - iv. The CTAMP (Stages 1 and 2), subject to the review by the Principal's Representative under Clause 13.2 and Clause 14.5, respectively.

### **13.2 Review of Contract Plan**

- a) The Principal's Representative may review all or part of the plans prepared and submitted by the Contractor under Clause 13.1(a) or Clause 13.1(b), and within 21 days of the submission by the Contractor of a Contract Plan:
  - i. accept the Contract Plan, or
  - ii. reject all or part of the plans submitted under Clause 13.1(a) or Clause 13.1(b) if in its reasonable opinion those plans do not comply with the requirements of the Contract (including the requirements set out in Appendices, as applicable) in which case the Principal's Representative must provide reasons for the rejection.
- b) If a plan submitted under Clause 13.1(a) or Clause 13.1(b) is rejected in whole or in part, the Contractor must submit an amended version of the plan to the Principal's Representative within seven days of receiving notice under Clause 13.2(a)(ii) and this Clause 13.2 shall re-apply in respect of the amended plan.

### **13.3 Updating Contract Plans**

- a) Without limiting Clause 13.3(b), on or before 1 August in each Year of the Term after the first Year, the Contractor must submit an updated version of all components of the Contract Plan to the Principal's Representative and Clause 13.2 shall apply, except for the CTAMP, where Clause 14.5 shall apply.
- b) If requested by the Principal's Representative, which may be made at any time and from time to time, or where an issue or deficiency arises in respect of any part of the Contract Plan, the Contractor must submit an updated version of the relevant part of the Contract Plan to the Principal's Representative and Clause 13.2 shall apply.

### **13.4 Permission and compliance**

- a) The Contractor must implement and at all times comply with all plans that form part of the Contract Plan.
- b) Compliance with the Contract Plan does not relieve the Contractor from its general obligation to comply with this Contract and all Statutory Requirements.
- c) Any approval or comment from the Principal's Representative in respect of the Contract Plan does not relieve the Contractor of its responsibilities under this Contract or under the Contract Plan.

### **13.5 Audit of Contract Plan**

The Principal may carry out audits of the Contract Plan and its implementation at any time and from time to time. During any audit, the Contractor shall provide the Principal and its representatives with all documentation, access and assistance necessary for the audit. The Contractor is not entitled to any additional payment for providing any assistance during any audit of the Contract Plan.

## **Part C – Asset Management Services**

### **14 Overview of services and phases**

#### **14.1 Asset Management Services**

The Contractor must carry out the Asset Management Services:

- a) in accordance with the Contract, and
- b) with a view to achieving the Contract Objectives.

#### **14.2 Process to agree Second Phase Projects**

- a) The Asset Management Work to be completed by the Contractor falls into two phases:
  - i. from the Handover Date until the First Phase Expiry Date (First Phase), the Contractor shall carry out the Asset Management Work required to complete the First Phase Projects and any Second Phase Projects referred to the Contractor in accordance with Clause 18, and
  - ii. from the Second Phase Start Date and for the Term (Second Phase), the Contractor shall carry out the Asset Management Work required to complete the Second Phase Projects.
- b) This Part C sets out the process for the parties to analyse, plan and agree on:
  - i. the Asset Management Work to be carried out as Second Phase Projects, and
  - ii. how to make best use of the Network Schedule Total (Planned Routine Maintenance).
- c) The CLT may agree amendments to the process set out in this Part C.

#### **14.3 Process to agree Second Phase Projects**

Attachment 1 of Appendix J represents the process for the parties to analyse, plan and agree on the Asset Management Work to be carried out as Second Phase Projects. The remainder of this Part C will take precedence to the extent of any inconsistency.

#### **14.4 Principal's Tactical Asset Management Plan**

The Contractor acknowledges and agrees that:

- a) The Principal has developed a strategic Asset Management Policy.
- b) The Principal has developed a strategic and detailed asset management plan which includes the Principal's Tactical Asset Management Plan (TAMP) for the district road network.
- c) Any plans submitted by the Contractor under Clause 14 or Clause 15 (including the CTAMP, Draft FWP and Draft AWP) must comply with the documents referred to in Clauses 14.4(a) and 14.4(b).
- d) Where requested by the Principal, and otherwise in accordance with Appendix J, the Contractor will provide all necessary assistance to the Principal in updating or modifying the TAMP.

#### **14.5 Contractor's Tactical Asset Management Plan**

- a) Within 5 months of the Handover Date and on or before 1 August of each Year of the Term after the first Year, the Contractor shall submit to the Principal's Representative its completed

Contractor's Tactical Asset Management Plan (CTAMP) setting out the strategies the Contractor intends to put in place to manage the Road Infrastructure:

- i. to achieve the Contract Objectives
  - ii. which complies with Clause 14.4, and
  - iii. which otherwise complies with the requirements in Appendix J.
- b) The Principal's Representative shall within 21 days of receiving the completed CTAMP from the Contractor in accordance with Clause 14.5(a):
- i. accept the CTAMP, or
  - ii. reject the CTAMP, in whole or in part, if in its reasonable opinion the CTAMP does not comply with the requirements of the Contract (including the requirements set out in applicable Appendices) in which case the Principal's Representative must provide reasons for the rejection.
- c) If the CTAMP, submitted under Clause 14.5(a) is rejected in whole or in part, the Contractor must submit an amended version of the plan to the Principal's Representative within seven days of receiving notice under Clause 14.5(b)(ii) and this Clause 14.5 shall re-apply in respect of the amended plan.

## **15 Asset Management Plan and development of Design Briefs**

### **15.1 Submission and approval of Forward Work Program**

- a) Within seven months of the Handover Date and on or before 1 October of each Year of the Term after the first year, the AMG will submit, a Draft Forward Work Program or Draft FWP to the Principal's Representative comprising a program specifying the proposed sequence and priority of Asset Management Work over the following five year period (which may extend beyond the Term of the Contract and any extensions to the contract) and containing those matters in Appendix J (Draft Forward Work Program or Draft FWP).
- b) The Draft FWP will be developed by the AMG.
- c) The Principal's Representative shall within 14 days of receiving the Draft FWP from the AMG:
  - i. recommend the Draft FWP for consideration by the CLT, in which case the AMG shall submit the Draft FWP to the CLT for approval, or
  - ii. decline to recommend the Draft FWP for consideration by the CLT, and request that the Contractor address the reasons for the decline, and resubmit the Draft FWP within 14 days (in which case this Clause 15.1(c) shall reapply).
- d) The CLT shall within 14 days of receiving the Draft FWP from the AMG in accordance with Clause 15.1(c)(i):
  - i. approve the Draft FWP, or
  - ii. reject the Draft FWP with reasons, and request that the AMG address the reasons for the rejection and resubmit the Draft FWP within 14 days (in which case this Clause 15.1(d) shall reapply), or
  - iii. if the CLT is unable to reach a unanimous decision, refer the Draft FWP to the Principal.

- e) The Principal shall within seven days of receiving the Draft FWP from the AMG in accordance with Clause 15.1(d)(iii):
  - i. approve the Draft FWP, or
  - ii. reject the Draft FWP with reasons, and request that the AMG address the reasons for the rejection and resubmit the Draft FWP within 14 days (in which case this Clause 15.1(e) shall reapply).
- f) The Principal may withhold its approval of the Draft FWP under Clause 15.1(e)(i) until such time as the parties have entered into an executed Contract on the terms of the Letter of Acceptance.

**15.1A Submission and approval of Annual Work Program**

- a) Within seven months of the Handover Date and on or before 1 October of each Year of the Term, the AMG will submit, a Draft Annual Work Program or Draft AWP to the Principal's Representative comprising a program specifying the proposed sequence and priority of Asset Management Work over the following Year and which complies with the Draft FWP submitted under Clause 15.1(e), and contains those matters in Appendix J (Draft Annual Work Program or Draft AWP).
- b) The Draft AWP will be developed by the AMG based on the Draft FWP.
- c) The Principal's Representative shall within 14 days of receiving the Draft AWP from the AMG:
  - i. recommend the Draft AWP for consideration by the CLT, in which case the AMG shall submit the Draft AWP to the CLT for approval; or
  - ii. decline to recommend the Draft AWP for consideration by the CLT, and request that the AMG address the reasons for the decline, and resubmit the Draft AWP within 14 days (in which case this Clause 15.1A(c) shall reapply).
- d) The CLT shall within 14 days of receiving the Draft AWP from the AMG in accordance with Clause 15.1A(c)(i):
  - i. approve the Draft AWP, which on approval shall become the Annual Works Program (AWP), and that part of the Program which is approved to be delivered by the Contractor, shall become the Contractor's AWP, or
  - ii. reject the Draft AWP with reasons, and request that the AMG address the reasons for the rejection and resubmit the Draft AWP within 14 days (in which case this Clause 15.1A(d) shall reapply), or
  - iii. if the CLT is unable to reach a unanimous decision, refer the Draft AWP to the Principal.
- e) The Principal shall within seven days of receiving the Draft AWP from the AMG in accordance with Clause 15.1A(d)(iii):
  - i. approve the Draft AWP, which on approval shall become the Annual Works Program (AWP), and that part of the Program which is approved to be delivered by the Contractor, shall become the Contractor's AWP, or
  - ii. reject the Draft AWP with reasons, and request that the Contractor address the reasons for the rejection and resubmit the Draft AWP within 14 days (in which case this Clause 15.1(e) shall reapply).

### **15.2 Development of Design Brief**

- a) For each Second Phase Project of Asset Management Work specified in an AWP approved by the CLT or the Principal (as the case may be) under Clause 15.1A, the AMG will develop a Design Brief:
  - i. in accordance with Appendix J
  - ii. using the template Design Brief included as Attachment 3 to Appendix J, and
  - iii. specifying details of any Pre-construction Testing the AMG considers necessary for the relevant Second Phase Project,and provide it to the Principal's Representative as soon as is reasonably practicable following approval of the AWP.
- b) The Principal's Representative shall within 21 days of receiving the Design Brief from the Contractor in accordance with Clause 15.2(a):
  - i. accept the Design Brief, or
  - ii. reject the Design Brief with reasons, and request that the AMG address the reasons for the rejection and resubmit the Design Brief within seven days (in which case this Clause 15.2(b) shall reapply).

### **15.3 Design Services Fee and Pre-Construction Testing**

Upon acceptance of the Design Brief by the Principal's Representative in accordance with Clause 15.2(b), the Principal's Representative may request the Contractor to provide a fee proposal to carry out the Design Services and Pre-Construction Testing.

- a) Within 30 days of receiving each Design Brief and prior to commencing any Design Services or Pre-construction Testing, the Contractor must submit to the Principal's Representative written details of the proposed Design Services Fee and Pre-construction Testing Fee for the relevant Second Phase Project (Fee Proposal).
- b) After receiving the Fee Proposal, the Principal's Representative will:
  - i. accept the Fee Proposal
  - ii. request that the Contractor re-submit the Fee Proposal (with reasons) in which case this Clause 15.3(b) shall re-apply, or
  - iii. reject the Fee Proposal.

## **16 Contractor's design obligations for Second Phase Projects**

### **16.1 Design Services**

Upon acceptance of the Fee Proposal by the Principal's Representative in accordance with Clause 15.3, the Contractor shall:

- a) Carry out and complete the Design Services and Pre-Construction Testing and prepare the Drawings and Specifications:
  - i. with due expedition and without delay

- ii. such that the Second Phase Projects will reach Practical Completion in accordance with the relevant proposed Project Programs.
  - iii. in accordance with:
    - A. the Principal's Standard Drawings
    - B. the Principal's Standard Specifications
    - C. the Principal's standards, polices and manuals in relation to design, as amended from time to time, and
    - D. the accepted Design Brief, or accepted amended Design Brief.
  - iv. to achieve the Contract Objectives
  - v. to enable the Contractor to construct and complete the Works, the subject of the Design Services in accordance with this Contract, and
  - vi. where the standard of finish for any part of the Works is not specified or cannot otherwise be determined by reference to the Contract, provide for a standard of finish specified elsewhere in the Contract for similar work, or if there is no similar work, in accordance with the standard of care required to ensure the Works are free from defects and appropriate for the intended use, having regard to the assumptions that a competent and experienced contractor would be reasonably expected to make.
- b) Work closely with the AMG in carrying out the Design Services such that, to the extent possible, the AMG will have reviewed and provided input on all Drawings and Specifications prior to inclusion of the Drawings and Specifications in a Project Proposal in accordance with Clause 17.
- c) Ensure that:
- i. all Design Services are carried out by a person who is prequalified under the Principal's prequalification system, and who is an RPEQ, or under the direct supervision of an RPEQ; and
  - ii. all Drawings and Specifications, and any other design work forming part of the Design Services, is certified by the RPEQ involved in the carrying out or supervision of that work, as having been prepared or supervised by that RPEQ.

## **16.2 Contractors' design warranties**

Without limiting Clause 4, the Contractor warrants that:

- a) It shall at all times be suitably qualified and experienced, and shall exercise due skill, care and diligence in the execution and completion of the work under the Contract.
- b) The designs delivered will be sound and efficient and meet the objective of the Contract delivering value for money and best for network.
- c) Except in respect of the First Phase Projects (the design for which has been undertaken by the Principal), the design of the Works the subject of the Second Phase Projects will be carried out and completed in accordance with the requirements of the Contract:
  - i. such design will be fit for the purposes stated in the Contract or the Design Brief, and suitable and adequate for the Site, and

- ii. comply with all the requirements of the Contract, including (without limitation), the requirements of all Authorities and Statutory Requirements.

## **17 Submission and approval of Project Proposals**

### **17.1 Project Proposals**

For each Second Phase Project:

- a) included in the Contractor's AWP approved under Clause 15, or
- b) referred to the Contractor in accordance with Clause 18,
- c) the Contractor must submit a proposal (Project Proposal) to the Principal's Representative setting out the following proposed details for the Second Phase Project:
  - i. the Project Contract Sum, including:
    - A. a full open book breakdown of Direct Costs, developed in accordance with the principles in Clause 3(b) of Appendix B: Compensation and Performance Framework (Revision 1)
    - B. the Corporate Overhead, and
    - C. the Margin,
  - ii. the Drawings and Specification, including:
    - A. a list of the Principal's Standard Drawings and the Principal's Standard Specifications that apply to the Project, and
    - B. the Project Specific Drawings and Project Specific Specifications
  - iii. the Project Program setting out the proposed timing, sequencing and expected duration of the Second Phase Project and which complies with the requirements of Appendix D: Detailed Requirements for Contract Plan (Revision 1)
  - iv. the Site
  - v. any subcontractors to be engaged with respect to the Second Phase Project
  - vi. details (including dates and times) of any road, lane or shoulder closures or other public disturbance anticipated for the Second Phase Project
  - vii. the approval and notices necessary for the Second Phase Project and details of whether or not such approvals or notices have been obtained or given (including details of any road, lane or shoulder closures or other public disturbance for which a notice is required under the Contract Plan)
  - viii. details of any Project-specific:
    - A. arrangements with utilities
    - B. plans which will augment the Contract Plan
    - C. arrangements to deal with any contract interfaces which will augment the requirements in Appendix C
  - ix. any other matters which the Contractor considers are relevant to the Second Phase Project.

### **17.2 Response to a Project Proposal**

- a) After receiving each Project Proposal, the Principal's Representative will:
  - i. accept the Project Proposal
  - ii. request that the Contractor re-submit an amended Project Proposal (with details of the requested amendments or further information required), in which case the Contractor will submit an amended Project Proposal within 14 days and this Clause 17.2 applies to the re-submitted Project Proposal, or
  - iii. reject the Project Proposal, in which case Clause 17.5 applies.

### **17.3 Acceptance of Project Proposals and Final AWP**

- a) The Contractor shall update the Contractor's AWP to reflect the Project Proposals accepted by the Principal's Representative prior to the commencement of the relevant Year, and submit the updated Contractor's AWP to the Principal for approval. If the Principal approves the updated Contractor's AWP, that document is deemed to be the 'Final AWP' which includes the Projects for which Project Proposals have been accepted and which the Contractor is required to carry out in the next Year.
- b) The Contractor must not commence any Second Phase Project until:
  - i. the Project Proposal for the Second Phase Project has been accepted by the Principal's Representative in accordance with this Clause 17, and
  - ii. a Final AWP has been approved by the Principal which includes the Second Phase Project.
- c) Subject to the Principal's approval, the Contractor will update the Final AWP to reflect additional Second Phase Projects to be carried out following the referral of a Project pursuant to Clause 18.1 and the carrying out of Planned Routine Maintenance Work as Asset Management Work pursuant to Clause 18.2.

### **17.4 Project Contract Sum**

- a) The parties acknowledge and agree that the Corporate Overhead and Margin is fixed for the Term and is not subject to re-negotiation as part of the process in this Clause 17.

### **17.5 Consequences of rejection**

Subject to Clause 19, if the Project Proposal is rejected by the Principal's Representative under Clause 17.3(a)(iii) or a Final AWP is not approved by the Principal, the Principal:

- a) will pay the Contractor the Design Services Fee and Pre-construction Testing Fee (if owed and if not already paid), provided the Project Proposal complies with the requirements in the Contract and is otherwise capable of being accepted by the Principal
- b) owns and may use any information (including Intellectual Property Rights) included in the Project Proposal or produced as part of Design Services or Pre-construction Testing
- c) may advise the Contractor whether or not the Second Phase Project the subject of the Project Proposal should be deferred until the next Year of the Term, and
- d) subject to Clause 19, may arrange to carry out the Project Proposal by other means including by using contractors and consultants other than the Contractor.

The Contractor's sole remedy if a Project Proposal is rejected is payment under Clause 17.5(a), and otherwise the Principal has no liability to the Contractor (including to make any payment under this Clause 17.5 or the Contract if a Project Proposal is rejected because the Guaranteed Second Phase Projects Amount is reached in a Year), whether by reason of a breach of the Contract or otherwise.

## **18 Planned Routine Maintenance Work and referral of additional Projects**

### **18.1 Referral of Projects**

- a) At any time and from time to time the Principal may refer a proposed Second Phase Project to the Contractor by:
  - i. Requesting the Contractor to provide a Project Proposal, in which case the Principal will provide information such as:
    - I a design drawings, schedule of quantities, specifications,
    - II the proposed timing and approximate expected duration of the Project, and
    - III any other information which the Principal considers is relevant, or
  - ii. Giving the Contractor a Design Brief and details of:
    - I the Site
    - II the proposed timing and approximate expected duration of the Project, and
    - III any other matters which the Principal considers are relevant to the preparation of a Project Proposal.
- b) The Contractor will:
  - i. following receipt of a notice under Clause 18.1(a)(i), within 21 days of receipt of a notice under Clause 18.1(a)(i) (or within another agreed time), submit a Project Proposal for the referred Project in accordance with Clause 17.
  - ii. following receipt of a notice under Clause 18.1(a)(ii), provide a Fee Proposal to undertake the Design Services in accordance with Clause 16.3 and
    - I upon acceptance of the Fee Proposal by the Principal's Representative in accordance with Clause 15.3, the Contractor shall the undertake the Design Services required for the referred Project in accordance Clause 16, and
    - II within 90 days of receipt of a notice under Clause 18.1(a)(ii) (or within another agreed time), submit a Project Proposal for the referred Project in accordance with Clause 17.

### **18.2 Principles for Planned Routine Maintenance Work**

The parties acknowledge and agree that:

- a) where work under the Contract, which might otherwise be considered as Routine Maintenance Work, involves a large volume or quantity of work to rectify a defect or defects in the Road Infrastructure or is to be completed as a proactive measure to increase the sustainability of the Road Infrastructure, it may be more cost efficient to carry out that work as a Project of Asset Management Work.

- b) the Planned Routine Maintenance Work Schedule of Rates specifies tolerance levels which are used to distinguish between Routine Maintenance Work and Planned Routine Maintenance Work, and
- c) in respect of the Planned Routine Maintenance Work:
  - i. the Network Schedule Total (Planned Routine Maintenance Work) represents the funding the Principal intends to expend in respect of the Planned Routine Maintenance Work, and
  - ii. consistent with the Contractual Objectives, Clause 18.3 sets out the process for the CLT to provide input in relation to how the Network Schedule Total (Planned Routine Maintenance Work) is best used.

### **18.3 Submission and review of Planned Routine Maintenance Recommendations**

- a) The Contractor (with the assistance of the AMG) must regularly, and prior to commencing any activity of Planned Routine Maintenance Work, provide written recommendations to the Principal's Representative in relation to the basis on which the Planned Routine Maintenance Work should be performed (**Planned Routine Maintenance Recommendations**). In making Planned Routine Maintenance Recommendations, the Contractor must:
  - i. have regard to the Contract Objectives and the various bases on which the parties contemplate that the Planned Routine Maintenance Work may be carried out, as set out in Clause 18.3(b)(i), and
  - ii. ensure that the Network Schedule Total (Planned Routine Maintenance) is wisely invested and so that the Road Infrastructure is maintained in the best interests of the Principal.
- b) After receiving each Planned Routine Maintenance Recommendation, the Principal's Representative will:
  - i. direct the relevant Planned Routine Maintenance Work to be carried out as:
    - A Programmed Maintenance Work or Rehabilitation Maintenance Work, in which case the relevant work will be deemed to be referred as a Second Phase Project under Clause 18.1 upon the Principal providing a Design Brief to the Contractor, or
    - B Routine Maintenance Work to be carried out on the basis of:
      - I. the rates or prices in the Planned Routine Maintenance Work Schedule of Rates, or
      - II. where Clause 18.3(b)(i)(B)(I) does not apply, reasonable rates or prices to be approved by the Principal's Representative prior to the Planned Routine Maintenance Work commencing.
  - ii. request that the Contractor re-submit an amended Planned Routine Maintenance Recommendation (with details of the requested amendments or further information required), in which case the Contractor will submit an amended Planned Routine Maintenance Recommendation to the Principal's Representative within 14 days and this Clause 18.3(b) will apply to the re-submitted Planned Routine Maintenance Recommendation.

## 19 Guaranteed Asset Management Works Projects

- a) Subject to Clause 19(b), the Principal must ensure that it or its representatives accept Project Proposals submitted in accordance with Clause 17, such that the aggregate of the Project Contract Sums, the Pre-Construction Testing Fee, Design Services Fee and the cost of the Principal Supplied Items in each Year of the Initial Term shall not be less than the amount specified in Item 12 of the Key Information (**Guaranteed Asset Management Works Projects Amount**). The Principal does not otherwise guarantee accepting any Project Proposals submitted in accordance with Clause 17 (and is not obliged to do so) once the Guaranteed Asset Management Works Projects Amount for each Year is reached. The amounts specified in Item 12 of the Key Information represent the actual minimum amount available for Asset Management Works Projects in the relevant Year and are not subject to adjustment based on the present value of those amounts at the Date of Award.
- b) Clause 19(a) only applies to the extent that:
  - i. the Principal reasonably considers that the Contractor has the capacity and expertise to carry out the Asset Management Works Projects
  - ii. the Contractor has complied with its obligations under this Contract in relation to undertaking the Asset Management Services and preparing to carry out the Asset Management Works Projects in the relevant Year, including to carry out the Design Services and Pre-construction Testing required for, and submitting a genuine Project Proposal (including a proposed Project Contract Sums that contain Direct Costs at genuine prevailing market prices) in respect of, the Asset Management Works Projects in the relevant Year
  - iii. the Contractor is not in substantial breach of the Contract, and
  - iv. the parties have entered into an executed Contract on the terms of the Letter of Acceptance within 3 months from the Date of Award.
- c) The Principal's Asset Management representative(s) on the AMG may specify a proportion of the amount available for Asset Management Works Projects in each Year to apply in respect of part of the Road Infrastructure (including the green or blue network, or part of the national highway network which forms part of the Road Infrastructure).

## 20 dTIMs and the collection, storage and provision of data and information

- a) The Contractor must, at its own cost:
  - i. collect, store and upon request from the Principal provide to the Principal all data and information in relation to asset condition assessments and maintenance activities performed under the Contract in accordance with the requirements of the Contract and the Appendices as applicable, including any additional asset information procured in connection with the work under the Contract (for example, specialist surveys and design-related services), and
  - ii. ensure that all document production, management, transfer and storage required under the Contract is undertaken in a manner which is compatible with dTIMs and the Principal's nominated asset management system.

- b) Subject to Clause 20(a) the Principal will provide access to dTIMs outputs to the Contractor for the purpose of carrying out the work under the Contract.
- c) The Contractor must ensure its personnel comply with all reasonable requirements of the Principal in relation to the use of dTIMs.
- d) The Principal (or a representative of the Principal) will develop and manage dTIMS.
- e) The Contractor must promptly provide all information requested by the Principal's Representative in connection with the Contract or the work under the Contract.

## **Part D – Insurances**

### **21 Insurance of the Works**

On or before the Handover Date, the Contractor shall effect a policy of insurance in relation to the Works to be handed over to the Principal as a result of the Asset Management Work. The policy or proposed policy shall include the name of the Principal. The Contractor shall maintain the policy:

- a) with a limit not less than the amount specified in Item 13 of the Key Information and with excesses not exceeding the amounts specified in Item 13 of Key Information, and
- b) while the Principal has an interest therein and the Contractor must pay all premiums.

### **22 Public and Product Liability Insurance**

On or before the Date of Award, the Contractor shall effect a public and products liability policy of insurance in relation to the work under the Contract. The policy or proposed policy shall include the name of the Principal. The Contractor shall maintain the policy:

- a) with a limit not less than the amount specified in Item 14 of the Key Information, and
- b) while the Principal has an interest therein and the Contractor must pay all premiums.

### **23 Professional indemnity insurance**

Before commencing any professional design services, the Contractor shall take out, and ensure any subcontractor undertaking professional services takes out, a claims made based annual professional indemnity insurance policy for a total aggregate not less than that stated in Item 15 of the Key Information covering, among other things, claims by the Principal, its employees and agents and third parties against the Contractor or subcontractor or by any other person arising out of or incidental to any negligent act, error or omission by the Contractor or subcontractor in connection with the professional activities and duties of the Contractor or subcontractor.

Such professional indemnity insurances shall be maintained by the Contractor and Subcontractor until the end of the Term and thereafter for a period as stated in Item 16 of the Key Information.

### **24 Insurance of employees**

Before commencing the work under the Contract and at all times during the Term, the Contractor shall insure against liability for death of or injury to persons employed by the Contractor including liability by statute and at common law. The insurance cover shall be maintained until all work under the Contract (including remedial work) is completed.

Where permitted by law, the insurance shall be extended to indemnify the Principal for the Principal's statutory liability to persons employed by the Contractor.

The Contractor shall ensure that every subcontractor is similarly insured.

## **25 Motor vehicle insurance**

Before commencing the work under the Contract and at all times during the Term, the Contractor shall maintain compulsory motor vehicle insurance in respect of all vehicles against liability for:

- a) death, disease, bodily injury or illness to any person, and
- b) loss or damage that may occur to any physical property.

The Contractor shall maintain the policy with a limit not less than the amount specified in Item 17 of the Key Information and with an excess not exceeding the amount specified in Item 17 of the Key Information.

## **26 Inspection and provisions of insurance policies**

### **26.1 Proof of insurance**

Before the Contractor commences the work under the Contract and whenever requested in writing by the Principal, the Contractor shall produce evidence to the satisfaction and approval of the Principal of the insurance effected and maintained.

The effecting of insurance shall not limit the liabilities or obligations of a party under other provisions of the Contract.

### **26.2 Failure to produce proof of insurance**

If, after being requested in writing by the Principal, the Contractor fails to produce evidence of compliance with insurance obligations under Clauses 21, 22, 23 or 24 to the satisfaction and approval of the Principal acting reasonably, the Principal may effect and maintain the insurance and pay the premiums. The amount paid shall be a debt due from the Contractor in default to the Principal. The Principal may refuse payment until evidence of compliance with insurance obligations under Clauses 23 or 24 is produced by the Contractor to the satisfaction and approval of the Principal acting reasonably. The rights given by this Clause 26.2 are in addition to any other right.

### **26.3 Notices from or to the insurer**

The Contractor shall ensure that each policy of insurance contains provisions acceptable to the Principal that will:

- a) Require the insured party (being the Principal, the Contractor or a subcontractor), whenever the insurer gives the insured party a notice of cancellation or other notice concerning the policy at the same time to inform the other party or parties in writing that the notice has been given.
- b) Provide that a notice of claim given to the insurer by the Principal, the Principal's Representative, the Contractor or a subcontractor shall be accepted by the insurer as a notice of claim given by the Principal, the Principal's Representative, the Contractor and the subcontractor and that a failure by one insured to discharge its obligations of disclosure and good faith or to observe the terms of the policy will not prejudice the cover of the other insureds, and

- c) Require the insured party (being the Principal, the Contractor or a subcontractor), to provide:
  - i. a Certificate of Currency that specifies the dates when the relevant policy is effective, and
  - ii. on or before the end date of the Certificate of Currency, another Certificate of Currency to confirm the continuation of insurance cover for the relevant policy for the required term of the relevant policy as set out in this Clause 26.

#### **26.4 Notices of potential claims**

The Contractor shall, as soon as practicable, inform the Principal in writing of any occurrence that may give rise to a claim under a policy of insurance required by Clauses 21, 22 or 23 and shall keep the Principal informed of subsequent developments concerning the claim. The Contractor shall use its best endeavours to ensure that subcontractors in respect of their operations similarly inform the Principal. The Contractor shall not be required to comply with this Clause 26.4 in respect of claims which the Contractor and the Principal may have against each other, nor where to do so may prejudice the Contractor's cover under a policy of insurance required by Clauses 21, 22 or 23.

The Contractor shall comply with the terms of the policies of insurance effected under Clauses 21, 22, 23 or 24 (including, but not limited to, the notification requirements under those policies).

#### **26.5 Settlement of claims**

Upon settlement of a claim under the insurance specified by Clause 21:

- a) to the extent that the work under the Contract needing reinstatement has been the subject of a payment or allowance by the Principal to the Contractor, if the Contractor has not completed reinstatement of that work, moneys received shall, if requested by either party, be paid into a bank agreed upon by the parties in an account in the joint names of the Contractor and the Principal. As the Contractor proceeds to reinstate the loss or damage, the Principal's Representative shall certify against the joint account for the cost of reinstatement, and
- b) to the extent that the work to be reinstated has not been the subject of a payment or allowance by the Principal to the Contractor, the Contractor shall be entitled immediately to receive from moneys received, the amount of money so paid in relation to any loss suffered by the Contractor relating to that work under the Contract (including the supply of goods and materials on Site whether or not incorporated into the Works).

#### **26.6 Cross liability**

Any insurance required to be effected by the Contractor in joint names in accordance with the Contract shall include a cross liability clause in which the insurer agrees to waive all rights of subrogation or action against any of the persons comprising the insured and for the purpose of which the insurer accepts the term 'insured' as applying to each of the persons comprising the insured as if a separate policy of insurance had been issued to each of them (subject always to the overall sum insured not being increased thereby).

The insurance policies to be effected by the Principal in accordance with Clauses 21 and 22 will include a cross liability clause in which the insurer agrees (subject to exceptions specified in the policies) to waive rights of subrogation or action against any of the persons constituting the insured (including the Contractor and its subcontractors).

**26.7 Excess / deductible**

The Contractor shall bear or pay any excess or deductible which is applicable to any claim made under any of the policies of insurance effected under Clauses 21, 22, 23, 24 or 25 except to the extent that the claim is with respect to loss or damage which is the direct consequence of an Excepted Risk and is without any fault or omission on the part of the Contractor.

## **Part E – Site and execution of the Work under the Contract**

### **27 Site**

#### **27.1 Access**

Subject to the Contractor's compliance with Clause 53.1 and Clause 27.13, the Principal shall give the Contractor possession of sufficient of each Site for carrying out work under the Contract. If the Principal has not given the Contractor possession of the whole of a Site, the Principal shall give the Contractor possession of such further portions of the Site as may, from time to time, be necessary for carrying out the work under the Contract.

Possession of a Site shall confer on the Contractor a right to only such use and control as is necessary to enable the Contractor to carry out the work under the Contract.

Except to the extent otherwise agreed between the parties, the Contractor acknowledges and accepts that public use of a Site must be fully maintained during the performance of the work under the Contract.

#### **27.2 Interfaces and access for the Principal**

The Contractor shall comply with the Interface Arrangements.

The Contractor shall, at all reasonable times, give the Principal, the Principal's Representative, and other persons authorised in writing by the Principal or Principal's Representative access to a Site and any other place where the work is being carried out or materials are being prepared or stored.

The Principal shall ensure that the Contractor is not impeded in the execution of the Contractor's work by any persons referred to in Clause 27.2, whilst exercising the right of access given by Clause 27.1.

The Contractor shall permit the execution of work on a Site by persons engaged by the Principal and shall cooperate with them and coordinate the Contractor's work with their work. If requested by the Contractor, the Principal shall provide to the Contractor the names of the persons so engaged.

#### **27.3 Working days and hours**

Subject to the Incident Management, and Response Arrangements for Disruptive Events and Disasters, and unless otherwise specified in this Contract or directed by the Principal's Representative, the Contractor shall carry out the work under the Contract on the days and during the hours that will result in the most efficient operation, having regard to the effect on traffic, adjacent land owners and the environment.

#### **27.4 Adjoining private land**

In performing the work under the Contract, the Contractor shall not enter or permit its Constructional Plant (including that of any subcontractor) to enter private land adjoining a Site without first obtaining the written approval of the land occupier and the land owner (where these are not the same person). The Contractor shall submit a copy of this written approval to the Principal's Representative upon request.

Notwithstanding the granting of such approval of entry, the Contractor shall comply with the following conditions relating to private land adjoining a Site:

- a) privacy of the land owner / occupier shall be paramount

- b) the land owner / occupier shall be notified in advance when entry onto private land is required for any purpose
- c) vehicles shall be driven at a maximum speed of 20 kilometres per hour when in close proximity to any dwellings, and
- d) where a permanent access structure to private land is to be constructed under this Contract, the Contractor shall maintain access for others across a Site at all times.

The Contractor shall, by the action of the entering on to the private land, be deemed to have indemnified the Principal against any claims which may arise from such entry or subsequent operations on the land.

Upon completion of work on private land, the Contractor shall forward to the Principal's Representative a statement signed by the land owner / occupier to the effect that the land owner and occupier are satisfied that any damage to the land which may have arisen from the Contractor's operations has been adequately repaired or otherwise compensated by the Contractor. All costs associated with work on private land shall be borne by the Contractor.

### **27.5 Use of Site by Contractor**

Unless the Contract otherwise provides or the Principal's Representative gives prior written approval, the Contractor shall not use a Site or allow it to be used for:

- a) camping
- b) residential purposes, or
- c) any purpose not connected with the work under the Contract.

### **27.6 Finding of minerals, fossils and relics**

Valuable minerals, fossils, articles or objects of antiquity or of anthropological or archaeological interest, treasure trove, coins and articles of value found on a Site shall as between the parties be and remain the property of the Principal. Immediately upon the discovery of these things the Contractor shall take precautions to prevent their loss or removal or damage (including by stopping the work under the Contract if necessary) and shall notify the Principal's Representative of the discovery.

If compliance with obligations under Clause 27.6 causes the Contractor to incur more or less cost than the Contractor could reasonably have anticipated at the time of tendering, the difference shall be valued under Clause 55 (in the case of the Asset Management Work) or Clause 62.3 (in the case of Routine Maintenance Work).

### **27.7 Traffic Management and lane closures**

The Contractor must:

- a) make every endeavour to ensure that traffic lanes and shoulders remain open to the safe passage of traffic at the posted speed at all times in accordance with the provisions of the Contract, and
- b) comply with the traffic management requirements set out in Appendix D: Detailed Requirements for Contract Plan (Revision 1), other relevant Specifications, Policies or Manuals, as applicable.

### **27.7A Lane rentals and lane closures**

Where any work under the Contract necessitates road, lane or shoulder closures, other than those at the locations and times specifically described in the Contract or in any Project Proposal approved by the Principal under Clause 17.3, the Contractor shall pay to the Principal the lane rental charges listed in Item 17A of the Key Information, for every additional hour or part thereof that the lane or shoulder remains closed. Lane rental charges will not be charged for lane and shoulder closures concurrently. Should both the lane and shoulder remain closed the rent charged will be the higher amount. Such cost will be a debt due and payable from the Contractor to the Principal.

Notwithstanding the application of lane rental charges by the Principal, the Contractor shall make every endeavour to ensure that traffic lanes and shoulders remain open to the safe passage of traffic at the posted speed at all times in accordance with the provisions of the Contract.

### **27.8 Public utility plant**

- a) If the Contractor identifies any public utility plant that may be affected by the work under the Contract (affected utilities), the Contractor must:
  - i. give written notice to the Principal's Representative, and
  - ii. unless otherwise directed by the Principal's Representative, arrange and coordinate all work associated with relocation of affected utilities in connection with the work under the Contract in accordance with the requirements of the Authority responsible for such public utility plant (Responsible Authority).
- b) For all public utility plant identified on, in, over, under or adjacent to the Site, the Contractor shall establish and maintain, up to the date when Works are completed at the Site, reference markers identifying the type of utility, size, alignment, depth and emergency contact telephone number of the Responsible Authority.
- c) Additional costs incurred by the Contractor in complying with this Clause 27.8 will be valued under Clause 55 (in the case of the Asset Management Work) or Clause 62.3 (in the case of Routine Maintenance Work).

### **27.9 Damage and repair to public utility plant**

The Contractor shall be responsible for any damage to any public utility plant caused by the work under the Contract and the Contractor shall make good any such damage (and any associated damage to the Works) at its own cost. The Contractor shall make arrangements directly with the Responsible Authority for any repairs which may be necessary to public utility plant damaged by the work under the Contract and shall have no claim against the Principal for any loss or delay occasioned by any such damage. The Contractor shall notify the Principal's Representative of any such damage to public utility plant.

The Contractor shall have no Claim against the Principal for its responsibilities under this Clause 27.9.

### **27.10 Cleaning up**

The Contractor shall keep each Site and the work under the Contract clean and tidy. The Contractor shall regularly remove rubbish and surplus material.

### **27.11 Protection of bituminous surfaces**

The Contractor shall not carry out any of the following activities on any bituminous surface, including asphalt, or on any other surface on which bitumen is to be placed:

- a) the refuelling of plant
- b) the use of plant or equipment which leaks fuel or oil
- c) the mixing of cutter or flux oils with bitumen, or
- d) any other activity which may result in the spillage of any solvent.

### **27.12 Work adjacent to Queensland Rail property and overhead line equipment**

The Contractor must comply with the requirements set out in Appendix D: Detailed Requirements for Contract Plan (Revision 1) in relation to:

- a) work on or adjacent to Queensland Rail property, and
- b) work adjacent to overhead line equipment.

### **27.13 Specialised equipment**

The Contractor must give written notice to the Principal's Representative not less than seven days prior to carrying out work under the Contract in the vicinity of or which may impact traffic counters, weigh in motion sensors, red light and speed cameras.

## **28 Protection of people and property**

Insofar as compliance with the requirements of the Contract permits, and without limiting any obligations under Part J and Part K, the Contractor shall, in the performance of the work under the Contract:

- a) take all reasonable steps to protect people and property
- b) avoid unnecessary interference with the passage of people and vehicles, and
- c) not contribute to, exacerbate or cause unlawful contamination, unlawful environmental harm, nuisance, unreasonable noise and disturbance.

Without limiting the generality of the Contractor's obligations, the Contractor must provide all necessary barricades, guards, fencing, temporary roads, footpaths, warning signs, lighting, watching, traffic flagging, safety helmets and clothing, removal of obstructions and protection of services.

If the Contractor or the employees or agents of the Contractor damage property, including but not limited to, public utilities and services and property on or adjacent to the Site, the Contractor shall promptly make good the damage and pay any compensation which the law requires the Contractor to pay.

If the Contractor fails to comply with an obligation under this Clause 28 the Principal may, in addition to any other remedy, perform the obligation on the Contractor's behalf and the cost incurred by the Principal shall be a debt due from the Contractor to the Principal.

## **29 Damage to persons and property other than the Works**

### **29.1 Indemnity**

The Contractor shall indemnify the Principal against:

- a) loss of or damage to property of the Principal, including existing property in or upon which the work under the Contract is being carried out, and
- b) claims, costs and losses associated with claims by any person against the Principal in respect of personal injury or death or loss of or damage to any property,

arising out of or as a consequence of the performance or non-performance of the work under the Contract, but the Contractor's liability to indemnify the Principal shall be reduced proportionally to the extent that any act or omission of the Principal or its employees or agents may have contributed to such loss, damage, injury or death.

Clause 29.1 shall not apply to:

- i) the extent that the liability of the Contractor is limited by another provision of the Contract
- ii) exclude any other right of the Principal to be indemnified by the Contractor
- iii) claims in respect of the right of the Principal to construct the work under the Contract, and
- iv) the extent that the liability is the unavoidable result of performing the work under the Contract in accordance with the Contract.

### **29.2 Indemnity by the Principal**

The Principal shall release and indemnify the Contractor for claims by a person against the Principal or Contractor in respect of personal injury or death or loss of or damage to any property:

- a) where the claim arises as a direct consequence of a defect in the Road Infrastructure, but only when the defect was below the Intervention Limit, or
- b) in respect of claims referred to in Clause 29.1(b)(iii).

## **29A Limitation of liability**

### **29A.1 Consequential Loss**

- a) Subject to Clause 29A.1(b), but notwithstanding any other provision of this Contract to the contrary, neither party will be liable to the other party for any Consequential Loss incurred by the other party in connection with the Contract.
- b) The limitation of liability set out under Clause 29A.1(a) does not apply where the liability has arisen as a result of or in connection with:
  - i. Wilful Misconduct of the wrongful party, its employees, agents or contractors
  - ii. the imposition of a fine or penalty as the result of an act or omission of the wrongful party, or
  - iii. the Contractor's obligation to indemnify the Principal pursuant to Clause 29.1.

### **29A.2 Limit of liability**

The Contractor's maximum aggregate liability to the Principal under or in connection with this Contract in any one year during the Term is limited to the amount nominated in Item 13 of the Key Information.

**29A.3 Exceptions to limit of liability**

- a) The limit of liability set out under Clause 29A.2 does not apply to or limit any of the following obligations or liabilities of the Contractor:
- i. liability for Wilful Misconduct of the Contractor, its employees, agents or contractors
  - ii. criminal conduct of the Contractor, its employees, agents or contractors
  - iii. in respect of any infringement of an Intellectual Property Right of any other person by the Contractor
  - iv. for breach of confidence, privacy or misuse of personal information
  - v. liability to the extent the Contractor is paid or indemnified for the liability by an insurer under an insurance policy under the Contract, or is entitled to be paid or indemnified for the liability by such an insurer
  - vi. liability to the extent the Contractor would have been entitled to be paid or indemnified for the liability by an insurer under an insurance policy required by Clauses 21, 22, 23, 24 and 25 of the Contract, but for a failure by the Contractor to effect and maintain the insurance policy as required by the Contract
  - vii. liability to the extent the Contractor recovers compensation for its liability to the Principal from another person which compensation will be net of the costs of recovery incurred in the recovery action
  - viii. liability to the Principal with respect to the Contractor's obligation to indemnify the Principal pursuant to Clause 29.1
  - ix. the obligation to perform the work under the Contract
  - x. liability for unlawful abandonment of the Contract,
- in which case, the Contractor's liability in respect of each such event will be unlimited and will not be taken into account for the purposes of clause 29A.2.
- b) In Clause 29A.3(a)(v), the reference to a liability for which the Contractor "is entitled to be paid or indemnified for the liability by such an insurer" means a liability for which the Contractor is or would be entitled to be paid or indemnified under the relevant insurance policy if:
- i. Clause 29A.2 had not existed
  - ii. the Contractor had complied with the terms of the policy
  - iii. the Contractor had submitted a claim where there was a legitimate entitlement to claim under the policy, and
  - iv. the Contractor had taken reasonable steps to pursue such a claim once it had been submitted.
- c) In Clause 29A.3(a)(vi), the reference to a liability for which the Contractor "would have been entitled to be paid or indemnified for the liability by an insurer" means a liability for which the Contractor would have been entitled to be paid or indemnified under the relevant insurance policy if:
- i. the Contractor had effected and maintained the insurance policy as required by the Contract

- ii. Clause 29A.2 had not existed
- iii. the Contractor had complied with the terms of the policy
- iv. the Contractor had submitted a claim where there would have been a legitimate entitlement to claim under the policy, and
- v. the Contractor had taken reasonable steps to pursue such a claim once it had been submitted.

Any provision of this Clause 29A which seeks to limit or exclude an obligation or liability of the Contractor, is to be construed as doing so only to the extent permitted by law.

## **30 Safety**

### **30.1 Definitions**

For the purposes of this Clause 30, the words 'person with management and control', 'construction project', 'notifiable incident' and 'workplace' have the meanings assigned to them by the *Work Health and Safety Act 2011* (Qld) (**WHS Act**) and the *Work Health and Safety Regulation 2011* (Qld) (**WHS Regulation**).

### **30.2 General**

Without limiting the remainder of this Clause 30, the Contractor shall:

- a) be the person with management and control of each workplace at which the work under the Contract is to be carried out
- b) ensure that it complies with the Principal's work health and safety requirements when performing the work under the Contract
- c) ensure that it complies with its obligation under WHS Act to consult, cooperate and coordinate activities with all other persons who have a work health and safety duty in relation to the same matter
- d) comply with the requirements of the WHS Act, WHS Regulation and the Workplace Health and Safety Management Plan, and
- e) ensure health and safety of any person affected by the work under the Contract including but not limited to:
  - i. the Contractor's employees, agents and subcontractors
  - ii. the Principal's employees and agents
  - iii. users of the Road Infrastructure, and
  - iv. occupiers of adjoining land,

while carrying out the work under the Contract.

### **30.3 Specific obligations - management or control**

The Contractor agrees that:

- a) the work under the Contract may include construction work that is a 'construction project' for the purposes of the WHS Regulations

- b) if the work under the Contract is a construction project, the Principal engages the Contractor as the principal contractor, as defined in the WHS Regulation, in respect of the Site at which the construction project is to be carried out, and
- c) where it is engaged as the principal contractor, the Contractor is:
  - i. responsible for discharging its duties as a person conducting a business or undertaking in accordance with the WHS Act and WHS Regulation
  - ii. responsible for discharging the duties of a principal contractor in accordance with the WHS Regulation
  - iii. authorised to have management and control of the workplace and is responsible for discharging the duties of a person with management or control of a workplace in accordance with the WHS Act; and
  - iv. required to consult with the Principal's Representative in relation to matters of safety that the Contractor cannot resolve to the standard imposed by the WHS Act and the WHS Regulation and to cooperate and coordinate with the Principal's Representative to ensure any issues are resolved to the required standard.

#### **30.4 Responsibilities and liabilities**

The Contractor is responsible for and assumes liability for the duties under the WHS Act and the WHS Regulation for which the Contractor is responsible and liable as between the parties, in accordance with this Clause 30.

Nothing contained in this Clause 30 shall in any way limit or exclude any of the Contractor's obligations or liabilities under the Contract.

#### **30.5 Notifiable incidents**

The Contractor will, regardless of whether or not it is appointed as principal contractor:

- a) comply with its obligations under the WHS Act in relation to any notifiable incident arising out of or in connection with the conduct of the business or undertaking of the Contractor
- b) notify the Principal's Representative of every notifiable incident in relation to or in connection with the Site within a time period that ensures the Principal can comply with its obligations under the WHS Act in relation to any notifiable incident
- c) keep the Principal's Representative informed of the status of any safety or health related incidents that have occurred in relation to or in connection with the Site
- d) do all that is necessary to assist the Principal's Representative with any investigations into any safety or health related incident in relation to or in connection with the Site, including requiring, to the extent possible, the Contractor's agents and subcontractors to assist the Principal's Representative
- e) as soon as practicable but no later than seven days of receiving a request from the Principal's Representative to do so, provide the Principal's Representative with a copy of any notification to the regulator for work health and safety of a safety or health related incident, and
- f) consult, cooperate and coordinate with the Principal and Principal's Representative at CDT meetings in relation to any safety matters arising out of, or in connection with the Site.

### **30.6 Indemnities**

To the extent permitted by law, the Contractor indemnifies and will keep indemnified the Principal from and against all loss which may be brought against or made on the Principal or which the Principal may pay, sustain or be put to, arising by reason of or in connection with:

- a) any breach of the WHS Act or the WHS Regulation at a Site caused or contributed to by the Contractor or its employees, agents, subcontractors and other persons authorised by the Contractor to be at the Site
- b) any breach by the Contractor of its obligations under this Clause 30 or its duties under the WHS Act or the WHS Regulation, and
- c) if the Contractor has been appointed as principal contractor for the relevant Site, the Principal being deemed under the WHS Act to be the person with management and control of the Site or the person with management and control of any fixtures, fittings and plant in relation to or in connection with the Site.

It is not necessary for the Principal to incur expense or make a payment before enforcing any indemnity conferred by this Clause 30.6.

### **30.7 First aid**

The Contractor shall ensure the workers have access to appropriate equipment, facilities and training in accordance with the provisions of the WHS Regulations.

Any first aid requirements on the Site shall be determined in accordance with the *First Aid in the Workplace Code of Practice 2014* (Qld).

### **30.8 Safety audits**

The Principal's Representative may audit the implementation of the Workplace Health and Safety Management Plan or the Contractor's compliance with the requirements of this Clause 30 at any time. During any audit the Contractor shall provide the Principal's Representative with all documents, access and assistance necessary for its completion.

If any non-conformance in the Contractor's Workplace Health and Safety Management Plan is detected, the Contractor shall rectify the non-conformance within seven days.

If the Contractor fails to rectify a non-conformance that has been identified on three separate occasions in the auditing process, the Principal may give notice to the Contractor of a substantial breach of the Contract under Clause 40.2.

## **31 Environmental**

### **31.1 General obligations**

For the purposes of this Clause 31, 'Environmental Law' means:

- a) all laws relating to the environment, noise, development, town planning, construction of structures, buildings, health, contamination, pollution, environmental harm, radiation, waste disposal, land management and hazardous contaminants
- b) the *Environmental Protection Act 1994* (Qld)
- c) the *Environment Protection and Biodiversity Conservation Act 1999* (Cth), and

- d) any aspect of any law which relates to or addresses any matter in paragraph a).

The Contractor shall:

- a) at all times during the Term comply, and procure the Contractor's employees, agents, subcontractors or other persons authorised by the Contractor to be at the Site to comply, with the requirements of:
  - i. Environmental Laws
  - ii. the Environmental Requirements
  - iii. Appendix L – Environmental and Cultural Heritage Management, and
  - iv. any environmental requirements set out in the Specifications.
- b) implement and maintain measures to preserve and protect the natural environment (including the protection of cultural heritage) on and adjacent to a Site
- c) pay all penalties, costs and expenses that may be incurred concerning offences committed or alleged to be committed under Environmental Laws or any other Statutory Requirements relating to environmental management that may arise as a result of the performance of the work under the Contract, and
- d) ensure all applicable environment protection measures are implemented prior to proceeding with any relevant work under the Contract
- e) do all that is necessary to assist the Principal's Representative, including requiring, to the extent possible, the Contractor's agents and subcontractors to assist the Principal's Representative to enable the Principal to comply with its obligations under any Environmental Law or Statutory Requirements, or to confirm whether or not the Contractor is complying with its obligations under this Clause 31, and
- f) promptly notify the Principal's Representative in writing of any breach or likely breach of this Clause 31 by the Contractor, promptly after the Contractor becomes aware of the breach or likely breach.

### **31.2 Indemnity**

The Contractor indemnifies and will keep indemnified the Principal from and against all Claims, costs and losses which may be suffered, incurred by or brought against or made on the Principal or which the Principal may pay, sustain or be put to, arising by reason of or in connection with:

- a) any breach of the Environmental Laws caused or contributed to by the Contractor or the Contractor's employees, agents, subcontractors or other persons authorised by the Contractor to be at the Site, and
- b) any breach by the Contractor of its obligations under this Clause 31.

It is not necessary for the Principal to incur expense or make a payment before enforcing any indemnity conferred by this Clause 31.2.

### **31.3 Environmental audits**

The Principal's Representative may audit the implementation of the Environmental Management Plans or the Contractor's compliance with the requirements of this Clause 31 at any time. During any audit the Contractor shall provide, and shall procure the Contractor's employees, agents, subcontractors or other persons authorised by the Contractor to be at the Site to provide, the Principal's Representative with all documents, access and assistance necessary for its completion.

If any non-conformance in the implementation of the Environmental Management Plans or non-compliance with the Contractor's obligations under Clause 31 is detected, the Contractor shall rectify the non-conformance or non-compliance and notify the Principal's Representative in writing of that rectification within seven days.

If the Contractor fails to rectify a non-conformance or a non-compliance that has been identified on three separate occasions in the auditing process, the Principal may give notice to the Contractor of a substantial breach of the Contract under Clause 40.2.

### **31.4 Environmental Incidents**

The Contractor must notify the Principal's Representative of the occurrence of an Environmental Incident that occurs during the performance of the work under the Contract within a time period that ensures the Principal can comply with its obligations under Environmental Laws in relation to the Environmental Incident.

The Contractor must provide the Principal's Representative with notification as soon as possible:

- a) of any complaint arising from an Environmental Incident, and
- b) of any communication with or from an Authority arising from or related to an Environmental Incident (and provide copies thereof).

If so directed by the Principal, the Contractor must perform any obligation of the Principal under any Environmental Law to notify any Authority about any Environmental Incident occurring in relation to or as a consequence of the work under the Contract within the time period required by any Environmental Law and promptly notify the Principal when it has done so.

In this Clause 31, 'Environmental Incident' means an event, circumstance or incident which gives, or has the potential to give, rise to a breach of the obligations set out in Clause 31.

### **31.5 Dealings with Authorities**

The Contractor must promptly notify the Principal's Representative of any proposed meetings with, or inspections by, Authorities, related to Environmental Incidents or Environmental Laws regarding the work under the Contract, and allow the Principal, or their representative, to be present at those meetings or inspections.

## **32 Materials, labour and Constructional Plant**

### **32.1 Provision of materials, labour and Constructional Plant**

Except to the extent that the Contract otherwise provides, the Contractor shall supply everything necessary for the proper performance of the Contractor's obligations and discharge of the Contractor's liabilities under the Contract.

### **32.2 Key personnel**

Those personnel nominated in Item 18 of the Key Information shall be the Contractor's key personnel for the Contract (Key Personnel).

Where Key Personnel are not nominated the Contractor shall employ experienced staff, necessary to carry out the requirements of the Contract.

The Contractor must:

- a) ensure that the Key Personnel perform the work under the Contract required of their designated positions
- b) not remove any Key Personnel without the Principal's prior written approval, except if a person
  - i. dies
  - ii. becomes ill or incapacitated so as to be unable to perform their role, or
  - iii. resigns from the Contractor's employment, or where applicable, the employment of the Contractor's subcontractors (other than to be employed by an associated entity of the Contractor or, where applicable, an associated entity of the Contractor's subcontractors),  
in which case the Contractor must then replace that person with someone of at least equivalent ability, experience and expertise approved by the Principal, which approval will not be unreasonably withheld, and
- c) replace any Key Personnel, where in the reasonable opinion of the Principal, the relevant person:
  - i. is not performing to the expectations of the Principal, or
  - ii. does not fulfil the criteria set out in Clause 32.2A,  
in which case the Contractor must then replace that person with someone of at least equivalent ability, experience and expertise approved by the Principal, which approval will not be unreasonably withheld.

When a designated person is replaced in accordance with this Clause 32.2, the Contractor must (unless the person being replaced has died or become ill or incapacitated) ensure that there is a proper 'handover' which will require the person and the replacement to work together for at least two weeks.

#### **32.2A Qualifications**

The Contractor must ensure that all its employees, agents and contractors (including the Contractor's Representative and Key Personnel):

- a) Are appropriately qualified, competent, and experienced in the provision of the type of work required under this Contract; and
- b) Hold and maintain all necessary licences and registrations in accordance with the requirements of any legislation for the purposes of, or incidental to, the performance of the work under the Contract.
- c) If carrying out professional engineering services, are registered professional engineers in Queensland (RPEQ) or under the direct supervision of person who is an RPEQ.

### **32.3 Training requirements**

The Contractor, in its execution of the work under the Contract, shall employ on the Site (either directly or indirectly through subcontractors), apprentices, trainees and/or cadets and Up-skill workers for the number of hours equivalent to 10% of the total work force hours (including hours worked by those workers engaged directly or indirectly by subcontractors).

In complying with this Clause 32.3, not less than 75% of the required number of training labour hours shall be performed by apprentices, trainees and / or cadets. All apprentice, trainee and / or cadet labour hours shall be attributable to the required training labour hours. However, the number of attributable labour hours to up-skill a worker shall be limited to the nominal hours deemed necessary to adequately present the educational material, in a classroom delivery mode, for the worker to achieve an identified competency or qualification. Such nominal hours shall be as determined by the Queensland Department of Education, Training and Employment (DETE).

The Contractor shall:

- a) within seven days of the expiration of each successive 13 week period during the Term and commencing from the Date of Award, submit to DETE (with a copy to the Principal's Representative), a copy of the interim Compliance Report (using the form included in the Other Documents), and
- b) within 14 days of the end of the Term, submit the DETE (with a copy to the Principal's Representative), a completed completion Compliance Report (using the form included in the Other Documents).

The Contractor acknowledges that failure to comply in part or in whole with this Clause 32.3 will be a substantive factor that will be taken into account in the award of future contracts by the Principal.

### **32.4 Manufacture and supply of materials**

The Principal's Representative may direct the Contractor to supply particulars of:

- a) the mode and place of manufacture
- b) the source of supply
- c) the performance capacities, and
- d) other information,

in respect of any materials, machinery or equipment to be supplied by the Contractor under or used in connection with the Contract.

### **32.5 Use of proprietary, trade or brand names**

The description in the Contract of any materials, plant, equipment, work or other items by a proprietary, trade or brand name, supplier's or manufacturer's name, model number or other specific means does not in any way relieve, limit or exclude any of the Contractor's obligations or liabilities under the Contract with respect to the materials, plant, equipment, work or any other items (including, but not limited to, obligations and liabilities under any warranties, performance guarantees or defects liability provisions of the Contract).

### **32.6 Material supplied by the Principal**

The Principal may make certain materials available free of charge to the Contractor (Principal Supplied Material) for use in the various individual projects (included within the Asset Management Work).

Where the Principal has agreed to supply Principal Supplied Materials, at least 21 days before any Principal Supplied Material is required, the Contractor shall advise the Principal's Representative in writing of the exact date of the requirement and the quantity required on that date.

The Contractor shall be responsible for the transport of the Principal Supplied Material from the location(s) specified in Item 19 of the Key Information and for the appropriate storage and care at all times so that it is not contaminated nor deteriorates. The Contractor shall take all necessary measures to reduce potential harm to the environment which might arise from the transport and storage of Principal Supplied Material. The Contractor shall comply with any relevant requirements in the Contract, and / or Statutes and / or Australian Standards and / or manufacturer's instructions in relation to the proper handling and care of any Principal Supplied Material.

Upon the receipt of any Principal Supplied Material, the Contractor shall immediately inspect the material and ensure that the specified quantity has been delivered and that the material is in a condition which complies with the relevant Specification.

If, within seven days, the Principal's Representative has not received written notification of any deficiencies, then it shall be deemed that the specified quantity of Principal Supplied Material has been delivered to the Contractor in a condition which complies with the relevant Specification.

If, after seven days from the receipt of any Principal Supplied Material:

- a) the Contractor discovers that the Principal Supplied Material is not in a condition which complies with the relevant Specification
- b) the deficiency in the Principal Supplied Material could not reasonably have been identified by an experienced and competent contractor inspecting the Principal Supplied Material in accordance with this Clause 32.6 and was not caused by the Contractor's failure to properly store and protect the Principal Supplied Materials, and
- c) the deficiency in the Principal Supplied Material will cause the Contractor to incur more or less cost than it otherwise would have incurred but for the deficiency,

the difference shall be valued as a variation under Clause 55.5 (in the case of Principal Supplied Materials related to Asset Management Work) or Clause 62.3 (in the case of Principal Supplied Materials related to Routine Maintenance Work).

Any Principal Supplied Material which, after delivery to the Contractor, is lost, destroyed, contaminated or altered in any way such that the material no longer complies with the relevant specification shall be immediately replaced by the Contractor with material which complies with the relevant specification. The Contractor shall notify the Principal's Representative in writing of any lost, destroyed, contaminated or altered material within seven days of the Contractor becoming aware of such events.

Where excess Principal Supplied Material is specified to be returned to the Principal, any material which is excess to the requirements of the Contract shall be returned to the point of return nominated by the Principal's Representative

### **33 Materials and Work**

#### **33.1 Quality of materials and Work**

Without limiting Clause 13 and the Contractor's obligation to comply with the Quality Plan, the Contractor shall use the materials and standards of workmanship required by the Contract. In the absence of any requirement to the contrary, the Contractor shall use suitable new materials.

#### **33.2 Quality assurance**

The Contractor shall:

- a) plan, establish, implement and maintain a quality system which conforms to the requirements of this Contract and the Quality Plan, and
- b) provide the Principal's Representative with access to the quality system of the Contractor and each of the subcontractors of the Contractor to enable monitoring and quality auditing.

Any such quality system shall be used only as an aid to achieving compliance with the Contract and to document such compliance. Such system shall not relieve the Contractor of the responsibility to comply with the Contract.

Failure by the Contractor to establish, implement or maintain its quality system shall constitute a substantial breach for the purposes of the operation of Clause 40.2.

#### **33.3 Contractor's obligations unaffected**

Notwithstanding any statements to the contrary in the Contractor's quality system documentation or in the Quality Plan, no part of the quality system shall be used to pre-empt, preclude or otherwise negate the requirements of any part of the Contract nor relieve the Contractor of its obligations under the Contract.

The Contractor's quality system shall be used as an aid to achieving compliance with the Contract and in documenting such compliance, and in no way shall it relieve the Contractor of responsibility to comply with the requirements of the Contract.

#### **33.4 Defective Works**

If the Principal's Representative becomes aware of Asset Management Work or Routine Maintenance Work done (including material provided) by the Contractor which does not comply with the Contract, the Principal's Representative shall as soon as practicable give the Contractor written details thereof. If the subject work has not been rectified, the Principal's Representative may direct the Contractor to do any one or more of the following (including times for commencement and completion):

- a) remove the material from the Site
- b) demolish the work
- c) reconstruct, replace or correct the work, and
- d) not deliver it to the Site.

If:

- i. the Contractor fails to comply with such a direction, and

- ii. that failure has not been made good within seven days after the Contractor receives written notice from the Principal's Representative that the Principal intends to have the subject work rectified by others,

the Principal may have that work so rectified and the Principal's Representative shall certify the cost incurred as moneys due from the Contractor to the Principal.

### **33.5 Acceptance of defective Works**

Instead of a direction pursuant to Clause 33.4, the Principal's Representative may direct the Contractor that the Principal elects to accept the subject work, whereupon the consequential reduction in the:

- a) Project Contract Sum shall be valued by the Principal's Representative in accordance with Clause 55.5, or
- b) amount payable in respect of Routine Maintenance Work shall be valued in accordance with Clause 62.3.

### **33.6 Timing**

The Principal's Representative may give a direction pursuant to this Clause 33 with respect to the Asset Management Work at any time before the expiry of the Defects Liability Period for the relevant Project.

## **34 Examination and testing**

### **34.1 Principal's Representative may order tests**

In Clause 34 'test' includes examine and measure.

At any time prior to the end of the Term the Principal's Representative may direct that any material or work under the Contract be tested (including testing to be carried out by the Principal). The Contractor shall provide such assistance and samples and make accessible such parts of the work under the Contract as may be required by the Principal's Representative.

### **34.2 Covering up of Works**

The Principal's Representative may direct that any part of the work under the Contract shall not be covered up or made inaccessible without the Principal's Representative's prior approval.

### **34.3 Who conducts tests**

Tests shall be conducted as provided in the Contract or by the Principal's Representative or a person (which may include the Contractor) nominated by the Principal's Representative.

### **34.4 Notice of tests**

Before conducting a test under the Contract the party conducting the test, being the Principal's Representative or the Contractor, shall give reasonable notice in writing to the other of the time, date and place of the test. If the other does not then attend, the test may nevertheless proceed.

### **34.5 Procedure if tests delayed**

Without prejudice to any other right, if the Contractor or the Principal's Representative delays in conducting a test, the other, after giving reasonable notice in writing of intention to do so, may conduct the test.

### **34.6 Results of tests**

Results of tests shall be promptly made available by each party to the other and to the Principal's Representative.

### **34.7 Costs of testing**

Costs of and incidental to testing (other than tests already required under the Contract shall be valued under Clause 55.5 (in the case of tests related to Asset Management Work) or Clause 62.3 (in the case of tests related to Routine Maintenance Work), and shall be borne by the Principal or paid by the Principal to the Contractor unless:

- a) the Contract provides that the Contractor shall bear the costs or the test is one which the Contractor was required to conduct other than pursuant to a direction under Clause 34.1
- b) the test shows that the material or work is not in accordance with the Contract
- c) the test is in respect of work under the Contract covered up or made inaccessible without the Principal's Representative's prior approval where such was required, or
- d) the test is consequent upon a failure of the Contractor to comply with a requirement of the Contract.

Where such costs are not to be borne by the Principal, they shall be borne by the Contractor or paid by the Contractor to the Principal.

### **34.8 Access for testing**

If, during the Term:

- a) the Principal or the Principal's Representative asserts that material or work is not in accordance with the Contract, and
- b) the Contractor requests permission to test the material or work,

the Principal shall not unreasonably refuse the Contractor access to test the material or work.

## **35 Suspension of the Works**

### **35.1 Suspension by Principal's Representative**

The Principal's Representative may direct the Contractor to suspend the progress of the whole or part of the work under the Contract for such time as the Principal's Representative thinks fit, if the Principal's Representative considers that the suspension of the whole or part of the work under the Contract is necessary:

- a) because of an act or omission of:
  - i. the Principal, the Principal's Representative or an employee, consultant or agent of the Principal, or
  - ii. the Contractor, a subcontractor or an employee or agent of either
- b) for the protection or safety of any person or property, or
- c) to comply with an order of a court.

### **35.2 Suspension by Contractor**

If the Contractor wishes to suspend the whole or part of the work under the Contract, otherwise than under Clause 40.9 or as required by a Statutory Requirement, the Contractor shall obtain the prior written approval of the Principal's Representative. The Principal's Representative may approve of the suspension and may impose conditions of approval. The Principal's Representative is not obliged to approve the suspension.

### **35.3 Recommencement of Works**

As soon as the Principal's Representative becomes aware that the reason for any suspension no longer exists, the Principal's Representative shall direct the Contractor to recommence work on the whole or on the relevant part of the work under the Contract.

If work is suspended pursuant to Clauses 35.2 or 40.9, the Contractor may recommence work at any time after reasonable advance notice to the Principal's Representative.

### **35.4 Cost of suspension**

Any cost incurred by the Contractor by reason of a suspension under Clause 35.1 or Clause 35.2 shall be borne by the Contractor but if the suspension is due to an act or omission of the Principal, the Principal's Representative or an employee, consultant or agent of the Principal not authorised by the Contract and the suspension causes the Contractor to incur more or less cost than otherwise would have been incurred but for the suspension, the difference shall be valued as a variation under Clause 55.5 (in the case of tests related to Asset Management Work) or Clause 62.3 (in the case of tests related to Routine Maintenance Work). The Contractor must use all reasonable efforts to mitigate any such cost and must on request of the Principal provide documentary evidence of such cost.

## **36 Urgent protection**

If urgent action is necessary to:

- a) protect the work under the Contract, other property or people and the Contractor fails to take the action, or
- b) rectify a defect in the Road Infrastructure which has exceeded the Hazard Intervention Limit,

the Principal may take the necessary action. If the action was an action which the Contractor should have taken at the Contractor's cost, the cost incurred by the Principal shall be a debt due from the Contractor.

If time permits, the Principal's Representative shall give the Contractor prior written notice of the Principal's intention to take action under Clause 36.

## Part F – Payment

### 37 Certificates and payments

#### 37.1 *Payment claims, certificates, calculations and time for payment*

- a) Payment claims
- i. Provided the Contractor has complied with the conditions precedent in Clause 37.1(a)(iii), at the date nominated in Item 20 of the Key Information (**Time for Lodgement**) the Contractor may deliver to the Principal's Representative a payment claim supported by evidence of the amount due to the Contractor including a breakdown of the amount due by reference to each category of work under the Contract and such other information as the Principal's Representative may reasonably require. If the date nominated in item 20 of the Key Information (Time for Lodgement) falls on a day which is not a Business Day, the Contractor shall submit the payment claim on the next Business Day.
  - ii. A payment claim must include the value of work carried out by the Contractor in the performance of the Contract to that time together with all amounts then due to the Contractor arising out of or in connection with the Contract or for any alleged breach thereof and GST. For the sake of clarification, the supply (whether work is done or otherwise) in respect of which the payment claim is made (other than a claim for release of retention) shall be treated as a separate taxable supply for the purposes of calculation of the GST.
  - iii. As a condition precedent to the Contractor's entitlement to submit a payment claim under Clause 37.1(a)(i), the Contractor must:
    - A. comply with Clauses 5, 13 and 26
    - B. have provided a statutory declaration in accordance with Clause 38.2
    - C. have provided Conformance Report in accordance with Clause 37.1(b)
    - D. have provided a Performance Report in accordance with Appendix B: Compensation and Performance Framework (Revision 1),
    - E. have provided the evidence required under Clause 37.1(a)(i) and
    - F. have submitted a payment claim in the format required under Clause 37.1(a)(iv).
  - iv. A payment claim must be in the electronic format specified in Appendix B: Compensation and Performance Framework (Revision 1) (ASCII), or as otherwise notified in writing by the Principal.

b) Evidence of conformance

The Contractor shall not include in any payment claim, and the Principal shall not be obliged to pay for, any work for which evidence of conformance (Conformance Report) has not been provided to the Principal's Representative.

The Conformance Report must include:

- i. evidence that:

- A. the work has been completed in accordance with the Contract in respect to quantity, quality and any other relevant requirements
  - B. the work has been inspected and tested in accordance with the requirements of the Contract, and
  - C. inspection and test results have been analysed to demonstrate compliance with the Contract, and
- ii. details of:
- A. the defects or incidents that initiated Routine Maintenance Work;
  - B. as constructed details, including:
    - I. the Work delivered
    - II. the location of the Works
    - III. dimensional details of the Works, and
    - IV. construction quantities, and
  - C. the dates and times that the work under the Contract commenced and was completed.

The Contractor shall submit a Conformance Report to the Principal's Representative promptly on completion of the work and prior to substantial progress on subsequent work under the Contract.

However, where the relevant evidence of conformance has not been submitted due only to the normal delays involved in processing, testing, analysis and reporting, and not exceeding 3 days, the Contractor may include that completed work for which evidence of conformance will be submitted in the next month. In this case, the Contractor shall submit with its payment claim a statement which lists the relevant completed work and certifies that evidence of conformance will be presented to the Principal's Representative no later than the end of the calendar month subsequent to the month of the relevant payment claim.

c) Payment certification

Within 10 Business Days after receipt of a payment claim, the Principal's Representative shall issue to the Principal and the Contractor a payment certificate stating the amount of the payment which, in the opinion of the Principal's Representative, is to be made by the Principal to the Contractor or by the Contractor to the Principal.

The Principal's Representative shall set out in the certificate the calculations employed to arrive at the amount and, if the amount is more or less than the amount claimed by the Contractor, the reasons for the difference.

The Principal's Representative shall allow in any payment certificate issued pursuant to this Clause 37.1(c), amounts paid under the Contract and amounts otherwise due from the Principal to the Contractor and/or due from the Contractor to the Principal arising out of or in connection with the Contract including but not limited to any amount due or to be credited under any provision of the Contract.

If the Contractor fails to make a payment claim under Clause 37.1(a), the Principal's Representative may nevertheless issue a payment certificate, but is not obliged to do so for the benefit of the Contractor.

d) Tax invoice

Within two Business Days of issue of the Principal's Representative's payment certificate, the Contractor shall issue to the Principal or the Principal shall issue to the Contractor, as the case may be, a tax invoice complying with the GST Legislation in respect of the relevant supply.

e) Payment

Subject to the provisions of the Contract and the provision of a tax invoice by the Contractor in accordance with Clause 37.1(d), within 20 Business Days after receipt by the Principal's Representative of a payment claim under Clause 37.1(a), the Principal shall pay to the Contractor or the Contractor shall pay to the Principal, as the case may be, an amount not less than the amount shown in the payment certificate as due to the Contractor or to the Principal as the case may be, or if no payment certificate has been issued, the Principal shall pay the amount of the Contractor's claim.

A payment made pursuant to this Clause 37.1(e) shall not prejudice the right of either party to dispute whether the amount so paid is the amount properly due and payable and on determination (whether under Clause 44 or as otherwise agreed) of the amount so properly due and payable, the Principal or Contractor, as the case may be, shall be liable to pay the difference between the amount of such payment and the amount so properly due and payable.

Payment of moneys shall not be evidence of the value of work or an admission of liability or evidence that work has been executed satisfactorily but shall be a payment on account only.

Except as provided in the Contract, the Principal shall not be obliged to pay for any item of unfixed plant and materials which is not incorporated in the Works. Upon payment to the Contractor of the amount which includes the value of the item, the item shall be the property of the Principal, free of any lien or charge.

If any work for which payment has been made is found not to be in accordance with the Contract, the Principal's Representative may take this into account in valuing any future payment certificate.

### **37.2 Measurement of work**

The Principal's Representative shall give reasonable notice to the Contractor of the Principal's Representative's intention to measure any work and the Contractor shall, if so directed by the Principal's Representative, be represented at and assist in the taking of measurements.

If the Contractor is not represented at the time appointed by such notice for the taking of measurements, the Principal's Representative may proceed in its absence and the measurements taken by the Principal's Representative shall be binding on the Contractor.

### **37.3 Payments Act**

- a) For the purposes of the Payments Act, the Principal's Representative is authorised to receive payment claims and issue payment schedules on behalf of the Principal.

- b) Without limiting the Principal's right to itself issue a payment schedule under the *Payments Act*, the Contractor agrees and acknowledges that in issuing payment schedules pursuant to the *Payments Act*, the Principal's Representative does so as (and is authorised by the Principal to do so as) the agent of the Principal.
- c) If a Claim is a payment claim under the *Payments Act*, the corresponding payment certificate will be deemed to be a payment schedule for the purposes of the *Payments Act*.
- d) If an adjudicator makes a decision under the *Payments Act* with respect to a payment claim which differs from the progress certificate in respect of that payment claim, the Principal Representative shall promptly issue an amended payment certificate to adopt the decision of the adjudicator. Either party may dispute the amended payment certificate.
- e) The Contractor shall ensure that within one Business Day after any notice (other than a payment claim or payment schedule) under the *Payments Act* is given or received by the Contractor or any Subcontractor, a copy of that notice is given to both the Principal Representative and the Principal.
- f) Notwithstanding any other provision of this Contract, the Contractor must:
  - i. immediately give the Principal and the Principal's Representative notice if the Contractor has been required to supply information to a Subcontractor under section 119 of the *Payments Act*, together with a copy of the information provided.
  - ii. immediately notify the Principal and the Principal's Representative if it becomes aware that a subcontractor has exercised, or intends to exercise a statutory charge under section 122 of the *Payments Act* in respect of work done by the subcontractor forming part of the work under the Contract.
- g) The Contractor acknowledges and agrees that a failure by the Principal's Representative to set out in a payment certificate an amount which the Principal is entitled to retain, deduct, withhold or set-off (whether under the Contract or otherwise) from the amount which would otherwise be payable to the Contractor by the Principal under the Contract will not prevent or prejudice the Principal's right to subsequently exercise that right to retain, deduct, withhold or set-off any amount which the Principal is entitled to retain under the Contract or otherwise.
- h) If the Principal becomes aware that a subcontractor:
  - i. is entitled to suspend the performance of work (which forms part of the work under the Contract) under the *Payments Act*, or
  - ii. is entitled to a charge under the *Payments Act* and has given a notice of claim of charge pursuant to section 122 of the *Payments Act*,
- i) the Principal may (at its absolute discretion) pay the subcontractor such money that is or may be owing to the subcontractor in respect of work forming part of the work under the Contract, and any costs and expenses incurred or to be incurred by the Principal in doing so will be a debt due from the Contractor to the Principal.

- j) The Contractor shall indemnify the Principal against all damage, expense (including lawyers' fees and expenses on a solicitor/client basis), loss (including financial loss) or liability of any nature suffered or incurred by the Principal arising out of:
  - i. a suspension by a subcontractor of the performance of work (which forms part of the work under the Contract) under section 33 of the Payments Act
  - ii. a notice of claim of charge being served on the Principal under Section 122 of the Payments Act, or
  - iii. a failure by the Contractor to comply with its obligations under Clause 37.3(f).

#### **37.4 Correction of payment certificates**

At any time and from time to time, the Principal's Representative may by a further certificate correct any error which has been discovered in any previous payment certificate.

Any correction must also correct the amount of GST in accordance with the GST Legislation.

#### **37.5 Interest on overdue payments**

If any moneys due to either party remain unpaid after the date upon which or the expiration of the period within which they should have been paid then interest shall be payable thereon from but excluding the date upon which or the expiration of the period within which they should have been paid to and including the date upon which the moneys are paid. The rate of interest shall be 10% per annum. Interest shall be compounded at six monthly intervals.

#### **37.6 Set offs by the Principal**

Without limiting the Principal's rights under any other provision in the Contract and notwithstanding the provisions of Clause 37.1 or the issue of any certificate by the Principal's Representative under that Clause, the Principal may deduct from any moneys due to the Contractor any debt due from the Contractor to the Principal and any claim which the Principal may have against the Contractor:

- a) whether or not the debt or claim arises by way of damages, debt, restitution or otherwise, and
- b) whether or not the factual basis giving rise to the debt or claim arises out of this Contract, any other contract or is independent of any contract.

If the moneys payable to the Contractor are insufficient to discharge the debt or claim the Principal may have recourse to security under Clause 5.

Nothing in Clause 37.6 shall affect the right of the Principal to recover from the Contractor the whole of the debt or claim or any balance that remains owing. This clause shall survive the expiry or termination of the Contract.

#### **37.7 Adjustments to payment under Compensation and Performance Framework**

- a) The Contractor acknowledges and agrees that:
  - i. the Principal will suffer loss and damage as a result of:
    - A. the Contractor's failure to maintain the Road Infrastructure such that the Intervention Limits set out in the Maintenance Levels of Service are exceeded
    - B. the Contractor's failure to complete Projects in accordance with the Final AWP and within the relevant Year, and

- C. defects in the Works.
- ii. the deductions the Principal is entitled to make under the Compensation and Performance Framework are not in excess of the loss or damage the Principal anticipates it will suffer as a result of the events in Clause 37.7(a)(i)
- iii. prior to entering the Contract, the Contractor was given an opportunity to review and understand the intent and operation of the Compensation and Performance Framework, and
- iv. the Principal's right to make deductions in accordance with the Compensation and Performance Framework do not limit or in any way effect the Principal's other rights under this Contract or at law.

## **38 Payment of workers and subcontractors**

### **38.1 Payment system**

Upon entry into a subcontract the Contractor shall, in respect of that subcontract establish a payment recording system for that subcontractor as set out in an appropriate form.

The recording system shall record all details of transactions with a subcontractor including, at least, details of claims for payment, payments made, retention and securities held in cash or unconditional undertakings or any other form.

The record of payment system shall be:

- a) kept by the Contractor until the end of the Term, and
- b) provided to the Principal's Representative for inspection and copying upon reasonable notice in writing.

### **38.2 Workers and subcontractors**

The Contractor shall deliver to the Principal's Representative with each payment claim a statutory declaration, in the form of Form C7850, sworn by the Contractor, or where the Contractor is a corporation, by a representative of the Contractor who is in a position to know the facts attested to stating that all subcontractors of the Contractor have been paid all that is due and payable to such subcontractors up to the date of submission by the Contractor of a payment claim in respect of the work under the Contract and that all its employees who at any time have been engaged on work under the Contract by the Contractor have been paid all moneys due and payable to them up to the date of submission by the Contractor of a payment claim, in respect of their employment on the work under the Contract. The Principal's Representative may also request reasonable supporting documentary evidence of those matters.

Before the payment of any money to the Contractor by the Principal, the Principal's Representative may also require the Contractor to deliver to the Principal's Representative a statutory declaration, in the form of Form C7851, by any subcontractor, or where the subcontractor is a corporation, by a representative of the subcontractor who is in a position to know the facts attested to stating that all subcontractors of the subcontractor have been paid all that is due and payable to them up to the date of submission by the Contractor of a payment claim in respect of the work under the Contract and that all employees who have been engaged by the subcontractor have been paid all moneys due and payable to them up to the date of submission by the Contractor of a payment claim in respect of their

engagement on the work under the Contract. The Principal's Representative may also request reasonable supporting documentary evidence of those matters.

If the Contractor provides to the Principal's Representative satisfactory proof of the maximum amount due and payable to workers and subcontractors by the Contractor, the Principal shall not be entitled to withhold any amount in excess of the maximum amount.

At the written request of the Contractor and out of moneys payable to the Contractor, the Principal may on behalf of the Contractor make payments directly to any worker or subcontractor.

### **38.3 Withholding payment**

If any worker or subcontractor obtains a court order in respect of moneys referred to in Clause 38 and produces to the Principal the court order and a statutory declaration that it remains unpaid, the Principal may pay the amount of the order, and costs included in the order, to the worker or subcontractor and the amount paid shall be a debt due from the Contractor to the Principal.

After the making of a sequestration order or a winding up order in respect of the Contractor, the Principal shall not make any payment to a worker or subcontractor without the concurrence of the official receiver or trustee of the estate of the bankrupt or the liquidator as the case may be.

## **39 Goods and Services Tax (GST)**

This Clause 39 applies in respect of any supply under or in connection with this Contract for which the method of calculating the GST in respect of that supply has not been specified.

The consideration for any supply to which this Clause 39 applies does not include GST.

To the extent that any supply made under or in connection with this Contract is a taxable supply, the consideration for that supply is increased by an amount determined by the supplier, not exceeding the amount of that consideration (or its market value) multiplied by the rate at which GST is imposed in respect of the supply.

The amount so determined must be paid by the recipient of the supply even if the recipient disputes the determination.

If either party is entitled under this Contract to be reimbursed or indemnified by the other party for a cost or expense incurred in connection with this Contract, the reimbursement or indemnity payment must not include any GST component of the cost or expense for which an input tax credit may be claimed by the party entitled to be reimbursed or indemnified, or by its representative member.

#### **a) GST in Calculation of Payment**

Further to Clause 37, items to be included for payment, other than amounts shown as 'Security and Retention', 'Liquidated Damages' and 'Other', shall be exclusive of the amount of GST.

The amount of GST shall be added to the sub totalled amount after retention has been taken out as shown on Form C6883 on the basis that that amount is a supply to the Principal by the Contractor or a supply by the Contractor to the Principal, as the case may be.

b) Adjustment

If an 'adjustment event', as defined in the GST Legislation, occurs:

- i. the supplier must make a determination as to the amount of the consideration payable for the supply, and
- ii. if the GST component of that consideration differs from the amount originally determined, the amount of the difference must be paid by, refunded to or credited to the recipient, as the case may be.

In the event that the Principal pays to the Contractor or the Contractor pays to the Principal, as the case may be, an amount on account of the GST in respect of a supply made under the Contract, and that amount exceeds the amount of the liability for GST in respect of the supply, then the Contractor or the Principal (as the case may be) shall reimburse the other party the amount by which the GST has been overpaid.

c) Tax Invoice

A supplier must issue a tax invoice which complies with the requirements of the GST Legislation to the recipient of a supply to which Clause 39 applies, in accordance with Clause 37.1 in regard to the GST inclusive consideration or the adjustment amount, as the case may be.

## **Part G – Default and termination**

### **40 Default or insolvency**

#### **40.1 Preservation of other rights**

If a party breaches or repudiates the Contract, nothing in Clause 40 shall prejudice the right of the other party to recover damages or exercise any other right.

#### **40.1A Non-Compliance Events**

If the Contractor commits a Non-Compliance Event, the Principal may give the Contractor a written notice (**Non-Compliance Notice**):

- a) stating that a Non-Compliance Event has occurred
- b) setting out reasonable details of the Non-Compliance Event
- c) directing the Contractor to do any or all of the following:
  - i. to meet with representatives of the Principal to consult about an appropriate remedy and timetable for the Contractor to effect that remedy
  - ii. provide the Principal with a Cure Plan
  - iii. implement Urgent Measures, and
- d) if the Non-Compliance Notice directs the Contractor to provide a Cure Plan, setting out the timeframe within which the Contractor must take measures to cure the Non-Compliance Event (or the events or the circumstances giving rise to the Non-Compliance Event) (**Cure Period**).

#### **40.1B Cure Plan**

A Cure Plan required by a Non-Compliance Notice, or that is proposed by the Contractor under this clause 40.1B, must be submitted by the Contractor to the Principal within 10 business days of the date of the Non-Compliance Notice (or such longer period as the Principal may agree).

The Contractor must ensure that the Cure Plan describes in reasonable detail:

- a) each measure that the Contractor will take to permanently cure the Non-Compliance Event within the Cure Period
- b) each measure that the Contractor will take to alleviate the adverse effect of the Non-Compliance Event within the Cure Period
- c) the proposed timing of each of those measures, which must be within the Cure Period and in a sequence and timing which is reasonably acceptable to the Principal, and
- d) the form and timing of reports (which must be reasonably acceptable to the Principal) to be provided by the Contractor to the Principal about the implementation status of the Cure Plan.

The Contractor must implement and pursue diligently its Cure Plan in order to permanently cure the Non-Compliance Event and alleviate its adverse effects within the Cure Period.

The Contractor may (on one occasion only in relation to each Non-Compliance Event) by notice in writing to the Principal request an extension to the Cure Period provided that:

- e) it does so prior to the expiry of the existing Cure Period

- f) it sets out complete particulars of the reasons why the extension is requested and any consequential revisions to the Cure Plan, and
- g) it provides evidence to the Principal's satisfaction that it has pursued diligently and is continuing to pursue diligently a cure in accordance with the Cure Plan.

The Principal may approve or reject a request for extension to the Cure Period at the Principal's discretion.

#### **40.1C Direction to remedy**

If the Contractor:

where the Contractor has been directed to provide a Cure Plan, fails to permanently cure a Non-Compliance Event and alleviate its adverse effects within the Cure Period, or

where the Contractor has not been directed to provide a Cure Plan, otherwise fails to remedy a Non-Compliance Event within seven days after the Contractor receives written notice from the Principal's Representative that the Principal intends have the Non-Compliance Event or the effects of the Non-Compliance Event remedied by others,

the Principal may engage other contractors to remedy or cure the Non-Compliance Event and its adverse effects, and the Principal's Representative shall certify the cost incurred as moneys due from the Contractor to the Principal.

#### **40.2 Substantial breaches**

If the Contractor commits a substantial breach of Contract and the Principal considers that damages may not be an adequate remedy, the Principal may give the Contractor a written notice to show cause.

Substantial breaches include:

- a) suspension of work, in breach of Clause 35
- b) failing to proceed with due expedition and without delay, in breach of Clause 53.2 or Clause 60
- c) failing to lodge security in breach of Clause 5
- d) Not Used
- e) failing to provide evidence of insurance, in breach of Clause 26.1
- f) failing to comply in any respect with Clause 46.2
- g) failing to comply in any respect with Clause 32.2 or 32.2A
- h) Not Used
- i) providing a statutory declaration pursuant to Clause 38 which is false, misleading or deceptive in any respect
- j) where, pursuant to the Compensation and Performance Framework, payments to the Contractor have been adjusted by the Price Adjustment Limit:
  - i. in three consecutive months, or
  - ii. in any four months over any six month rolling period,

- k) the Contractor failing to implement an Urgent Measure directed by the Principal under the Contract
- l) the Contractor failing to pursue diligently a Cure Plan in accordance with its obligations under Clause 40.1B or otherwise curing a Non-Compliance Event to the reasonable satisfaction of the Principal within an agreed Cure Period
- m) the Contractor persistently or repeatedly failing to comply with the Contract in circumstances where the Principal has previously notified the Contractor of the failures or Non-Compliance Events and has put the Contractor on notice that continued failures or Non-Compliance Events would constitute a substantial breach for the purposes of the Contract
- n) false or fraudulent behaviour, or
- o) any other substantial breach nominated in the Contract.

#### **40.3 Requirements of a notice by the Principal to show cause**

A notice under Clause 40.2 shall:

- a) state that it is a notice under Clause 40
- b) specify the alleged substantial breach
- c) require the Contractor to show cause in writing why the Principal should not exercise a right referred to in Clause 40.4
- d) specify the time and date by which the Contractor must show cause (which time shall not be less than 7 days after the notice is given to the Contractor), and
- e) specify the place at which cause must be shown.

#### **40.4 Rights of the Principal**

If by the time specified in a notice under Clause 40.2 the Contractor fails to show reasonable cause why the Principal should not exercise a right referred to in Clause 40.4, the Principal may by notice in writing to the Contractor:

- a) take out of the hands of the Contractor the whole or part of the work remaining to be completed, or
- b) terminate the Contract.

Upon giving a notice under Clause 40.2, the Principal may suspend payments to the Contractor until the earlier of:

- i. the date upon which the Contractor shows reasonable cause
- ii. the date upon which the Principal takes action under Clause 40.4(a) or (b), or
- iii. the date which is 7 days after the last day for showing cause in the notice under Clause 40.2.

If the Principal exercises the right under Clause 40.4(a), the Contractor shall not be entitled to any further payment in respect of the work taken out of the hands of the Contractor unless a payment becomes due to the Contractor under Clause 40.6.

#### **40.5 Procedure when the Principal takes over work**

If the Principal takes work out of the hands of the Contractor under Clause 40.4(a) the Principal shall complete that work and the Principal may without payment of compensation take possession of such of the Constructional Plant and other things on or in the vicinity of the Site as are owned by the Contractor and are reasonably required by the Principal to facilitate completion of the work.

If the Principal takes possession of Constructional Plant or other things, the Principal shall maintain the Constructional Plant and, subject to Clause 40.6, on completion of the work the Principal shall return to the Contractor the Constructional Plant and any things taken under this Clause 40.5 which are surplus.

#### **40.6 Adjustment on completion of the work taken out of the hands of the Contractor**

When work taken out of the hands of the Contractor under Clause 40.4(a) is completed the Principal's Representative shall ascertain the cost incurred by the Principal in completing the work and shall issue a certificate to the Principal and the Contractor certifying the amount of that cost.

If the cost incurred by the Principal is greater than the amount which would have been paid to the Contractor if the work had been completed by the Contractor, the difference shall be a debt due from the Contractor to the Principal. If the cost incurred by the Principal is less than the amount that would have been paid to the Contractor if the work had been completed by the Contractor, the difference shall be a debt due to the Contractor from the Principal. The Principal shall keep records of the cost.

If the Contractor is indebted to the Principal, the Principal may retain Constructional Plant or other things taken under Clause 40.5 until the debt is satisfied. If after reasonable notice, the Contractor fails to pay the debt, the Principal may sell the Constructional Plant or other things and apply the proceeds to the satisfaction of the debt and the costs of sale. Any excess shall be paid to the Contractor.

#### **40.7 Default of the Principal**

If the Principal commits a substantial breach of contract and the Contractor considers that damages may not be an adequate remedy, the Contractor may give the Principal a written notice to show cause.

Substantial breaches include but are not limited to:

- a) failing to make a payment, in breach of Clause 37.1
- b) failing to give the Contractor sufficient access to a Site, in breach of Clause 27.1, but only if the failure continues for longer than 28 days.

#### **40.8 Requirements of a notice by the Contractor to show cause**

A notice under Clause 40.7 shall:

- a) state that it is a notice under Clause 40
- b) specify the alleged substantial breach
- c) require the Principal to show cause in writing why the Contractor should not exercise a right referred to in Clause 40.9
- d) specify the time and date by which the Principal must show cause (which shall not be less than seven days after the notice is given to the Principal), and
- e) specify the place at which cause must be shown.

#### **40.9 Rights of the Contractor**

If by the time specified in a notice under Clause 40.7 the Principal fails to show reasonable cause why the Contractor should not exercise a right referred to in Clause 40.9, the Contractor may by notice in writing to the Principal suspend the whole or any part of the work under the Contract.

The Contractor shall lift the suspension if the Principal remedies the breach but if within 28 days after the date of suspension under Clause 40.9, the Principal fails to remedy the breach or, if the breach is not capable of remedy, fails to make other arrangements to the reasonable satisfaction of the Contractor, the Contractor may by notice in writing to the Principal terminate the Contract.

The Contractor shall be entitled to recover from the Principal any damages incurred by the Contractor by reason of the suspension.

#### **40.10 Rights of the parties on termination**

If the Contract is terminated under Clause 40.4(b) or Clause 40.9 the rights and liabilities of the parties shall be the same as they would have been at common law had the defaulting party repudiated the Contract and the other party elected to treat the Contract as at an end and recover damages.

#### **40.11 Insolvency**

If:

- A. a party informs the other party in writing or creditors generally that the party is insolvent or is financially unable to proceed with the Contract
- B. execution is levied against a party by a creditor
- C. a party is an individual person or a partnership including an individual person, and if that person:
  - i. commits an act of bankruptcy
  - ii. has a bankruptcy petition presented against him or her or presents his or her own petition
  - iii. is made bankrupt
  - iv. makes a proposal for a scheme of arrangement or a composition, or
  - v. has a deed of assignment or deed of arrangement made, accepts a composition, is required to present a debtor's petition, or has a sequestration order made, under Part X of the Bankruptcy Act 1966 (Cth), or
- D. in relation to a party being a corporation:
  - i. notice is given of a meeting of creditors with a view to the corporation entering a deed of company arrangement
  - ii. the party enters a deed of company arrangement with creditors
  - iii. a controller or administrator is appointed
  - iv. an application is made to a court for the winding up of the party and not stayed within 14 days
  - v. a winding up order is made in respect of the party

- vi. it resolves by special resolution that it be wound up voluntarily (other than for a members' voluntary winding up)
- vii. a mortgagee of any property of the party takes possession of that property, or
- viii. a receiver or a receiver and manager is appointed in respect of any property or undertaking of the party,

then, where the other party is:

- A. the Principal, the Principal may, without giving a notice to show cause, exercise the right under Clause 40.4(a) or Clause 40.4(b), or
- B. the Contractor, the Contractor may, without giving a notice to show cause, exercise the right under Clause 40.9.

The rights given by Clause 40.11 are in addition to any other rights and may be exercised notwithstanding that there has been no breach of contract.

## **41 Termination for convenience**

### **41.1 Termination for convenience**

In addition to any other right available to the Principal to terminate the Contract, the Principal may, at its absolute discretion and without cause, with 90 days written notice to the Contractor terminate the Contract.

The Principal may itself or by engaging others complete the work under the Contract not completed at the date of termination under this Clause 41.

### **41.2 Consequences**

If the Contract is terminated under this Clause 41:

- a) The Principal's Representative shall issue a payment certificate for work under the Contract carried out to the date of termination, evidencing the amount which would have been payable had the Contract not been terminated and had the Contractor been entitled to and made a progress claim on the date of termination.
- b) Subject to the Principal's rights under the Contract to deduct and withhold amounts owing to the Contractor, the Principal shall pay the Contractor as the Contractor's sole remedy in relation to the termination:
  - i. the amount due to the Contractor evidenced by all unpaid certificates
  - ii. the cost of services, materials and equipment reasonably ordered by the Contractor for work under the Contract and which the Contractor is liable to accept, but only if they will become the Principal's property upon payment, and
  - iii. the following costs reasonably incurred by the Contractor as a direct result of the termination:
    - A. costs of removing Temporary Works and Constructional Plant
    - B. costs of returning to their place of engagement the Contractor, subcontractors and their respective employees engaged in work under the Contract at the date of termination

- C. costs incurred prior to the date of termination in expectation of completing the work under the Contract and not included in any other payment
  - D. costs associated with any redundancies that are necessary and unavoidable, and
  - E. costs of breaking any contract or lease to which the Contractor is a party.
- c) subject to its rights to have recourse to security, each party shall promptly release and return all security provided by the other.

## **42 Termination by frustration**

If, under the law governing the Contract, the Contract is frustrated, the Principal shall:

- a) pay the Contractor:
  - i. for work executed prior to the date of frustration, the amount which would have been payable if the Contract had not been frustrated and the Contractor had made a progress claim on the date of frustration
  - ii. the cost of materials reasonably ordered by the Contractor for the work under the Contract, which the Contractor is liable to accept, but only if the materials become the property of the Principal upon payment
  - iii. costs reasonably incurred by the Contractor in the expectation of completing the whole of the work under the Contract and not included in any payment by the Principal
  - iv. the reasonable cost of removal of Constructional Plant, and
  - v. the reasonable cost of return to their place of recruitment of the Contractor's employees engaged in the work under the Contract at the date of frustration, and
- b) subject to its rights to have recourse to security, return any remaining security.

## **Part H – Claims and dispute resolution**

### **43 Notification of Claims**

#### **43.1 Communication of Claims**

As soon as practicable after a party could reasonably have been aware of any Claim (but in any event not later than 28 days after the occurrence of the event or circumstance giving rise to the Claim) that party shall give to the other party and to the Principal's Representative a prescribed notice under Clause 43.3 or a notice of dispute under Clause 44.1.

This Clause 43.1 and Clauses 43.3, 43.4 and 43.5 shall not apply to any claim, including a payment claim, the communication of which is required by another provision of the Contract.

#### **43.2 Liability for Failure to Communicate**

The failure of a party to comply with the provisions of Clause 43.1 or to communicate a Claim in accordance with the relevant provision of the Contract, shall preclude the party from being entitled to an extension of time or claim for payment.

#### **43.3 The Prescribed Notice**

A prescribed notice is a notice in writing which includes:

- a) an outline of the contractual or legal basis of the Claim or proposed Claim
- b) a description of the facts and documentation on which the Claim is based
- c) a detailed estimate of the quantum or likely quantum of the claim or proposed Claim, and
- d) a statement that it is a prescribed notice under Clause 43.1.

#### **43.4 Submission of Claim**

A party who has given a prescribed notice pursuant to Clause 43.1 may lodge a Claim in respect of the matters the subject of the prescribed notice.

If within 28 days of giving the prescribed notice the party giving the notice does not submit to the other party and the Principal's Representative a Claim in respect of matters the subject of the prescribed notice, the prescribed notice shall be deemed to be the Claim.

#### **43.5 Decision on Claim**

Within 56 days of receipt of the prescribed notice the Principal's Representative shall assess the Claim and shall promptly notify the parties in writing of the decision. Unless a party within a further 28 days of such notification serves a Notice of Dispute 44.1 which includes such Claim, the Principal's Representative shall include the amount of that assessment in the next payment certificate issued pursuant to Clause 37.

## **44 Dispute resolution**

### **44.1 Notice of dispute**

If a dispute between the Contractor and the Principal arises out of or in connection with the Contract, including a dispute concerning a direction given by the Principal's Representative, then either party shall deliver by hand or send by registered post to the other party and to the Principal's Representative a notice of dispute in writing adequately identifying and providing details of the dispute.

Notwithstanding the existence of a dispute, the Principal and Contractor shall continue to perform the Contract, and subject to Clause 40, the Contractor shall continue with the work under the Contract and the Principal and the Contractor shall continue to comply with Clause 37.1.

A claim in tort, under statute or for restitution based on unjust enrichment or for rectification or frustration, may be included in an arbitration.

#### **44.2 Further steps required before proceedings**

A party served with a notice of dispute may give a written response to the notice to the other party and the Principal's Representative within 28 days of the receipt of the notice.

Within 42 days of the service on the Principal's Representative of a Notice of Dispute or within 14 days of the receipt by the Principal's Representative of the written response, whichever is the earlier, the Principal's Representative shall give to each party the Principal's Representative's written decision on the dispute, together with reasons for the decision.

If either party is dissatisfied with the decision of the Principal's Representative, or if the Principal's Representative fails to give a written decision on the dispute within the time required under this Clause 44.2, the CLT shall within 14 days of the date of receipt of the decision, or within 14 days of the date upon which the decision should have been given by the Principal's Representative, meet to attempt to resolve the dispute.

In the event that the dispute cannot be so resolved by the CLT within 14 days of the date of receipt of the decision, or within 14 days of the date upon which the decision should have been given by the Principal's Representative, then:

- a) if the dispute is predominantly of a technical (and not legal or commercial) nature then the parties must refer the dispute to expert determination under Clause 44.2A, or
- b) if the dispute is not predominantly of a technical nature then either party may, by notice in writing delivered by hand or sent by registered post to the other party, refer such dispute to arbitration or litigation.

Nothing in this clause prevents the parties, by mutual agreement, agreeing that the dispute be dealt with by arbitration in accordance with Clause 44.3 or an alternative dispute resolution process.

#### **442.A Expert determination**

A dispute requiring expert determination under Clause 44.2(a) must be referred to and determined by an expert in accordance with clause this 44.2A.

The expert must:

- a) act as an expert and not as an arbitrator
- b) be an independent person with appropriate qualifications and experience in relation to the subject matter of the dispute, and
- c) be selected by agreement between the parties or if the parties fail to agree, by the person nominated by (and which nomination will bind the parties) the President for the time being of Resolution Institute.

Unless otherwise agreed by the parties and the expert, the expert determination must be determined in accordance with the expert determination rules of the Resolution Institute current at the Date of Award ('the Rules').

The expert must give a ruling on the subject matter of the expert's expertise only and not rule on commercial or legal issues and the expert's decision will be final and binding on the parties, unless:

- d) there is a manifest error of law
- e) the dispute relates to a monetary claim that is in excess of \$15 million, or
- f) the expert's decision requires a party to pay in excess of \$15 million.

The costs of the expert will be borne equally by the parties, irrespective of the expert's determination.

#### **44.3 Arbitration**

Arbitration shall be effected by a single arbitrator who shall be nominated by the Chairperson for the time being of the Queensland Chapter of the Institute of Arbitrators and Mediators Australia. Such arbitration shall be held in Queensland.

Unless the parties agree in writing, any person agreed upon by the parties to resolve the dispute pursuant to Clause 44.2 shall not be appointed as an arbitrator, nor may that person be called as a witness by either party in any proceedings.

Notwithstanding Clause 37.5, the arbitrator may award whatever interest the arbitrator considers reasonable.

If one party has overpaid the other, whether pursuant to a Principal's Representative's payment certificate or not and whether under a mistake of law or fact, the arbitrator may order repayment together with interest.

#### **44.4 Summary or urgent relief**

Nothing in this Clause 44 shall prejudice the right of a party to institute proceedings to seek debt injunctive or declaratory relief in respect of a dispute under Clause 44 or any matter arising under the Contract.

## **Part I – General provisions**

### **45 Control of Contractor's employees and subcontractors**

The Principal's Representative may direct the Contractor to remove from a Site or from any activity connected with the work under the Contract, within such time as the Principal's Representative directs, any person employed in connection with the work under the Contract who, in the opinion of the Principal's Representative, is guilty of misconduct or is incompetent or negligent. The person shall not thereafter be employed on a Site or on activities connected with the work under the Contract without the prior written approval of the Principal's Representative.

### **46 Assignment and subcontracting**

#### **46.1 Assignment**

Neither party shall, without the prior written approval of the other (such approval must not be unreasonably withheld), assign the Contract or any payment or any other right or benefit or interest thereunder.

#### **46.2 Subcontracting**

- a) The Contractor may subcontract part of the work under the Contract in accordance with Clause 46.2(b) but subcontracting shall not relieve the Contractor from any liability or obligation under the Contract and the Contractor shall be liable to the Principal for the acts and omissions of subcontractors and employees and agents of subcontractors as if they were acts or omissions of the Contractor.
- b) The Contractor shall not without the written approval of the Principal's Representative, which shall not be unreasonably withheld, subcontract or allow a subcontractor to subcontract any of the work under the Contract except where the value of the subcontract does not exceed \$200,000 or if the work is covered under Clause 46.3.
- c) The Contractor shall not, without the written approval of the Principal's Representative, which shall not be unreasonably withheld, allow a subcontractor to assign a subcontract or any payment or any other right, benefit or interest thereunder.

#### **46.3 Registered supplier**

Without limiting the Contractor's obligations under Clause 46.2, and unless otherwise agreed in writing by the Principal, the Contractor must only use registered suppliers in respect of work under the Contract which is covered by the relevant registration categories.

The registered suppliers and registration categories may be amended at any time and from time to time by the Principal and are available at the Principal's website.

Where a registered supplier is removed from the register after the Principal's Representative has granted approval of that supplier, the Contractor shall continue to fulfil its obligations under the Contract.

For the purposes of this Clause 46.3, registered includes prequalified.

#### **46.4 Suppliers' and manufacturers' warranties**

- a) The Contractor shall:
  - i. procure and deliver to the Principal, prior to the end of the Defects Liability Period, a completed and executed warranty in the form of Form C7858 from the supplier or manufacturer of any materials or goods incorporated into the Works
  - ii. in respect of any materials or goods incorporated into the Works, assign to the Principal the benefit of any warranty which applies after the end of the Defects Liability Period.
- b) The provision of an executed warranty pursuant to this Clause 46.4(a) shall not:
  - i. affect the warranties given by the Contractor under the Contract
  - ii. relieve, limit or exclude any of the Contractor's liabilities or obligations under the Contract
  - iii. modify, limit or exclude any of the Principal's rights or remedies against the Contractor whether under the Contract or otherwise.

This Clause 46.4 survives termination or expiry of the Contract.

#### **47 Intellectual Property Rights**

The Principal warrants that unless otherwise provided in the Contract:

- a) design
- b) materials
- c) documents, and
- d) methods of working,

specified in the Contract or provided or directed by the Principal or the Principal's Representative will not infringe any Intellectual Property Right.

The Contractor warrants that any other design, materials, documents and methods of working provided by the Contractor will not infringe any Intellectual Property Right and the Contractor shall indemnify the Principal against any design, materials, documents or methods of working provided by the Contractor infringing any Intellectual Property Right.

The Contractor agrees and acknowledges that all Intellectual Property Rights in documents provided by the Principal to the Contractor, shall as between the Principal and the Contractor, remain vested in and the property of the Principal.

The Contractor agrees and acknowledges that all Intellectual Property Rights created, discovered or coming into existence as a result of, or for the purposes of, or in connection with the execution of work under the Contract in accordance with the Contract, will by this Clause 47, be vested in and owned by the Principal immediately upon creation. The Principal provides a licence to the Contractor to use any such Intellectual Property Rights for the purpose of carrying out the work under the Contract.

In respect of other pre-existing Intellectual Property Rights used by the Contractor for the purpose of, or in connection with the execution of the work under the Contract in accordance with the Contract, to the extent the Contractor is legally able to do so, the Contractor grants to the Principal an irrevocable, transferable, perpetual, non-exclusive, royalty-free licence to use any and all such pre-existing

Intellectual Property Rights for any purpose whatsoever associated with the work under the Contract or the Works.

The Contractor must inform the Principal's Representative immediately upon becoming aware of any infringement or threatened infringement of any Intellectual Property Right owned or used by the Contractor or Principal in relation to the work under the Contract or the Works.

## **48 Statutory Requirements**

### **48.1 Complying with Statutory Requirements**

The Contractor shall promptly comply with all Statutory Requirements and, if notified by the Principal, any Statutory Requirements issued or granted to the Principal.

If a Statutory Requirement is at variance with a provision of the Contract, as soon as the Contractor discovers the variance the Contractor shall notify the Principal's Representative in writing specifying the difference.

Unless otherwise specified in this Contract, the Contractor shall apply for, procure and pay for all certificates, licences, consents, permits and other approvals necessary for the lawful carrying out of the work under the Contract. The Contractor shall promptly comply with all certificates, licences, consents, permits and other approvals relevant to the work under the Contract at the Contractor's cost.

### **48.2 Licences, registration, permits, approvals and certificates**

At all times during the Term, the Contractor must hold, and ensure that its subcontractors, agents and employees hold, all of the licences, registrations, permits, approvals and certificates that they are required by law to hold in order to carry out work of a type required by this Contract.

The Contractor shall give the Principal copies of documents issued to the Contractor by any Authorities in respect of the work under the Contract and, in particular, any approvals of the work under the Contract.

### **48.3 Changes**

If a change in a Statutory Requirement after the Date of Award:

- a) necessitates a change in the Works or the Temporary Works or the Contractor's method of working, or
- b) is an increase or decrease in or is a new fee or charge in relation to the Works or Temporary Works, and
- c) causes the Contractor to incur more or less cost than could reasonably have been anticipated by a competent and experienced contractor at the time the Contractor submitted its tender (or at the time of submitting the relevant Project Proposal in the case of the Asset Management Works Projects),

the difference must be valued under Clause 55.5 (in the case of Asset Management Work) and Clause 62.3 (in the case of Routine Maintenance Work).

#### **48.4 Portable Long Service Leave Levy Act**

Where applicable:

- a) the Contractor shall be responsible for the notification of any building and construction work required to be performed under this Contract in accordance with Section 67 of the *Building and Construction Industry (Portable Long Service Leave) Act 1991* (Qld), and
- b) the Principal shall be responsible for the payment of any levies due in accordance with Section 66 of the *Building and Construction Industry (Portable Long Service Leave) Act 1991* (Qld).

#### **48.5 NGERs**

A party will provide the other party with all information and documentation reasonably requested by the other party in respect of greenhouse gas emissions and energy production and consumption referable to any activities that comprise work under the Contract which is reasonably necessary to enable compliance by the other party (or by a Controlling Corporation of the other party) with its obligations under the NGER Legislation in relation to any work under the Contract.

The Contractor acknowledges that it is not entitled to any additional payment from the Principal for complying with any obligations the Contractor may have under the NGER Legislation.

#### **48.6 WHS Accreditation**

- a) Subject to the exclusions specified in the Fair Work (Building Industry – Accreditation Scheme) Regulation 2016, the Contractor must maintain accreditation under the Australian Government Building and Construction WHS Accreditation Scheme (the Scheme) established by the *Building and Construction Industry (Improving Productivity) Act 2016 (BCIIP Act)* while building work (as defined in Section 6 of the BCIIP Act) is carried out.
- b) The Contractor must comply with all conditions of Scheme accreditation.

#### **48.7 Biosecurity Matters**

The Contractor must comply with the requirements set out in Appendix L in respect of Biosecurity Matter, including Red Imported fire Ants.

#### **49 Service of notices**

A notice shall be deemed to have been given when it is received by the person to whom it is addressed or is delivered to the address of that person stated in the Details section of the Formal Instrument of Agreement or last communicated in writing by that person to the person giving the notice, whichever is the earlier.

The Principal, the Contractor, the Principal's Representative and the Contractor's Representative shall each notify the others of a change of address.

Without limiting the generality of 'notice', it includes a document.

The Contractor must ensure that within 24 hours after any such notice (other than a payment claim or payment schedule) under the *Payments Act*, is given or received by the Contractor or any subcontractors, a copy of that notice is given to both the Principal and Principal's Representative.

## **50 Queensland Code and Queensland Guidelines**

### **50.1 Definitions**

In addition to terms defined in this document, terms used in this Clause 50 have the same meaning as is attributed to them in the *Queensland Code of Practice for the Building and Construction Industry (Queensland Guidelines)* (as published by the Department of Justice and Attorney-General). The Queensland Code and Queensland Guidelines are available at <http://www.justice.qld.gov.au/corporate/business-areas/industrial-relations/codes-of-practice-and-guidelines/queensland-code-of-practice-for-the-building-and-construction-industry>.

### **50.2 Primary Obligation**

- a) The Contractor must comply with, and meet any obligations imposed by, the *Queensland Government's Code of Practice for the Building and Construction Industry* (Queensland Code) and Queensland Guidelines.
- b) The Contractor must notify the Building Construction Compliance Branch (BCCB) (or nominee) and the Principal of any alleged breaches of the Queensland Code and Queensland Guidelines and of voluntary remedial action taken, within 24 hours of becoming aware of the alleged breach.
- c) Where the Contractor is authorised to engage a subcontractor or consultant, and it does so, the Contractor must ensure that any secondary contract imposes on the subcontractor or consultant equivalent obligations to those in this Section 50, including that the subcontractor or consultant must comply with, and meet any obligations imposed by, the Queensland Code and the Queensland Guidelines.
- d) The Contractor must not appoint or engage another party in relation to the work under the Contract where that appointment or engagement would breach a sanction imposed on the other party in relation to the Queensland Code or Queensland Guidelines.

### **50.3 Access and information**

- a) The Contractor must maintain adequate records of compliance with the Queensland Code and Queensland Guidelines by it, its subcontractors, consultants and related entities.
- b) The Contractor must allow, and take reasonable steps to facilitate, Queensland Government authorised personnel (including personnel of the BCCB) to:
  - i. enter and have access to Sites and premises controlled by the Contractor, including any Site at which the work under the Contract is being carried out;
  - ii. inspect any work, material, machinery, appliance, article or facility
  - iii. access information and documents
  - iv. inspect and copy any record relevant to the work under the Contract
  - v. have access to personnel, and
  - vi. interview any person,as is necessary for the authorised personnel to monitor and investigate compliance with the Queensland Code and Queensland Guidelines, by the Contractor, its subcontractors, consultants and related entities.

- c) The Contractor, and its related entities, must agree to, and comply with, a request from Queensland Government authorised personnel (including personnel of the BCCB) for the production of specified documents by a certain date, whether in person, by post or electronic means.

#### **50.4 Sanctions**

- a) The Contractor warrants that at the time of entering into this Contract, neither it, nor any of its related entities, are subject to a sanction in connection with the Queensland Code or Queensland Guidelines that would have precluded it from tendering for work to which the Queensland Code and Queensland Guidelines apply.
- b) If the Contractor does not comply with, or fails to meet any obligation imposed by, the Queensland Code or Queensland Guidelines, a sanction may be imposed against it in connection with the Queensland Code or Queensland Guidelines.
- c) Where a sanction is imposed:
  - i. it is without prejudice to any rights that would otherwise accrue to the parties
  - ii. the State of Queensland (through its agencies, Ministers and the BCCB) is entitled to:
    - A. record and disclose details of non-compliance with the Queensland Code or Queensland Guidelines and the sanction, and
    - B. take them into account in the evaluation of future expressions of interest or tender responses that may be lodged by the Contractor, or its related entities, in respect of work to which the Queensland Code and Queensland Guidelines apply.

#### **50.5 Compliance**

- a) The Contractor bears the cost of ensuring its compliance with the Queensland Code and Queensland Guidelines, including in respect of any positive steps it is obliged to take to meet its obligations under the Queensland Guidelines. The Contractor is not entitled to make a claim for reimbursement or an extension of time from the Principal or the State of Queensland for such costs.
- b) Compliance with the Queensland Code and Queensland Guidelines does not relieve the Contractor from responsibility to perform the work under the Contract and any other obligation under the Contract, or from liability for any defect in the Works or from any other legal liability, whether or not arising from its compliance with the Queensland Code and Queensland Guidelines.
- c) Where a change in the Contract or the work under the Contract is proposed, and that change would, or would be likely to, affect compliance with the Queensland Code and Queensland Guidelines, the Contractor must immediately notify the Principal (or nominee) of the change, or likely change and specify:
  - i. the circumstances of the proposed change
  - ii. the extent to which compliance with the Queensland Code and Queensland Guidelines will, or is likely to be, affected by the change, and
  - iii. what steps the Contractor proposes to take to mitigate any adverse impact of the change (including any amendments it proposes to a Workplace Relations Management Plan),

and the Principal will direct the Contractor as to the course it must adopt within seven days of receiving notice.

## **51 Miscellaneous**

### **51.1 Confidential information**

Subject to Clause 51.1A, Drawings, Specifications, other information, samples, models, patterns and the like (including the Contractor's pricing, pricing methodology and financial models) supplied by either the Contractor or the Principal and marked or otherwise identified as confidential, shall be regarded as confidential and shall not be disclosed to a third party except with the prior agreement of the other party to the Contract.

If required in writing by a party, the other party shall enter into a separate agreement not to disclose to anyone else any confidential matter for an agreed additional term after the end of the Term.

#### **51.1A Insurance claims**

The Contractor must provide all information and documentation reasonably required by the Principal in connection with a claim by the Principal under any insurance policy to recover costs incurred to repair damage caused by third parties to the Road Infrastructure, including but not limited to:

- a) providing un-redacted copies of all such information and documentation within 14 days of request by the Principal, and
- b) providing reasonable technical assistance to the Principal in the interpretation of such information and documentation.

The Contractor must retain scanned copies of all documentation provided under this Clause 51.1A for a minimum period of 6 years, and must provide such documentation to the Principal upon request.

The Contractor must provide all necessary assistance to enable the Principal to recover the costs incurred by the Principal to repair damage caused by third parties to the Road Infrastructure from those third parties.

The restrictions on disclosure of confidential information in Clause 51.1 do not apply to any disclosure of such information or documentation

### **51.2 Information Privacy Act**

For the purposes of this Clause 51.2, the words 'bound contracted service provider', 'compliance notice', 'document', 'information commissioner', 'personal information', 'privacy complaint' and 'privacy principles' have the meanings given in the *Information Privacy Act 2009* (Qld).

The Contractor acknowledges that the Contractor is a bound contracted service provider and the information commissioner's functions include conducting reviews into personal information handling practices of bound contracted service providers and conducting compliance audits to assess bound contracted service providers' compliance with the privacy principles.

The Contractor shall promptly advise the Principal of any:

- a) enforcement of the Contractor's obligations under the Information Privacy Act 2009 (Qld) in connection with the Contract, including enforcement through compliance notices given to the Contractor, and

- b) privacy complaints in connection with the Contractor's discharge of its obligations under the Contract, including any privacy complaints to which the Contractor is a respondent.

The Contractor shall take any actions reasonably required by the Principal in connection with the matters referred to in the previous paragraph, including steps to comply with any compliance notice.

The Contractor shall keep the Principal informed about actions of the information commissioner in connection with the Contract of which the Contractor becomes aware.

The Contractor shall immediately notify the Principal if the Contractor becomes aware that disclosure of personal information held in relation to this Contract is, or may be, required or authorised by law.

For, or in connection with, either:

- i. an individual's application to the Principal for access to, or amendment of, a document containing the individual's personal information, whether the application is made under the *Information Privacy Act 2009* (Qld) or otherwise; or
- ii. privacy complaints made to the Principal, including any privacy complaints to which the Principal is a respondent,
- iii. the Contractor shall, as soon as possible following the Principal's request but no later than two days after such request from the Principal:
- iv. submit to the Principal a document specified by the Principal
- v. amend or notate a document specified by the Principal
- vi. provide information to the Principal concerning the Contractor's discharge of its obligations under this Clause 51.2, and
- vii. take other reasonable actions required by the Principal.

The Principal may make a written request to the Contractor to comply with privacy and security measures under the *Information Privacy Act 2009* (Qld) and the *Right to Information Act 2009* (Qld).

In relation to this Clause 51.2, the Principal's Representative shall act as an agent of the Principal.

At the end of the Term, the Contractor shall forward any personal information on members of the community held by the Contractor to the Principal. Following confirmation of receipt by the Principal, the Contractor shall destroy all such information in the Contractor's possession.

This Clause 51.2 survives termination or expiry of the Contract.

### **51.3 Community engagement requirements**

The Contractor must comply with the requirements in Appendix D: Detailed Requirements for Contract Plan (Revision 1) in relation to engaging with the community, stakeholders, elected members and the media.

### **51.4 Warranties by joint venturers**

Where the Contractor is two or more legal entities, the Contract shall be binding upon them jointly and severally and:

- a) each joint venturer warrants to the Principal:
  - i. the joint venturers have entered into a valid and binding joint venture agreement, a copy of which has been provided to the Principal before the Date of Award

- ii. it will fully comply with the terms of the joint venture agreement
- iii. it will give prompt notice to the Principal of any intention to amend or vary the joint venture agreement and will seek approval from the Principal for the proposed amendment or variation which such amendment or variation relates to, or in any way impacts upon, the following requirements:
  - A. an acknowledgement that the joint venturers are jointly and severally liable for the performance of all obligations and liabilities of the Contractor under the Contract and at law
  - B. that the scope of the joint venture is defined so that the joint venturers are required to ensure that the works under the Contract are fully performed
  - C. that one person is nominated as the Contractor's Representative for the purposes of the Contract with that person having authority to give and receive notices under the Contract
  - D. that the joint venturers establish one bank account into which progress payments will be paid by the Principal
  - E. that if the joint venture is terminated for any reason, either joint venturer must not be restricted or in any way prevented from negotiating with the Principal for the completion of the Contract and the Works
  - F. that there is no clause which impedes or restricts the operation or effect of Clause 47
  - G. that the process for dispute resolution specifically provides that the parties must continue to fully perform the Contract notwithstanding the existence of a dispute between them
  - H. that suitable terms are included in relation to default by the joint venturers (including consequences), dispute resolution, management of the joint venture, voting rights, financial and insurance arrangements and the provision of securities under the Contract, and
  - I. that the roles of each of the venturers is clearly defined. Individual venturers roles must not exceed their capability or that are inconsistent with their level of prequalification with the Principal, and
- iv. it will give prompt notice to the Principal of any dispute between the joint venturers, of which formal notice has been given by one to the other, and
  - b) any review or approval of the joint venture agreement by the Principal shall not constitute a representation by the Principal that the agreement is suitable, workable or consistent with the terms of the Contract and shall not relieve the Contractor from the performance of, or compliance with, any term of this Contract.

### **51.5 Collusive arrangements**

The Contractor warrants and represents to the Principal that:

- a) it had no knowledge of the tender price of any other tenderer for the work under the Contract at time of its submission of tender

- b) except as disclosed in its tender, it has not entered into any contract, arrangement or understanding to pay or allow any money directly or indirectly to a trade or industry association (above the published standard membership fee) or to or on behalf of any other tenderer in relation to this tender or any contract to be entered into consequent thereon, nor paid or allowed any money on that account, nor will it pay or allow any money on that account
- c) except by prior agreement with the Principal it has not paid or allowed or entered into any contract, arrangement or understanding to pay or allow any money directly or indirectly to or on behalf of any other tenderer nor received any money or allowance from or on behalf of any other tenderer in relation to its tender or this Contract entered into consequent thereon, nor will it pay or allow or receive any money as aforesaid, and
- d) if, without the Principal's prior agreement, it receives or has received any money or allowance from any other tenderer in relation to its tender, the other tenderer's tender or this Contract, then without prejudice to any other right or remedy of the Principal, such money or allowance shall be deemed to be held by the Contractor on trust for the Principal and shall be paid to the Principal forthwith.

**51.6 Waiver of conditions**

Except as provided at law or in equity or elsewhere in the Contract, none of the terms of the Contract shall be varied, waived, discharged or released, except with the prior consent in writing of the Principal in each instance.

## **Part J –Asset Management Work**

### **52 Application of this Part J**

This Part J applies to the performance of the Asset Management Works for the First Phase Projects and the Second Phase Projects of this Contract.

The Contractor shall carry out the Asset Management Work required for the Second Phase Projects included in the Final AWP and referred under Clause 18, in accordance with the terms of the relevant Project Proposal and the terms of this Contract.

The Principal shall:

- A. pay the Contractor the Project Contract Sum for each Asset Management Works Project in accordance with the terms of the relevant Project Proposal and the terms of this Contract, and
- B. will ensure access to the relevant Sites in accordance with Clause 27.1.

### **53 Time for commencement and completion of Projects**

#### **53.1 *Conditions precedent to commencing a Project***

- a) At least 28 days prior to commencing a Project and as a condition precedent to accessing the relevant Site, the Contractor must provide to the Principal's Representative for assessment and direction as to their suitability in accordance with Clause 13:
  - i. A copy of the Contract Plan, augmented to include:
    - I. Project specific details relevant to each component of the Contract Plan,
    - II. A Program for the Project in accordance with Clause 53.4,
    - III. an EMP(C) specific to the Project, and
    - IV. a traffic guidance scheme for the Project and which complies with Appendix D: Detailed Requirements for Contract Plan (Revision 1), and
  - ii. If requested by the Principal's Representative, evidence that:
    - I. any notices required under the Community Engagement Plan or Interface Arrangements prior to accessing the Site have been given, and
    - II. any approvals or consents required for the Asset Management Work have been obtained.
- b) Work on the Project may not commence until the Principal's Representative has:
  - i. Directed that the required components of the Contract Plan referred to in Clause 53.1(a) have been deemed suitable, and
  - ii. Accepted the Project Proposal required in Clause 17.

### **53.2 Progress**

The Contractor shall carry out the Asset Management Work:

- a) with due expedition and without delay, and
- b) such that, in each Year, the Projects set out in the Final AWP reach Practical Completion within that Year, except to the extent that delays are caused by the Principal's failure to comply with the timeframes in Clause 17 for receiving and responding to Project Proposals.

### **53.3 Programming – Overall sequencing of First Phase Projects**

- a) Within 28 days of the Date of Award the Contractor must submit proposed programs which provide details of the proposed overall sequencing of the First Phase Projects during the First Phase.
- b) Upon the written approval by the Principal's Representative of the proposed programs submitted by the Contractor under Clause 53.3(a), each program will be considered as the Final AWP for each of the relevant Years.

### **53.4 Programming – Project Specific**

- a) At least 28 days prior to commencing any Project, the Contractor must submit to the Principal's Representative a proposed program for the Project which complies with the requirements in Appendix D: Detailed Requirements for Contract Plan (Revision 1).
- b) Upon the written approval of each proposed Project Program by the Principal's Representative, it will be designated as the Current Project Program in respect of the Project. No changes shall be made to the Current Project Program without the prior written agreement of the Principal's Representative.
- c) Until such time as the Principal's Representative approves a Project Program under Clause 53.4(b), the Principal's Representative may have regard, as necessary, to the program submitted as part of the relevant Project Proposal submitted under Clause 17.1.
- d) No direction as to use of nor any other comment or direction by the Principal's Representative or the Principal regarding the suitability of or any change to any Project Program or any revised Project Program will:
  - i. relieve, limit or exclude any of the Contractor's liabilities or obligations under the Contract, including its responsibility for all planning, scheduling, sequences, methods and techniques necessary for the due performance of its obligations under the Contract
  - ii. constitute a direction to accelerate, disrupt, prolong or vary any or all of the Contractor's activities or the work under the Contract or any part thereof, or
  - iii. affect the time for performance by the Principal or the Principal's Representative of any of their obligations.
- e) If the actual progress of the work under the Contract in respect of a Project varies significantly from that shown in the Current Project Program, the Contractor shall submit a revised program which shall (where possible) indicate how the Contractor proposes to meet the Date of Practical Completion specified in the relevant Project Proposal. A revised program shall comply with the provisions of Appendix D: Detailed Requirements for Contract Plan (Revision

- 1). Once the Principal's Representative approves a revised program in writing that program shall be the Current Project Program.
- f) At each meeting of the CDT, the Contractor shall provide to the Principal's Representative a printed report which reviews the status of each Project against the corresponding Current Project Program and highlights any significant impacts on each Project for the period up to the next scheduled CDT meeting.
- g) The Contractor shall maintain adequate records of its progress on each Project in a format agreed with the Principal's Representative. The records may be examined by the Principal's Representative at any time and, if agreed, signed by both the Contractor and the Principal's Representative as a true record of the Contractor's performance.

### **53.5 Practical Completion**

Within 14 days after receiving a request by the Contractor for the issue of a Certificate of Practical Completion, the Principal's Representative shall give to the Contractor and the Principal either a Certificate of Practical Completion evidencing the Date of Practical Completion or written reasons for not doing so.

If the Principal's Representative is of the opinion that Practical Completion has been reached, the Principal's Representative may issue a Certificate of Practical Completion even though no request has been made.

### **53.6 No departure from Drawings and Specifications**

The Contractor shall carry out and complete each Project strictly in accordance with the Drawings and Specifications for the relevant Project, and any such other specifications (as may from time to time) be supplied by the Principal's Representative to the Contractor, or the use of which has been permitted by the Principal's Representative for the purposes of the Project.

The Contractor shall not depart from or change the Drawings or Specifications without written approval of the Principal's Representative.

The Contractor shall construct the Works:

- i. in a proper and workmanlike manner, and
- ii. using material that is of merchantable quality and complies with the requirements set out in the Contract or failing any specific description or requirements, appropriate for the intended use, having regard to the assumptions that a competent and experienced contractor would be reasonably expected to make.

The Contractor shall ensure, the Works (the subject of the Second Phase Projects) will when constructed:

- i. be fit and adequate for the purposes stated in, or that can be reasonably implied from, the Contract or the Design Brief, and
- ii. comply with all the requirements of the Contract, including (without limitation), the requirements of all Authorities and Statutory Requirements.

### **53.7 No claim for delay damages**

The Contractor acknowledges and agrees that:

- a) it is responsible for delivering the Asset Management Work, and
- b) subject to Clause 55 and the Compensation and Performance Framework, it will have no entitlement to an increase in the Project Contract Sum for any delays to the Asset Management Work the subject of each Project.

### **53.8 Defects liability**

The Defects Liability Period stated in Item 21 of the Key Information shall commence on the Date of Practical Completion for each Project at 4.00 pm.

The Contractor shall carry out rectification of defects at times and in a manner causing as little inconvenience to the occupants or users of the Works as is reasonably possible.

As soon as possible after the Date of Practical Completion, the Contractor shall rectify all defects existing at the Date of Practical Completion.

During the Defects Liability Period, the Principal's Representative may give the Contractor a direction to rectify a defect. The direction shall identify the defect and state dates for commencement and completion of its rectification.

If rectification is not commenced or completed by the stated dates, the Principal may have the rectification carried out by others but without prejudice to any other rights and remedies the Principal may have. The cost thereby incurred shall be certified by the Principal's Representative as moneys due and payable to the Principal.

This Clause 53.7 survives the termination or expiry of the Contract.

### **53.9 Application of terms to each Project**

The interpretation of:

- a) Date of Practical Completion
- b) Practical Completion
- c) Certificate of Practical Completion, and
- d) Clauses 53.5, 53.7 and 54,

apply separately to each Project and references therein to the Works, work under the Contract, Asset Management Work shall mean so much of the Works, work under the Contract, Asset Management Work as is comprised in the relevant Project.

## **54 Care of work under the Contract and reinstatement of damage**

### **54.1 Care of work under the Contract**

The Contractor shall be responsible for the care of:

- a) the whole of work under the Contract the subject of each Project from and including the date of commencement of the work under the Contract to 4:00 pm on the Date of Practical Completion, at which time the responsibility for the care of the Works (except to the extent provided in paragraph (b)) shall pass to the Principal, and

- b) outstanding work and items to be removed from the Site by the Contractor after 4:00 pm on the Date of Practical Completion until completion of outstanding work or compliance with the Contractor's obligations during the Defects Liability Period.

### **54.2 Reinstatement**

If loss or damage, other than to the extent caused by an Excepted Risk, occurs to the work under the Contract during the period of the Contractor's care, the Contractor shall, at its cost, rectify such loss or damage.

### **54.3 Maintenance of existing and completed Works**

- a) Except in respect of damage caused by an Excepted Risk and without limiting Clauses 54.1 and 54.2, from and including the date of commencement of the work under the Contract to 4:00 pm on the Date of Practical Completion the Contractor shall carry out, at its own cost, the following maintenance activities, or such other maintenance activities in respect of a Site as are otherwise required under the Contract (including pursuant to MRTS16 *Landscape and Revegetation Works*):
  - i. maintain existing and new Site vegetation and plantings including grassed areas by, without limitation, watering, weeding, mulching, spraying and fertilising
  - ii. mow any grassed areas within the Site within one week of the height of such grass exceeding 200 mm, and trim any trees or shrubs likely to cause a safety problem for users of the Road Infrastructure
  - iii. ensure that all culverts, channels, table drains, catch drains and other waterways and subsoil drains within the Site are kept clear of any obstructions
  - iv. maintain the existing pavement within the Site to no lesser standard than that existing at the time possession of the Site was granted to the Contractor and ensure its safety for all users of the Road Infrastructure
  - v. maintain the completed pavement that is part of the Works
  - vi. maintain existing and new route, ramp and intersection lighting within the Site, and
  - vii. maintain pavement markings within the Site.
- b) If the Contractor fails to comply with any obligation imposed on the Contractor by this Clause 54.3, the Principal's Representative may, after the Principal's Representative has given reasonable notice in writing to the Contractor, have the maintenance relevant activities carried out by other persons and the reasonable cost incurred by the Principal in having the work so carried out may be recovered by the Principal as a debt due from the Contractor to the Principal. The rights given by this paragraph are in addition to and without prejudice to any other right or remedy.

## **55 Variations**

### **55.1 Variations to the Asset Management Work**

The Principal's Representative may direct the Contractor to:

- a) increase, decrease or omit any part of the Asset Management Work the subject of a Project
- b) change the character or quality of any material or Asset Management Work the subject of a Project
- c) change the levels, lines, positions or dimensions of any part of the Asset Management Work the subject of a Project
- d) execute additional Asset Management Work the subject of a Project
- e) demolish or remove material or Asset Management Work the subject of a Project which no longer required by the Principal, or
- f) change any sequence or timing of the Asset Management Work.

The Contractor shall not vary the Asset Management Work the subject of a Project under the Contract except as directed by the Principal's Representative or approved in writing by the Principal's Representative under this Clause 55.

The Contractor is bound only to execute a variation which is within the general scope of the Contract.

The Contractor shall not be bound to execute a variation directed after Practical Completion unless the variation is in respect of the rectification of Asset Management Work under Clause 53.7.

Despite any provision in this Contract to the contrary no variation shall invalidate or amount to a repudiation of this contract.

For the avoidance of doubt, the Principal shall be entitled to have omitted work carried out by others.

### **55.2 Proposed variations**

Upon receipt of a notice in writing from the Principal's Representative advising the Contractor of a proposed variation under Clause 55, the Contractor shall advise the Principal's Representative whether the proposed variation can be effected. If the variation can be effected, the Contractor shall:

- a) advise the Principal's Representative of the effect which the Contractor anticipates that the variation will have on the Project Program and time for Practical Completion, and
- b) provide an estimate of the cost of the proposed variation.

The Principal shall reimburse the Contractor for the reasonable costs of complying with the requirements of Clause 55.2.

### **55.3 Pricing the variation**

Unless the Principal's Representative and the Contractor agree upon the price for a variation, the variation directed or approved by the Principal's Representative under Clause 55.1 shall be valued under Clause 55.5.

The Principal's Representative may direct the Contractor to provide a detailed quotation for the Asset Management Work a variation supported by measurements or other evidence of cost.

#### **55.4 Variations for the convenience of the Contractor**

If the Contractor requests the Principal's Representative to approve a variation for the convenience of the Contractor, the Principal's Representative may do so in writing. The approval may be conditional.

Unless the Principal's Representative otherwise directs in the notice approving the variation, the Contractor shall not be entitled to:

- a) any adjustment to the Project Program or the time for reaching Practical Completion, or
- b) extra payment,

in respect of the variation or anything arising out of the variation which would not have arisen had the variation not been approved.

The Principal's Representative shall not be obliged to approve a variation for the convenience of the Contractor.

#### **55.5 Valuation**

Where the Contract provides that a valuation shall be made under Clause 55.5, the Principal shall pay or allow the Contractor or the Contractor shall pay or allow the Principal as the case may require, an amount ascertained by the Principal's Representative using the following order of precedence:

- a) prior agreement
- b) applicable rates or prices in the Contract or Project Proposal, including the Dayworks Rates if applicable
- c) rates or prices in a schedule of rates or schedule of prices, even though not Contract documents, to the extent that it is reasonable to use them
- d) reasonable rates or prices, which shall include an amount equal to the Margin and Corporate Overhead,

and any deductions shall include an amount equal to the Margin and Corporate Overhead.

When under Clause 55.3 the Principal's Representative directs the Contractor to support a variation with measurements and other evidence of cost, the Principal's Representative shall allow the Contractor the reasonable cost of preparing the measurements or other evidence of cost that has been incurred over and above the reasonable overhead cost.

### **56 Latent conditions**

#### **56.1 Definition**

Latent conditions are physical conditions on the Site or its surroundings, including artificial things but excluding weather conditions at the Site, which differ materially from the physical conditions which should reasonably have been anticipated by the Contractor at the time of the Contractor's tender, if such a contractor had examined all information made available in writing by the Principal to the Contractor for the purpose of submitting its tender (or at the time of submitting the relevant Project Proposal in the case of the Second Phase Projects), and

- a) examined all information relevant to the risks, contingencies and other circumstances having an effect on the tender (or the relevant Project Proposal in the case of the Second Phase Projects) and obtainable by the making of reasonable enquiries, and

- b) inspected the Site and its surroundings.

### **56.2 Notification**

If during the execution of the Asset Management Work necessary to complete a Project, the Contractor becomes aware of a Latent Condition, the Contractor shall forthwith and where possible before the Latent Condition is disturbed, give written notice thereof to the Principal's Representative.

If required by the Principal's Representative, the Contractor shall provide to the Principal's Representative, a statement in writing specifying:

- a) the Latent Condition encountered and in what respects it differs materially
- b) the additional work and additional resources which the Contractor estimates to be necessary to deal with the Latent Condition
- c) the time the Contractor anticipates shall be required to deal with the Latent Condition and the expected delay in achieving Practical Completion
- d) the Contractor's estimate of the cost of the measures necessary to deal with the Latent Condition, and
- e) other details reasonably required by the Principal's Representative.

### **56.3 Additional costs**

If a Latent Condition causes the Contractor to:

- a) carry out additional Asset Management Work to complete the relevant Project
- b) use additional Constructional Plant, or
- c) incur extra cost,

which a competent and experienced contractor could not reasonably have anticipated at the time of making its tender (or at the time of submitting the relevant Project Proposal in the case of the Second Phase Projects), a valuation shall be made under Clause 55.5.

### **56.4 Time bar**

Where pursuant to Clause 56.3, a valuation is to be made under Clause 55.5, regard shall not be had to the value of additional work carried out, additional Constructional Plant used or extra cost incurred more than 14 days before the date on which the Contractor gives the written notice required under Clause 56.2.

## **57 Force Majeure**

### **57.1 Notice and relief**

If an event of Force Majeure occurs, then:

- a) as soon as reasonably practicable after that event of Force Majeure begins, the Contractor must notify the Principal's Representative of:
  - i. the event of Force Majeure, and
  - ii. the expected duration of any suspension that that will arise out of the event of Force Majeure pursuant to the operation of Clause 57.1(b), and

- b) the parties' obligations under the Contract which are prevented by the event of Force Majeure are suspended for the duration of the actual delay arising directly out of the event of Force Majeure.

**57.2 Mitigation of event**

The parties must use their reasonable endeavours to remove or relieve any event of Force Majeure and to minimise the delay caused by any event of Force Majeure.

## Part K – Routine Maintenance Work

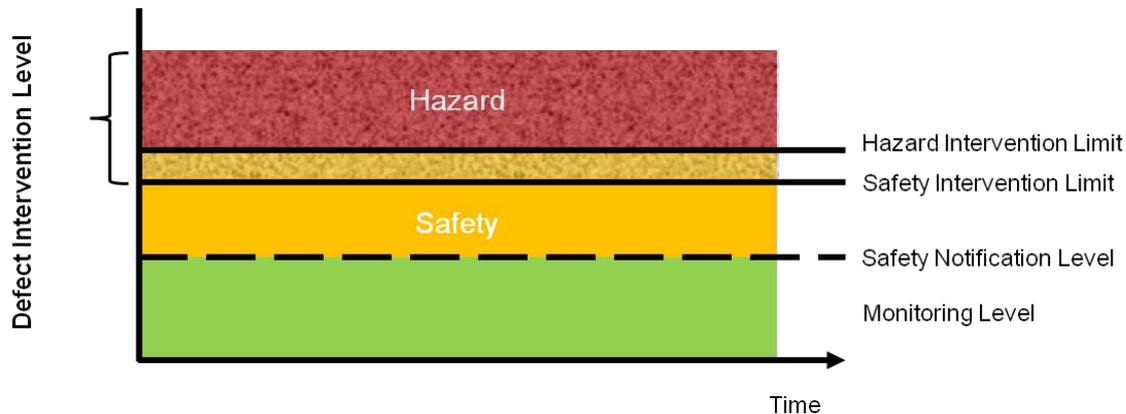
### 58 Application of this Part K

This Part K applies to Routine Maintenance Work.

### 59 Contractor's responsibilities

#### 59.1 Principles for Routine Maintenance Work

- a) The Maintenance Levels of Service sets out Intervention Limits, Notification Levels and Response Times in respect of defects in each asset class comprising the Road Infrastructure, as shown in the diagram below.



- b) The Contractor must:
- i. undertake all necessary inspections to identify defects in the Road Infrastructure
  - ii. from the Handover Date until the end of the Term, analyse defects in the Road Infrastructure and plan and carry out the Routine Maintenance Work so that the defects in the Road Infrastructure do not exceed the Intervention Limits, and
  - iii. provide the Principal with a monthly report which includes:
    - A. network inspection reports
    - B. prioritised current defect backlog list
    - C. Inspections or audits planned for the following month
    - D. Activities programmed for the following month and a forecast of the amount payable in respect of those Activities
    - E. a forecast of the amount payable in respect of the anticipated Routine Maintenance Work for the remainder of the current Year
    - F. all other information relevant to the condition of the Road Infrastructure and the defects identified in the Road Infrastructure, including details of the severity of each defect by reference to the corresponding Intervention Limits, Notification Level and Response Times for each asset class, and
    - G. other information and details as may be agreed by the CLT.

- c) The Contractor must ensure that:
  - i. the Network Schedule Total is wisely invested and that the Road Infrastructure is maintained in the best interests of the Principal, and
  - ii. discretionary changes within the Network Schedule Total (which are permitted under this Contract) are sound and justifiable.

### **59.2 Incident Response Activities**

- a) The Contractor will NOT be required to provide the initial response to Incidents and Emergencies which occur on the network including extreme weather events and disasters, except:
  - i. where the incident or emergency is related to the Contractor's own works;
  - ii. in the event of extreme or prolonged events, when directed by the Principal, at the Principal's discretion.
  - iii. when directed by the Principal at the Principal's discretion, to assist with the response to multiple or severe incidents or emergencies.
- b) The Principal shall pay the Contractor the amount determined in accordance Clause 62.3 for carrying out the Incident or Emergency Response Activities directed by the Principal.

### **59.3 Design standards**

The Contractor shall carry out any design work necessary in connection with the Routine Maintenance Work in accordance with:

- a) the Principal's Standard Drawings, Principal's Technical Specifications and the Supplementary Specifications
- b) the Principal's standards, polices and manuals in relation to design, as amended from time to time.

### **59.4 Construction standards**

Without limiting any other requirements in this Contract, the Contractor will carry out the Routine Maintenance Work in accordance with the Technical Specifications and latest version of 'Guidelines for Undertaking Routine Maintenance', which is available on the Principal's website.

### **59.5 Warranties**

Without limiting Clauses 4.2 and 16.3, the Contractor:

- a) warrants that the Routine Maintenance Work will be carried out in accordance with the Contract and will be fit for the intended purpose, as stated in the Contract or where no purpose is specified, having regard to the assumptions that a competent and experienced contractor would reasonably be expected to make
- b) warrants that the Contractor, its employees and any approved subcontractors or assignees have the necessary skills, experience and expertise to carry out the work under the Contract

- c) warrants that any design work necessary under the Contract will be fit for the intended purpose, as stated in the Contract or where no purpose is specified, having regard to the assumptions that a competent and experienced contractor would reasonably be expected to make and the designer will exercise the skill, care and diligence of a competent professional engineer or specialist designer engaged in the same or similar work, and
- d) warrants that all materials used by the Contractor or incorporated into any work performed by the Contractor shall be, unless inconsistent with any express requirement of the Contract, new, in conformity with its description, of merchantable quality and fit for the purpose or purposes for which they are used or supplied.

## **60 Time**

The Contractor must program, plan and establish the processes necessary to carry out the Routine Maintenance Work with due expedition and without delay and in a manner sufficient to meet its obligations under the Contract, including:

- a) complying with the Response Times
- b) carrying out the Routine Maintenance Work so that the defects in the Road Infrastructure do not exceed the Intervention Limits required to meet with Maintenance Levels of Service.

## **61 Changes to Routine Maintenance Schedule of Rates Items within the Discretionary Limits**

### **61.1 Discretionary changes**

- a) The Contractor may vary the quantity for each of the Routine Maintenance Schedule of Rates Items carried out:
  - i. within the Discretionary Limits, and
  - ii. provided that the Network Schedule Total (SoR Items) is not exceeded.
- b) The Principal is not liable for any claim for payment in respect of Routine Maintenance Schedule of Rates Items carried out in excess of the Discretionary Limits or Network Schedule Total (SoR Items).
- c) The Contractor must keep an up to date version of the Routine Maintenance Schedule of Rates Items which shows the quantities of each item performed and any discretionary changes made in accordance with this Clause 61.1.

### **61.2 Reallocation**

- a) Where the Contractor considers that it will not be able to satisfy the requirements of the Maintenance Levels of Service by discretionary changes to the Routine Maintenance Schedule of Rates Items in accordance with Clause 61.1, the Contractor must give notice (**Reallocation Notice**) to the Principal's Representative that there is no further scope for discretionary changes to the Routine Maintenance Schedule of Rates Items and providing details of:
  - i. the current status of the Routine Maintenance Schedule of Rates Items and indicate where a reallocation of the Network Schedule Total (SoR Items) could apply in respect of

the Routine Maintenance Schedule of Rates Items outside of the Discretionary Limits (**Reallocation**) in the best interests of the maintenance of the Road Infrastructure

- ii. any proposed changes to the Maintenance Levels of Service, and
  - iii. an event of Force Majeure.
- b) After receipt of a Reallocation Notice, the Principal's Representative must:
- i. direct:
    - A. a Reallocation, such that the Network Schedule Total (SoR Items) is not exceeded, or
    - B. a variation under Clause 62,
  - ii. authorise an increase to the Network Schedule Total (SoR Items), together with any adjustments to the Discretionary Limits, or
  - iii. authorise amendments to the Maintenance Levels of Service.
- c) The Contractor must update the Routine Maintenance Schedule of Rates Items and Maintenance Levels of Service to reflect any Reallocation.
- d) The Contractor is not entitled to any change to the rates included in the Routine Maintenance Schedule of Rates as a result of a Reallocation.

### **61.3 No application to Routine Maintenance Lump Sums**

This Clause 61 has no application with respect to the Routine Maintenance Lump Sums.

## **62 Variations and Adjustment Events**

### **62.1 Variations**

- a) The Principal's Representative may:
- i. direct:
    - A. an increase or decrease in Routine Maintenance Work
    - B. the Contractor to carry out Routine Maintenance Work in respect of the Road Infrastructure at a particular location
    - C. a change to the Maintenance Levels of Service
    - D. a change to the Road Infrastructure or the Geographical Limits, including to excise part of the Road Infrastructure where capital works will be carried out by another contractor, or make part of the network (within the Geographical Limits) part of the Road Infrastructure following the completion of capital works by another contractor, or
    - E. a change to the sequence or timing of Routine Maintenance Work
  - ii. increase or decrease the Network Schedule Total or a component of the Network Schedule Total which is available for payment in respect of the Routine Maintenance Work, in which case the Principal's Representative will make a reasonable adjustment to the Maintenance Levels of Service.

- b) Prior to exercising a right under Clause 62.1(a), the Principal may request the Contractor provide written details of the consequences of giving such a direction (including the anticipated costs or proposed changes the Maintenance Levels of Service ) and the Contractor will provide such information as soon as is reasonably practicable.

## **62.2 Adjustment Events**

- a) The following are Adjustments Events:
  - i. variations directed by the Principal's Representative under 62.1(a)(i), except where a direction under Clause 62.1(a)(i)(A) or 62.1(a)(i)(B) was given in order to rectify a defect in the Road Infrastructure which had exceeded the relevant Intervention Limit, and
- b) The Contractor must give written notice to the Principal's Representative as soon as is reasonably practicable after becoming aware of an Adjustment Event.
- c) If required by the Principal's Representative, the Contractor must provide to the Principal's Representative, a statement in writing specifying:
  - i. the Adjustment Event encountered:
  - ii. the impact of the Adjustment Event on the cost of performing the Routine Maintenance Work and the Maintenance Levels of Service, and
  - iii. other details reasonably required by the Principal's Representative in connection with the Adjustment Event.
- d) Where the Contractor incurs more or less cost as a consequence of an Adjustment Event, the difference will be valued in accordance with Clause 62.3.
- e) Where pursuant to Clause 62.2(d), a valuation is to be made under Clause 62.3, regard shall not be had to the value of additional Routine Maintenance Work carried out or extra cost incurred more than 14 days before the date on which the Contractor gives the written notice required under Clause 62.2(b).

## **62.3 Valuation**

Where the Contract provides that a valuation shall be made under Clause 62.3, the Principal shall pay or allow the Contractor or the Contractor shall pay or allow the Principal as the case may require, an amount ascertained by the Principal's Representative using the following order of precedence:

- a) in the case of the Routine Maintenance Schedule of Rates Items, using the Routine Maintenance Schedule of Rates
- b) in the case of the Routine Maintenance Lump Sum Items or for work which is not a Routine Maintenance Schedule of Rate Item:
  - i. prior agreement
  - ii. applicable rates or prices in the Contract, including the Dayworks Rates
- c) in the case of any prime cost items specified in the Contract, the Dayworks Rates;
- d) rates or prices in a schedule of rates or schedule of prices, even though not Contract documents, to the extent that it is reasonable to use them;
- e) reasonable rates or prices, which shall include an amount equal to the Corporate Overhead and Margin.

