

**C6083 – General Conditions**

# **Road Maintenance Performance Contract (RMPC)**

**April 2024**

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## Part A: Contract overview and fundamentals

### 1 Definitions and interpretations

#### 1.1 Definitions

In the Contract, except where the context otherwise requires, specific definitions for words or phrases used in this document are listed in this table.

Term	Definition
Adjustment Events	Those events that will result in changes to the Total Contract Amount defined in 'Part F: Variations'.
Affected Utilities	A Public Utility Plant (PUP) that may be affected by Work under the Contract.
Asset Information	Any document, information, data, report, material, sample or whatever its form regarding: <ol style="list-style-type: none"> <li>a) the Road infrastructure or its surroundings</li> <li>b) the condition of the Road infrastructure or the historical data relating to:                             <ol style="list-style-type: none"> <li>i. Maintenance Work required to maintain the Road infrastructure</li> <li>ii. Incident Response Activities</li> </ol> </li> <li>c) a Site or its surroundings or the subsurface conditions (including topographical, geological, environmental and hydrological conditions) or subsurface services at a Site or its surroundings.</li> </ol>
Authority	All federal, state or territory 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 affect any aspect of the Work under Contract or Works.
Business Day	Has the meaning given in the <i>Payments Act</i> .
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 or any Claim which the Principal may have against the Contractor 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.
Confidential Information	Any information which is confidential to the Principal, and of which the Contractor is aware for the purpose of providing the Road Maintenance services or otherwise, and which includes (without limitation) information concerning or relating to past, present or contemplated activities, internal or external business operations or other information of the Principal or which may, either directly or indirectly, be relevant to the Principal's business and which includes any compilation of otherwise public information that is in a form not in the public domain.
Consequential Loss	Any: <ol style="list-style-type: none"> <li>a) indirect or Consequential Loss or damage of any nature</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 which otherwise includes, such loss.</li> </ol>
Contract	Means the agreement between the Principal and the Contractor and comprising the documents set out or referred to in the completed RMPC forms.
Contractor	A Local Government (LG), RoadTek or joint venture with local government(s) or RoadTek).
Contract Documents	Comprises: <ol style="list-style-type: none"> <li>a) the completed Offer Documents (Conditional Agreement Schedules)</li> <li>b) other Offer Documents (not requiring completion)</li> </ol>



Term	Definition
	c) any ratification notice(s) d) Contractor's quality system, including its Quality Plan, Environmental Management Plan (Maintenance) and Safety Plan e) latest versions of referenced corporate documents, including: <ul style="list-style-type: none"> <li>i. the Roads and Transport Alliance Memorandum of Agreement between the Department of Transport and Main Roads and Local Government Association of Queensland Ltd, <i>The Roads and Transport Alliance Agreement</i> (where the Contractor is a Local Government), and</li> <li>ii. the current Mutual Obligations Agreement between RoadTek and the Principal's district delegate (only where the Contractor is RoadTek)</li> </ul> f) any variation or other written agreements under the Contract.
Contract Period	The period (up to 24 months) shown in the Contract Documents.
Day	Means calendar day.
Daywork Rates	Where the Contract specifies that a valuation is to be made using Daywork Rates (including in relation to prime cost items and variations) such a valuation will be made using the corresponding Daywork Rates (as supplied) and actual quantities.
Defect	Any undesirable condition of the transport infrastructure identified as per Intervention Level / Response Time (IL / RT) criteria.
Defect Log	List of Defects identified as per IL / RT criteria during the inspection.
Defect Backlog	Remaining low priority Defects in the current Defect Log.
Department	The Queensland Department of Transport and Main Roads.
Emergency Maintenance	Maintenance Activities undertaken by the Contractor in response to an emergency situation.
Engineering Innovation document	The Principal's document, <i>Engineering Innovation in the Department of Transport and Main Roads</i> as amended from time to time.
Excepted Risks	Has the meaning given in Clause 8.2.
Forward List of Work	The list of Works, programmed to be completed on the Network due to Defects having reached the Initial Intervention Level.
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	<i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth), 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 Renewal Period	The guaranteed period for renewal of the Contract as shown in the Contract Documents.
Guidelines	The department's technical document for Routine Maintenance Guidelines, incorporating: <ul style="list-style-type: none"> <li>a) Intervention Level and Response Time (IL / RT) criteria</li> <li>b) Hazardous Defects Identification Procedure, and</li> <li>c) corporate Maintenance Activity Standards.</li> </ul>
Incident Response Activities	All activities required to comply with the notifiable incidents.
Initial Intervention Level	The magnitude of a Defect as set out in the Guidelines that should be used by the Contractor for recording Defects into the Forward List of Works to assist in Work planning.
Intellectual Property Right	Any patent, registered design, trademark or name, copyright or other protected right.

Term	Definition
Intervention Level / Response Time (IL / RT) criteria	As defined in the Routine Maintenance Guidelines (Guidelines).
Invitation to Offer	The department's invitation to the Contractor to prepare and submit an Offer in accordance with the Contract Documents.
Joint Maintenance Requirement Assessment (JMRA)	A joint department / Contractor assessment of the Network for the purpose of determining the extent of Maintenance Activities required for Routine Maintenance for the forthcoming Contract Period.
LG	Local Government in Queensland.
Maintenance Activity	Describes how a Defect is rectified. The word 'Activity' in the document has the same meaning of Maintenance Activity.
Maintenance Activity Standard	<p>The department's requirements for a Maintenance Activity, including:</p> <ul style="list-style-type: none"> <li>• unique reference number (mandatory)</li> <li>• description (mandatory)</li> <li>• applicable specifications</li> <li>• restoration standards</li> <li>• units of measurement (mandatory)</li> <li>• work items (if applicable)</li> <li>• testing requirements</li> <li>• work preparation or work operations details in lieu</li> <li>• work planning, particular points to consider, and</li> <li>• work procedures, particular points to consider or work operations details in lieu.</li> </ul> <p>Note: These Activity Standards are not mandatory requirements (except where indicated) but may be used in preparing the Contractor's Quality Plan. They are detailed in the Principal's Routine Maintenance Guidelines (the Guidelines).</p>
Maintenance	All activities, as indicated in the RMPC Manual and the Guidelines, to rectify Defects.
Minor Works	Specific minor enhancement Works, generally preidentified during the JMRA in order to reduce further deterioration of transport infrastructure. The total estimated cost for all minor Works schedules must be less than \$500,000 per year per contract.
Network	Comprises those Roads included in the Contract.
Network Schedule	The financial limit that applies for each year for Routine Maintenance Schedule of Rates items (but excluding the prime cost items), as adjusted from time to time in accordance with the Contract.
Network Schedule Total	The sum of the extended amounts for the Network Schedule (Form C6084.2). The amount agreed by the parties for completion of Maintenance Activities on the National Highway Network and the Other State-Controlled Network respectively.
Payments Act	means the <i>Building Industry Fairness (Security of Payment) Act 2017 (Qld)</i> and any relevant regulations and includes any amendments to that Act and those regulations.
Person	Includes a firm or body corporate or un-incorporate or an individual.
Planned Routine Maintenance Work	<p>The items of Work specified in the Joint Maintenance Requirement Assessment (JMRA): where an item of Work is specified in the JMRA Schedule of Rates and the:</p> <ol style="list-style-type: none"> <li>a) Routine Maintenance Lump Sums, or</li> <li>b) Routine Maintenance Schedule of Rates</li> </ol> <p>applies, that item of Work is only Planned Routine Maintenance Work where the Intervention Level specified in the JMRA for the relevant item of Work is exceeded.</p>
Planned Routine Maintenance Work Schedule of Rates	Set out in Form C6086.

<b>Term</b>	<b>Definition</b>
Principal	The State of Queensland acting through the Queensland Department of Transport and Main Roads.
Principal Delegate	Means the person or position delegated by the Principal with the authority to enter into the Contract.
Principal's Representative	Means the person or position delegated by the Principal's Delegate and shall represent the interests of the Principal when required under the Contract. The Principal's Representative shall have a good knowledge and understanding of the requirements of the Works.
Progress Report	Includes: a) signed Form C6096 b) Form C6097 (mandatory requirement) or a disk(or other electronic media) containing details of completed Activities in the format as set out in the RMPC Activity Numbering System (mandatory requirement) c) Form C6098 and variations (as required by the department), and d) completed updated Programmed Expenditure Report (as required by the department).
Provisional Sum	The amounts agreed in the Schedules for difficult to measure Activities.
Public Utility Plant (PUP)	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: a) on, in, over, under or adjacent to the Site, or b) affected by the Work Under the Contract but does not include Constructional Plant.
Quality Plan	The plan required under 'Part I: <i>Quality System</i> ' detailed in Clause 10.2.
RoadTek	RoadTek is a commercial business branch within the Department of Transport and Main Roads (department).
Routine Maintenance	Those Activities as set out in the Guidelines.
Routine Maintenance Works	All Maintenance Works and related services necessary to maintain the Road infrastructure, such that the intervention limits specified in the Maintenance levels of service are not exceeded.
Schedules	List of priced Maintenance Activities.
Site	The nominated Road Network and any other places where the Road Maintenance services or any part of the Road Maintenance services are to be carried out.
Single Invitee	Where the department offers Routine Maintenance Works to its traditional suppliers, Local Government (LG) and RoadTek without any competition from other Contractors.
Specifications	The Principal's Standard Specifications.
Subcontractor	Means any Contractor, consultant or supplier (including their personnel), engaged by or on behalf of the Contractor with respect to the Work Under the Contract and includes the Contractor's designers and any supplier or hirer of materials, plant or equipment.
Total Contract Amount	The sum of the amounts for the Network Schedule Totals and Minor Works Schedule Totals.
Traffic Control Accreditation Scheme	The Traffic Controller Accreditation Scheme is the scheme which authorises traffic controllers who are accredited under by the Department of Transport and Main Roads to control traffic at road Work Sites and other events where a road closure or part road closure is necessary.
Upper Intervention Level	As defined in the Routine Maintenance Guidelines.
Works	Means the whole, or part of, the work to be executed in accordance with the Contract, including variations provided for by the Contract.

## **1.2 Interpretations**

Where a doubt arises as to the correct interpretation of any words, phrases, sentences, clauses or parts of the Contract, the Principal will notify the Contractor in writing of the interpretation that will apply. Such an interpretation may be subject to the issue resolution procedures as set out in the Partners in Government.

Any reference to 'Clauses' and 'Parts' are references to Clauses and parts of these General Conditions.

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.

Unless otherwise provided, prices are in Australian currency and payments shall be made in Australian currency.

Communications between the Principal, the Principal's Representative and the Contractor shall be in the English language.

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.

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.

The Clause headings and subheadings in the Contract are for convenience only and shall not be used in the interpretation of the Contract.

Words in the singular include the plural and words in the plural include the singular, according to the requirements of the context.

Words importing a gender include every gender.

Where a provision in the Contract states that the Principal 'may' do something, it shall be read as permitting, but not obliging, the Principal (as applicable) to do that thing.

The meaning of general words is not limited by specific examples introduced by 'including', 'for example' or similar expressions.

## **Part B: General contract framework**

### **2 Nature of contract**

#### **2.1 Term**

The Contract commences on the date of award or from the signing of the Conditional Agreement and continues for the term. The Contractor's obligations for the term are set out in this Contract.

#### **2.2 Cooperative approach**

The Principal and the Contractor shall, at all times:

- a) act in a manner which will contribute to the planning, management and completion of Maintenance Activities to the required quality, within acceptable timeframes, to achieve the best value for the Principal
- b) cooperate in the resolution of any disputes as soon as possible after they arise
- c) be dedicated to achieving agreed common goals and the Contract objectives
- d) act in good faith, and
- e) foster a 'partnering' approach in their relationship. For local governments (LGs), this is set out in the *Partners in Government Agreement (an agreement for the partnership and the relationship between the State Government and local government in Queensland)* published by the Department of Local Government.

#### **2.3 Objectives**

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

- a) ensure the Road Network is safe and serviceable and remains safe and serviceable to users while the Work under the Contract is being carried out
- b) increase the sustainability of the Road Network, including the ongoing preservation and improvement work such as rehabilitation of the Road Network as directed
- c) obtain greater value for money from the funds provided to maintain the Road infrastructure, including the adoption of a holistic approach to Maintenance and innovation, and
- d) identify and implement innovations in connection with the Work under the Contract in accordance with the department's Engineering Innovation document.

#### **2.4 Order of precedence of documents**

The order of priority to be used in resolving ambiguities in the Contract Documents is:

- a) Notice of ratification (if applicable) of the Conditional Agreement or the Conditional Agreement itself
- b) correspondence between the parties by which the terms and conditions contained in the Contract Documents are agreed to be varied
- c) supplementary conditions of Contract (if supplied)
- d) this document: Form C6083
- e) documents incorporated by reference

- f) drawings (if applicable)
- g) invitation to Offer
- h) Schedules.

Any ambiguity between documents shall be resolved by reference to the highest ranking document.

## **2.5 Notices**

All notices under the Contract shall be in writing.

- a) Where the Contractor is the receiving party, the address for service of notice shall be the street or postal address, or facsimile number, as indicated in the Offer Documents or last notified in writing by the Contractor to the Principal.
- b) Where the Principal is the receiving party, the address for service of notice shall be the street address or postal address, or facsimile number, issued to the Contractor by the Principal in the Offer Documents or last issued in writing by the Principal to the Contractor.
- c) Notice may be served:
  - i. by hand delivery to the Principal or Contractor at their respective address, in which case notice is deemed to be served at the time the document is handed over
  - ii. by pre-paid post, in which case notice is deemed to be served at the time when such notice is received
  - iii. by email, in which case notice is deemed to have been received on the day of transmission, except where the receiving party notifies the sending party by 4:00pm on the day following transmission that the copy received is not legible, in which case no service shall have been affected.

## **2.6 Assignment and subcontracting**

### **2.6.1 Consent for assignment**

The Contractor shall not assign the Contract, or any payment, or other benefit under the Contract without prior written consent of the Principal and except on such terms and conditions as may be imposed by the Principal.

### **2.6.2 Consent for subcontractors**

The Contractor shall not subcontract the whole or any part of the Work to be performed by the Contractor under the Contract without prior written consent of the Principal.

Where the Contractor seeks the Principal's consent under Clause 2.6.1, the Contractor must supply to the Principal:

- a) details of the identity, financial standing, experience and business reputation of the proposed assignee or Subcontractor
- b) any other information that is relevant to assessing the ability of the proposed assignee, or Subcontractor, to carry out any part of the Work under the Contract.

Subject to the Contractor complying with Clause 2.6.2, the Principal's consent shall not be reasonably withheld.

### **2.6.3 Contractor remains liable**

The consent of the Principal under Clause 2.6.2 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, defaults and omissions of all Subcontractors and assignees, or any of their employees or agents, as if they were the acts, defaults and omissions of the Contractor.

## **2.7 Contract period and Contract rates**

The Contract shall commence on the date specified in Form C6094 for a specified period of up to 24 months unless otherwise agreed in writing by the parties.

### **2.7.1 Continuation of work after expiration of current contract**

If a new contract has not been established, the Principal may direct the Contractor to continue work under the existing conditions and rates during the transition period.

This transition period shall not be more than two months from the end of the previous contract. The Contractor shall fulfil their obligation during this transition period.

### **2.7.2 Contract rates**

In a two year Contract (24 months), the Contractor and Principal may agree rates for both year 1 and year 2 at the commencement of the Contract, or alternatively, determinate the rates for the second year upon the completion of the first year Contract.

### **2.7.3 Guaranteed renewal period**

The Principal warrants that additional Contract Periods will apply for the Guaranteed Renewal Period, subject to satisfactory performance, achievement of agreed productivity targets and agreement on rates/lump sums.

### **2.7.4 Working days and hours**

For other than Emergency Maintenance Activities, the Contractor shall carry out Work on the Days and during the hours:

- a) in accordance with the agreement or in the absence of such a provision in the agreement
- b) the Days and hours that will result in the most efficient operation, having due regard to the effect on traffic, adjacent land owners and the environment.

## **2.8 Royalties, fees and intellectual property rights**

### **2.8.1 Copyright vested in contractor**

Intellectual Property Rights in all Contract material prepared by, or on behalf of, the Contractor in the performance of the Contract, shall vest in the Contractor.

The Contractor, as owner of Intellectual Property Rights of such Contract material, grants a royalty-free licence to the Principal to use the Contract material for the full period for which such rights subsist.

### **2.8.2 Royalties and other fees**

All payments (whether or not accrued due and payable at the date of the Contract) for royalties and patent rights, registered designs, trademarks or names, copyright and other protected rights and all fees then or thereafter to become payable for or in connection with any land, matter or thing used, or

required to be used, in the performance of the Contract or to be supplied under the Contract, shall be the responsibility of the Contractor and shall be paid by the Contractor to those to whom and at the time at which they become payable.

### **2.8.3 Contractor's warranty**

The Contractor warrants that all designs, materials, documents and methods of working provided by the Contractor in the performance of the Contract will not infringe any patent, registered design, trademark or name, copyright or other protected right.



## Part C: Contractor's obligations and warranties

### 3 Contractor's roles

The Contractor is responsible under the Contract for the Maintenance of existing Road infrastructure assets on the Road Network. This responsibility may include identifying the need to provide new assets and further works on the Network other than Maintenance to existing assets.

The Contractor, in its various roles under the Contract, must act in the best interests of the Principal.

#### 3.1 Obligations of the Contractor

The Contractor shall be responsible for:

- a) ensuring Maintenance funds are wisely invested and the infrastructure asset is maintained in the best interests of the Principal
- b) ensuring discretionary changes within the Network Schedule Total(s) are sound and justifiable
- c) dealing with Maintenance concerns at a local level and only referring such concerns to the Principal when necessary
- d) ensuring that any advice to the Principal is both timely and of a high standard, and
- e) encouraging its employees to report any need to provide new assets and Works other than Maintenance to existing assets. This information may then be reported to the Principal for possible action.

#### 3.2 Principles for routine maintenance works

The Guidelines set out Initial Intervention Level, Upper Intervention Level and Response Time for Routine Maintenance Defects identified on the Road Network. The Contractor is required to prioritise the Works as per Intervention Level / Response Time (IL / RT) criteria provided in the Guidelines. The general Defect priority has been assembled into six groups as summarised in Table 3.2.1. Routine Maintenance Activities are required to be prioritised as described in the Guidelines.

**Table 3.2.1 – Defects priority**

Priority no.	Defect type	Definition
1	Hazard	Defects that constitute an immediate danger or hazard to traffic, road users, or other members of the public (as determined by the hazardous defect identification procedure in the Guidelines).
2	Ordered Works	Work undertaken in accordance with the Principal's order and direction.
3	Safety	Defects that are considered to be of a safety nature.
4	Legislative	Defects to be repaired as required by legislation.
5	Preventative	Defects that, if treated, prevent further asset deterioration.
6	Appearance/usability	Defects that are considered to be a nuisance or unsightly.

1. The Principal shall give the Contractor at least two weeks' notice of the Contract Review Meeting(s) (CRMs) and shall indicate in such notice the time and place of a CRM, the agenda, documents, records, reports and other information to be made available at a CRM.

2. The Contractor must:
  - a) undertake all necessary inspections as per the inspection frequency to identify Defects in the transport infrastructure
  - b) from the initial JMRA, in the planning phase of the Contract until the end of the term, analyse Defects as explained in the Guidelines and plan and carry out the Routine Maintenance Work so that the Defects in the Network can be managed consistently and appropriately across the state
  - c) provide the Principal with reports every three months as a minimum for the CRM, listed on the agenda the Principal produces and submitted to the Principal within two weeks of the end of the Contract period, after which the Principal may require a formal CRM to discuss the reports, and
  - d) attend the CRM and provide information requested in the notice from the Principal, which may include:
    - i. Network inspection reports
    - ii. prioritised current Defect Log
    - iii. the Defect Backlog and strategies to address the Defect Backlog
    - iv. activities programmed for the following Month and a forecast of the amount payable for those Activities
    - v. a forecast of the amount payable for the anticipated Routine Maintenance Work for the remainder of the current year
    - vi. 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 and Response Times for each asset class, and
    - vii. other information and details as may be agreed.
3. The Contractor must ensure:
  - a) the Network Schedule Total is wisely invested and not exceeded and that the road network is maintained in the best interests of the Principal
  - b) discretionary changes within the Network Schedule Total (which are permitted but notifiable under this Contract) are sound and justifiable, and
  - c) that it develops a strategy to revisit, reprioritise, and address the Defect Backlog. This strategy may require a request for a reallocation in accordance with Clause 5.3
4. The Contractor shall carry out the Maintenance under the Contract in accordance with:
  - a) quality system plans, the requirements for which are set out in Part I in Clause 10.2
  - b) other relevant provisions in the Contract Documents.
5. Where Defects not listed in the Guidelines are encountered on the Network, the Contractor shall use its judgement, taking into account safety and asset useability requirements in adopting an appropriate Intervention Level / Response Time.

6. Routine Maintenance Performance Assessment and Strategic Analysis: The Contractor will be required to provide further information to assess routine maintenance element performance and effectiveness of revised Intervention Level and Response Time (IL / RT) criteria. This will require some defect information and inspection details from the contractors to be obtained annually.

### **3.3 Design standards for minor Works (if applicable)**

The Contractor shall carry out any design work that is necessary under the Contract consistent with, but not limited to, those standards described in the latest versions of the department's design references, including any referred documents. If in doubt, the Contractor should request details of applicable references from the Principal. Design references include all manuals, texts, guidelines, Specifications, standards and policies the department uses currently in the design of Road transport infrastructure. Where the Contractor wishes to base any design on other design references, it shall obtain prior written agreement from the Principal before carrying out such design.

### **3.4 Construction standards for minor Works**

The Contractor shall adopt construction standards for Minor Works based on those in the Maintenance Activity Standards contained in the Guidelines (referring to the department's Specifications / standard drawings) or, in the absence of such Standards, the appropriate Australian standard or as otherwise previously agreed in writing between the parties.

The Contractor shall address construction standards and procedures for Minor Works in the Quality Plans, Safety Plans and Environmental Management Plans (EMP - Maintenance) for RMPCs generally, in accordance with Part I: *Quality System*.

### **3.5 Warranties**

The Contractor:

- a) warrants that the Maintenance will be carried out in accordance with the Contract Documents and will be fit for the purpose or purposes for which it is intended
- 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 purpose and the designer will exercise the skill, care and diligence and the final design to be certified by a Registered Professional Engineer of Queensland (RPEQ)
- 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.

### **3.6 Labour, materials, plant and equipment**

#### **3.6.1 Supply of labour, materials, plant and equipment**

The Contractor shall supply everything, including labour, materials, plant and equipment, necessary to complete the Contract unless otherwise provided under the Contract or agreed in writing.

### **3.6.2 Removal of materials, plant and equipment**

The Principal may, from time to time, by notice in writing, direct the Contractor:

- a) to remove, or
- b) not to remove

from the Site, any materials, plant and equipment; the Contractor shall comply with such a direction in accordance with specified time limits.

### **3.6.3 Removal of persons**

The Principal may, from time to time, direct the Contractor to remove from the Site, or from any Work under the Contract, any Person (including a Subcontractor) employed in connection with Work under the Contract.

The Principal must provide details of an employee's misconduct, incompetence or negligence and time limits and the Contractor shall comply with such direction. Such a Person shall not be re-employed by the Contractor for Work under the Contract without the written approval of the Principal.

### **3.6.4 No agency, relationships or representation**

Where the Contractor is an LG:

- a) the Contractor shall not represent itself and shall take all steps to ensure its employees and any approved Subcontractors or assignees do not represent themselves as being employees or agents of the Principal. It is the express intention of the parties that such relationships do not exist, and
- b) nothing in the Contract will be deemed or construed by the parties or any third party as creating the relationship of partnership, joint venture or Principal and agent and, accordingly (except the extent permitted and provided for in the Contract Documents), neither party shall enter into any agreement, make any representation or warranty on behalf of or otherwise bind the other party to such an agreement, representation or warranty.

### **3.6.5 Manufacture and supply of materials**

The Principal 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

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

### **3.6.6 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 or manufacturer 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 for 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).

### **3.7 Materials and work**

#### **3.7.1 Quality of materials and work**

Without limiting Clause 10.3 and the Contractor's obligation to comply with the Quality Plan, the Contractor shall use the materials and standards of workmanship the Contract requires. In the absence of any requirement to the contrary, the Contractor shall use suitable new materials.

#### **3.7.2 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
- b) provide the Principal 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 a 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 11.2.

#### **3.7.3 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.

#### **3.7.4 Defective work**

If the Principal becomes aware of Routine Maintenance Work done (including material provided) by the Contractor which does not comply with the Contract, the Principal shall, as soon as practicable, give the Contractor written details of the non-compliance.

If the subject Work has not been rectified, the Principal may direct the Contractor (including times for commencement and completion) to do any one or more of:

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

If:

- a) the Contractor fails to comply with such a direction, or
- b) that failure has not been made good within seven Days after the Contractor receives written notice from the Principal that the Principal intends to have the subject Work rectified by others

the Principal may have that Work rectified by others and certify the cost incurred as moneys due from the Contractor to the Principal.

### **3.7.5 Acceptance of defective work**

Instead of a direction pursuant to defective Work, the Principal may direct the Contractor that the Principal elects to accept the subject Work, whereupon the consequential reduction in:

- a) the project Contract sum shall be valued by the Principal, or
- b) the amount payable for Routine Maintenance Work shall be valued in accordance with Part F.

### **3.8 Work directed by the Principal**

Where the Principal directs the Contractor to carry out Schedule Maintenance Activities at specific locations, the Contractor shall program and carry out the Work in accordance with the Principal's time constraints.

Where warranted, the Principal shall increase the rates for such Work and indicate any appropriate reallocation, in accordance with Clause 5.3.

Where the Contractor refuses, or fails, or is otherwise unable to complete the Work within the nominated time, the Principal may have the Work carried out by others and the Contractor shall make a discretionary change in accordance with Clause 5.2 or, where this is not possible, initiate action for a reallocation in accordance with Clause 5.3.

## **Part D: Principal's responsibilities**

### **4 Principal's role**

#### **4.1 Duties and accountability**

The Principal's role is to:

- a) set policy and give philosophical and strategic direction for the Work under the Contract within the boundaries set out in the Contract
- b) provide leadership and set a visible example of the Principal's commitment to the Contract objectives and the cooperative approach to partnering
- 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 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) consider fee Offers, Planned Routine Maintenance recommendations and project proposals referred for consideration under Clause 5
- h) ensure a culture necessary to achieve all key performance indicators is created and sustained
- i) ensure directions from the Principal (under the Contract) are implemented
- j) monitor the performance of the Contractor and implement appropriate measures to correct undesirable trends
- k) issue directions, approvals and decisions as required by the Contract
- l) make recommendations in relation to changes to the levels of service
- m) attempt to resolve any differences or issues that are referred under Clause 6.

#### **4.2 Contract review meetings**

##### **4.2.1 Timing**

The Principal shall convene at least quarterly Contract Review Meetings (CRMs) with the Contractor for each year of Contract Period: preferably one within two months after the completion of each year of the Contract Period. Any additional CRMs shall be held at the discretion of the Principal.

##### **4.2.2 Notice of meetings**

The Principal shall give the Contractor at least two weeks' notice of such CRMs and shall indicate in such notice:

- a) the time and place of the meeting
- b) agenda
- c) documents, records, reports and other information to be made available at the meeting.

The Contractor shall attend such CRMs and provide information requested in the notice.

#### **4.2.3 Purpose of meetings**

The purpose of such meetings is to discuss the contents of Form C6092 and any matters that may arise from the performance report.

#### **4.3 Contract performance reports**

##### **4.3.1 General**

The Principal shall prepare a performance report on the Contractor using Form C6092 prior to a CRM.

The Contractor must be given the opportunity to read and acknowledge a completed performance report before a CRM. The performance report template is available at the below link:

<https://www.tmr.qld.gov.au/business-industry/Technical-standards-publications/Road-maintenance-performance-contract-manual>

##### **4.3.2 Less than satisfactory performance**

Where the Contractor is given a less than satisfactory assessment in at least one of the assessment criteria and the Contractor fails to improve for the following assessment period, the Principal may review the Guaranteed Renewal Period.

##### **4.3.3 Unacceptable performance**

Where the Contractor incurs three successive unsatisfactory assessments for the same performance criteria, such performance is deemed to be unacceptable and may result in termination of the Contract.

#### **4.4 Principal supplied information**

The Principal shall, on request, make available relevant existing information on the Network to the Contractor.



## **Part E: Claims and dispute resolution**

### **5 Certificates and payments**

#### **5.1 Total contract amount**

The Total Contract Amount, which comprises the total of the amounts for the Network Schedule Total(s) and Minor Works Schedule total(s), shall not be exceeded except by a variation approved in accordance with Clause 7.

#### **5.2 Discretionary changes**

The Contractor may vary the quantity for each of the Activities and for individual Schedule totals (within the agreed discretionary limit(s) in each of the Network Schedule Total(s), provided each of the Network Schedule Total(s) is not exceeded.

Discretionary limits must not be exceeded without the prior written approval of the Principal.

The Contractor must keep current, up-to-date Network Schedule(s) to reflect any discretionary changes.

#### **5.3 Reallocation**

Where the Contractor cannot satisfy the requirements of the Defects priorities by discretionary changes to the Schedules, the Contractor must give notice to the Principal that there is no further scope for discretionary changes to the Network Schedule Totals and Minor Work Schedules.

The Contractor should clearly set out the current state of the Schedule(s) and indicate where reallocation could take place in the best interests of Maintenance of the Network.

In doing so, the Contractor must indicate the consequential changes due to Defect priority that would result from such action.

The Principal may authorise:

- a) a change of quantities / lump sums outside the agreed discretionary limits within a Network Schedule, such that the Network Schedule Total is not exceeded
- b) addition or deletion of Maintenance Activities
- c) changing Defect priority for certain Defects.

The Contractor shall update the Network Schedule Total(s) and Intervention Level / Response Time Schedule(s) to reflect any reallocation.

Any reallocation shall not entitle the Contractor to any additional payment because of a change in scope.

Where the Principal does not authorise a reallocation, the Principal may authorise a variation in accordance with Clause 7.

#### **5.4 Payment claims**

The Contractor shall submit a payment Claim for each month within 10 Business Days after the end of the month for which the Works are claimed to the Principal (or such other period as agreed in writing).

Each Claim shall include:

- a) for each Schedule of rates Activity for the Network or Minor Works Schedule(s) the quantity completed since the certified quantity in the previous payment Claim, together with the amount claimed for each item
- b) for each lump sum Activity in the Network or Minor Works Schedule(s) a pro rata amount based on the period of time since the period included in the previous payment
- c) for each Provisional Sum Activity in the Network Schedule - the amount based on the rates (Daywork rates or as otherwise agreed) and/or lump sums agreed with the Principal relevant to the Claim period
- d) for any variations ordered by the Principal in accordance with Part F the amount based on the rates (see Clause 7.2.2) and/or sums nominated in the variation relevant to the Claim period
- e) the total completed Work amount
- f) the total amount paid to the Contractor in previous payments
- g) amount claimed by the Contractor for emergency Maintenance Activities relevant to the Claim period, and
- h) the payment now claimed by the Contractor.

#### **5.5 Supporting documents for payment Claims**

The Contractor must provide with each payment Claim:

- a) a signed payment Claim
- b) an itemised list of all completed Maintenance Activities in a specified electronic format (ASCII) or as otherwise notified in writing by the Principal; where the Contractor uses one of the department's recommended Maintenance Management Systems, it will provide the necessary data by electronic file transfer (not on computer disk) to the nominated address of the Principal as set out in the Conditional Agreement
- c) progress against Network / individual Schedule(s), Daywork and variations as required by the Principal
- d) completed revised programmed expenditure flow for each Network as required by the Principal.

#### **5.6 Payment certificate**

- a) Within 10 Business Days after receipt of a payment Claim, the Principal shall issue to the Contractor a payment certificate setting out:
  - i. the amount of the payment which, in the opinion of the Principal, is to be made by the Principal to the Contractor or by the Contractor to the Principal
  - ii. 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, and
  - iii. within two Business Days of the issue of the payment certificate by the Principal, 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.

## **5.7 Payment**

Subject to the provisions of the Contract, within 20 Business Days after receipt of the payment Claim by the Principal, 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.

## **5.8 Emergency maintenance**

Where the Contractor is required to carry out Emergency Maintenance, the Contractor shall include details with the next payment Claim, based on the provisions set out in Clause 5.2.

## **5.9 Payments Act**

- a) For the purposes of the *Payments Act*, the Principal is authorised to receive payment Claims and issue payment schedules.
- b) 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*.
- c) If an adjudicator makes a decision under the *Payments Act* with respect to a payment Claim which differs from the payment certificate in respect of that payment Claim, the Principal shall promptly issue an amended payment certificate to adopt the decision of the adjudicator.  
Either party may dispute the amended payment certificate.
- d) 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 the Principal.

## **6 Dispute resolution**

### **6.1 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), either party shall deliver by hand, or send by registered post, to the other party, a notice of dispute in writing, adequately identifying and providing details of the dispute.

### **6.2 Partners in Government Agreement requirements**

Where the Contractor is a local government, the parties shall comply with the underlying principles as set out in the *Partners in Government Agreement (an agreement for the partnership and the relationship between the State Government and local government in Queensland)* published by the Department of Local Government.

### **6.3 Disputes involving with RoadTek**

Where the Contractor is RoadTek, either or both of the parties shall proceed to resolve the dispute in accordance with the dispute resolution process set out in the current Mutual Obligations Agreement between the RoadTek and the relevant district delegate of the Principal.

### **6.4 Work to continue during dispute**

Notwithstanding the existence of a dispute, the Contractor shall continue to carry out Work under the Contract and the Principal shall continue to make payments in accordance with the Contract.

## **Part F: Variations**

### **7 Variations to the contract**

#### **7.1 Allowable variation events**

This Clause outlines the only allowable Adjustment Events that will result in changes to the Total Contract Amount.

##### **7.1.1 Additional funds**

The Principal provides additional funds for:

- a) nominated additional quantities / lump sums for scheduled Maintenance Activities
- b) nominated additional Maintenance Activities (which are not in the Schedules), and
- c) nominated new or additional Minor Works Items.

##### **7.1.2 Advice to public**

The Principal directs that Work related to dissemination of information to the community of significant traffic changes is undertaken by the Contractor in accordance with Clause 9.6.

##### **7.1.3 Emergency maintenance**

The Contractor completes an Emergency Maintenance Activity.

##### **7.1.4 Defective work**

The Contractor completes Work to a standard less than that indicated or referred in the Quality Plan and the Principal accepts such defective Work at a reduced cost.

##### **7.1.5 Omission or decrease in work**

The Principal omits or decreases a quantity of Work or reduces the funds available for certain Work.

##### **7.1.6 Public Utility Plant, ancillary works and encroachments**

The Contractor must carry out alterations in accordance with Clause 9.8.

##### **7.1.7 Change in legislations or standards**

If any legislative changes or standards occur subsequent to the contract award, which are beyond the control of the Contractor, the Principal reserves the right to direct variations as necessary.

##### **7.1.8 Principal directed changes**

In the event of unforeseen circumstances, such as a change in haul distance, alter the tender assumptions outlined at the time of tendering, the Principal may direct the Contractor to develop new unit rates.

### **7.2 Notification**

#### **7.2.1 Contractor's initiative**

Where the Contractor determines no further discretionary changes to the Network Schedule(s) are possible and refers the matter to the Principal for reallocation (in accordance with Clause 5.3); and where the decision is that reallocation is not appropriate and it is essential that Work be carried out under the Contract, the Principal may advise the Contractor that additional funds will be made available for such Work.

Such additional funds may involve changes to the rates / lump sums for scheduled Maintenance Activities in situations where there is a significant change of scope affecting those Maintenance Activities during the course of the Contract.

#### **7.2.2 Principal's initiative**

Where the Principal determines additional Work is required, or additional funds are available, the Principal may advise the Contractor that such additional funds will be made available for additional Maintenance Activities or Minor Works and the Contractor must complete such Work.

Such additional funds may involve changes to the rates / lump sums for scheduled Maintenance Activities in situations where there is a significant change of scope affecting those Maintenance Activities during the course of the Contract.

#### **7.2.3 Defective work**

Where the Principal becomes aware that Work has not been completed by the Contractor in accordance with the standards in the Contractor's Quality Plan, the Principal shall give notice to the Contractor of its acceptance or rejection of the Work and indicate any reduction in the quantities or lump sum that will apply to the next payment.

#### **7.2.4 Emergency maintenance**

The Contractor must advise the Principal no later than the next working day after completing Emergency Maintenance that involves:

- a) a callout for an accident involving fatalities, or
- b) a likely Claim from the Contractor of more than that specified in Form C6094.

All Claims for payment must include sufficient detail to verify type of Work carried out and costs and must be notified to the Principal on or before the end of that Claim period.

#### **7.2.5 Quantification of variations**

Where a variation event arises in accordance with Clause 7.1, the value / quantity of charged Work shall be determined as:

- a) where the Work involves a Schedule of rates Maintenance Activity in a Network Schedule or Minor Works Schedule, the agreed rates shall apply unless the Maintenance Activity involves a significant change of scope
- b) where the Work involves a Schedule of rates Maintenance Activity in the standing Offer Schedule, the agreed rates shall apply
- c) where the Work involves a low value / low quantity Schedule of rates Maintenance Activity, the parties may agree on a lump sum amount, or
- d) for all other cases, the agreed Daywork rates shall apply unless the parties otherwise agree in writing.

#### **7.2.6 Reduced payment for defective work**

Where a variation event occurs in accordance with Clause 7.1, the Principal shall determine the reduced payment that shall apply, having regard to the expected life of such Work if it had been completed to the required standard.

## **Part G: Insurances, Liability and Indemnity**

### **8 Insurances, liability and indemnity**

#### **8A Insurance**

##### ***8.1 Public liability insurance***

Where the Contractor is an LG, before commencing Work, the Contractor shall take out a public liability policy of insurance in the name of the Contractor in relation to the Work under the Contract for its rights and interests to cover its liabilities to third parties. The policy must also cover the Contractor's liability to the Principal for loss of, or damage to, property and the death of, or injury to, any Person (other than liability which is required by law to be insured under a workers' compensation policy of insurance).

The Contractor shall ensure that all Subcontractors employed from time to time in relation to the Contract, are similarly covered by a public liability policy of insurance.

The public liability policy shall include a Clause in which the insurer agrees to waive all rights of subrogation or action against the Principal and its employees.

The public liability policy of insurance shall be for an amount for any one occurrence not less than the sum stated in the Invitation to Offer and, unless otherwise specified in the Contract, shall be effected with an insurer and in a form both approved in writing by the Principal, which approval shall not be unreasonably withheld.

The policy shall be maintained during the term of the Contract.

Before commencing Work and whenever requested in writing from time to time after that by the Principal, the Contractor shall produce evidence to the satisfaction of the Principal of the insurances effected and maintained by the Contractor, for the purposes of this Clause.

The Contractor must:

- a) provide to the Principal, a copy of any notice of cancellation of any notice under or in relation to the policy, that the Contractor receives from the Contractor's insurer within seven Days of receiving the notice(s) from the Contractor's insurer
- b) provide to the Principal, a copy of any notice of Claim made by the Contractor to the Contractor's insurer within seven Days of making that Claim to the Contractor's insurer, and
- c) inform the Principal in writing of the occurrence of any event that may give rise to a Claim under the policy of insurance affected pursuant to this Clause within seven Days of the occurrence of any such event, and shall ensure that the Principal is kept fully informed of subsequent action and developments concerning the Claim.

##### ***8.2 Insurance of employees – workers' compensation***

Before commencing Work, 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:

- a) be unlimited in amount
- b) be maintained until at Work, including remedial Work is completed

- c) extend indemnity to the Principal for the Principal's statutory liability to Persons employed by the Contractor.

The Contractor shall ensure that every Subcontractor employed from time to time under the Contract is similarly insured.

## **8B Liability**

### **8.3 Care of uncompleted Work, materials and the Site**

8.3.1 The Contractor shall be responsible for the care of:

- a) any Work done (including temporary Work) from the time such Work is commenced, until the time such Work is completed (unless otherwise agreed in writing)
- b) any materials, goods or other things in the possession of the Contractor from time of possession until time of completion of Work that incorporates such materials, goods or other things
- c) the Site or other land occupied by the Contractor for the purpose of doing Work under the Contract from time of possession until the possession ceases.

8.3.2 If loss or damage occurs to anything while the Contractor is responsible for its care, the Contractor shall promptly ensure the loss or damage is made good unless the loss or damage is a direct consequence, without fault or omission on the part of the Contractor, of an Excepted Risk.

### **8.4 Excepted risks**

The Excepted Risks are:

- a) any negligent act or omission of the Principal or the employees, consultants, or agents of the Principal (except the Contractor)
- b) any risk specifically excepted in the Contract
- c) war, invasion, act of foreign enemies, act of terrorism, 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 government or public Authority
- 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 the Contractor's employees or agents
- e) use or occupation by the Principal or the employees or agents of the Principal or other Contractors to the Principal (not being employed by the Contractor), or
- f) defects in the design of the Work Under the Contract other than a design provided by the Contractor.

## **8C Indemnity**

### **8.5 Professional indemnity**

The Contractor shall indemnify the Principal, its employees and agents against any Claims for personal injury or death or loss of or damage to property due to any design Work under the Contract of the Contractor, its employees, or agents.

## **8.6 Public liability**

### **8.6.1 Damage to Persons and property other than the Work under the Contract**

The Contractor shall indemnify the Principal against:

- a) loss of, or damage to, property of the Principal, including existing property in, or upon which, Work under the Contract is carried out
- b) Claims by any Person against the Principal for personal injury or death or loss of or damage to any property

arising out of, or as a consequence of, the performance of the Contract by the Contractor, except to the extent that the Principal, or its employees or agents, caused or contributed to the Claim.

This indemnity shall not apply to:

- a) exclude any other right or remedy of the Principal against the Contractor, including any other right to be indemnified
- b) things for the care of which the Contractor is responsible under Clause 2.1
- c) damage which is the unavoidable result of the performance of the Contract, or
- d) loss or damage to property, injury or death covered by the indemnities in Clauses 3.2.2 and 3.2.3.

### **8.6.2 Principal's indemnity for Contractor non-performance of Maintenance**

The Principal shall indemnify the Contractor against any Claim against the Contractor for personal injury and death or loss of, or damage to, any property arising from or a direct consequence of the Contractor's non-performance of Maintenance, but only in circumstances where:

1. the non-performance is a direct consequence of complying with a direction of the Principal, or
2. related to any Defect of which the Contractor had no knowledge, provided the Contractor:
  - a) undertook inspections in accordance with its agreed Inspection Schedule, and
  - b) maintained accurate, up-to-date Network inspection reports under Clause 3.2
3. the non-performance relates to Defects:
  - a) which were below the Upper Intervention Level, or
  - b) which were above the Upper Intervention Level but
    - i. the Contractor had complied with its Response Times and Maintenance Activity Standards included in the Contractor's Quality Plan (as referred in Clauses 3.2 and 10 for the Defect)
    - ii. the Contractor had formally sought a reallocation, beyond discretionary changes pursuant to Clause 5.3 for the Defect, or
    - iii. having regard to road user safety considerations (the Defect having been prioritised in accordance with the Routine Maintenance Guidelines), the failure by the Contractor to remedy the Defect did not place it in breach of its Maintenance Activity Standards.

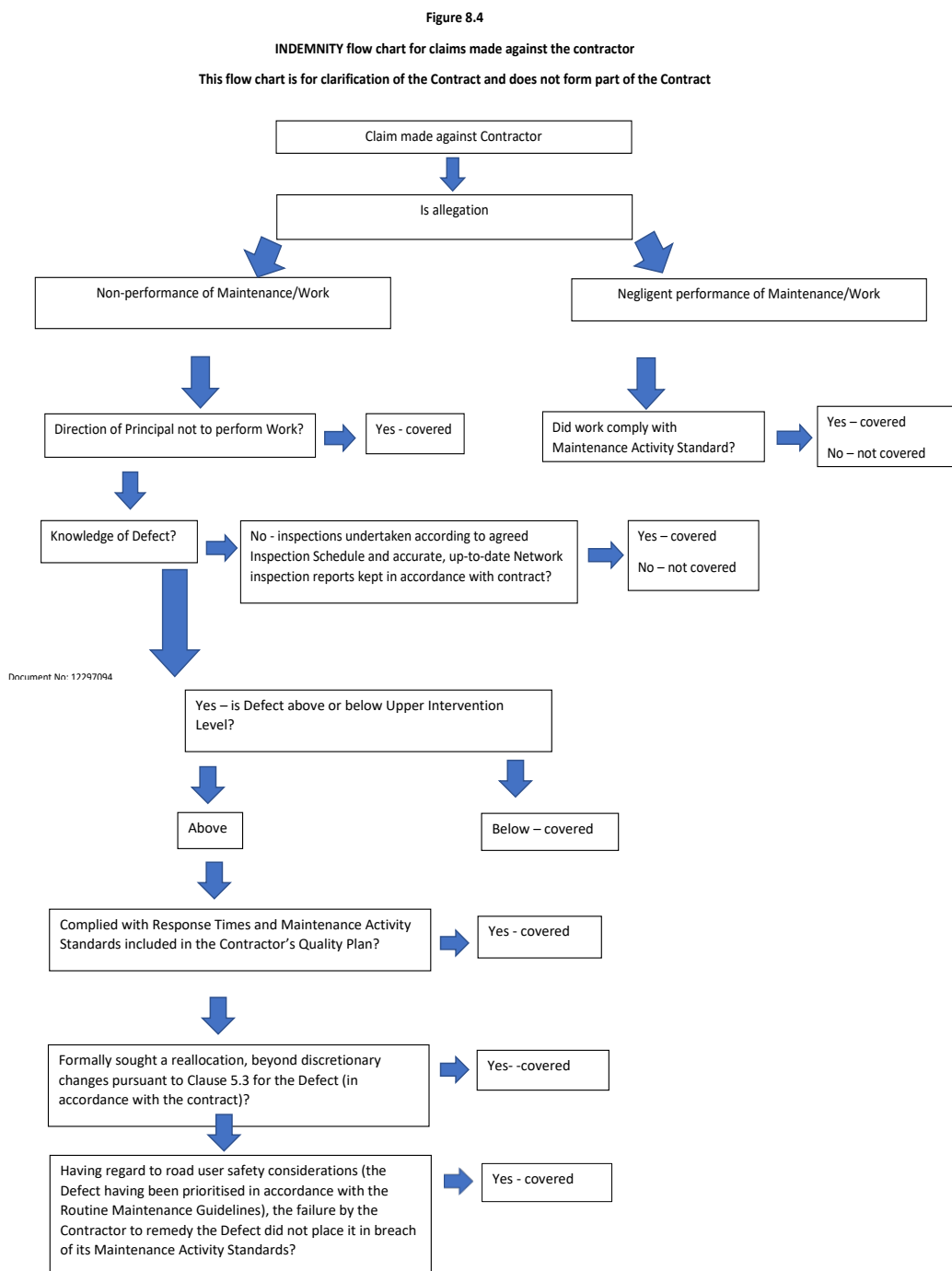


### 8.6.3 Principal's indemnity for Contractor's Work

The Principal shall indemnify the Contractor against any Claim against the Contractor for personal injury or death or loss or damage to any property arising from completed Maintenance where such Work has been carried out in accordance with the Maintenance Activity Standards.

### 8.6.4 Flowchart

Figure 8.4 sets out a flowchart that demonstrates how the indemnity is intended to operate in the case of a claim against the Contractor. In the case of inconsistency, the text of this Clause 8 prevails over figure 8.4.



## **Part H: Site and execution of Work under the Contract**

### **9 The Site**

#### **9.1 *Extent of Site***

The Site shall comprise the Road Network as indicated in Form C6094 as the Network, as well as other land used by the Contractor, including depots, quarries and other land use directly related to delivery of the Contract.

Unless otherwise agreed in writing, the Principal shall not add or delete Roads to the Network during the Contract Period and must give at least 12 months' notice of such an addition or deletion. This period of notice may be waived in the case of federally funded National Highways where the federal department responsible for transport demands a shorter notice period.

#### **9.2 *Nature of possession***

##### **9.2.1 *Sufficiency of possession***

The Contractor shall have such possession of the Site as defined in Clause 9.1 to enable the Contractor to carry out the Work under the Contract for the Contract Period.

##### **9.2.2 *Public use of Site***

The Contractor acknowledges and accepts that public use (as well as use by the Principal and owners of Public Utility Plant) of the Site will continue during the performance of the Contract (unless alternative arrangements have been made).

##### **9.2.3 *Necessary possession***

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

##### **9.2.4 *Approval for removal***

The Contractor shall not destroy or remove naturally-occurring materials, trees, shrubs or other vegetation on, or from, the Site (except where such destruction or removal is part of the Work under the Contract) without prior approval of the Principal.

##### **9.2.5 *Joint use of the Site***

Work may be carried out on the Site by the Principal or by Person(s) engaged or approved by the Principal. The Contractor shall cooperate with such Persons and coordinate the Contractor's Work with their Work.

##### **9.2.6 *Principal's materials***

All materials suitable for reuse shall remain the property of the Principal and be securely stored by the Contractor. The types of materials include signs and sign components, guardrail and components, pipes.

When the materials are reused, a reduction in the scheduled rate for the relevant Activity may be negotiated, taking into account the costs for storing the materials. Where gravel materials removed from the Road pavement during Maintenance Activities are suitable for reuse, the Contractor shall stockpile these materials in the nearest practical gravel pit or stockpile area unless otherwise agreed. Within one month of the start of the Contract, the Contractor shall advise the Principal of the quantity stored at the gravel stockpile Sites.

### **9.3 Protection of people and property**

#### **9.3.1 Contractor's responsibilities**

The Contractor shall:

- a) provide required materials, plants and labours and take all measures necessary to protect people and property using or on the Site
- b) avoid unnecessary interference with the passage of Road users through the Site, and
- c) prevent nuisance and unreasonable noise and disturbance to persons using or adjoining the Site.

#### **9.3.2 Damage to property**

If the Contractor or its Subcontractors, employees or agents damage property including, but not limited to, Public Utility Plant 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.

#### **9.3.3 Maintain clean and tidy Site**

The Contractor shall keep the Site clean and tidy at the location where, and at all times during which, Work is being performed.

#### **9.3.4 Failure to comply**

If the Contractor fails to comply with an obligation under this Clause, the Principal may, in addition to any other right or remedy it may have, perform the obligation on the Contractor's behalf and the costs incurred by the Principal shall be a debt due from the Contractor to the Principal. The Contractor shall indemnify the Principal against cost, loss, liability or damage which the Principal may suffer or incur as a result of the Contractor's failure to comply with this Clause.

#### **9.3.5 Urgent protective Work**

If it becomes necessary for the Principal to carry out urgent protective, remedial or similar Work to protect, or prevent damage to or loss of, any Work under the Contract, and the obligation to provide the protection or carry out the remedial or other Work was the Contractor's responsibility, then the costs incurred by the Principal shall be a debt due from the Contractor to the Principal.

### **9.4 Safety**

#### **9.4.1 Definitions**

For the purposes of the Clause 9.4, 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*).

#### **9.4.2 General**

Without limiting the remainder of this Clause, 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 the *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.
- e) Ensure the 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.

#### **9.4.3 Specific obligations – management and 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 Regulation*.
- 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*, for the Site at which the construction project is to be carried out.
- 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
  - iv. required to consult with the Principal 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 to ensure any issues are resolved to the required standard.

#### **9.4.4 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.

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

#### **9.4.5 Notifiable incidents**

The Contractor shall, 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 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 informed of the status of any incidents related to safety or health that have occurred in relation to or in connection with the Site
- d) do all that is necessary to assist the Principal with any investigations into any incident related to safety or health 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
- e) as soon as practicable, but no later than within seven Days of receiving a request from the Principal to do so, provide the Principal with a copy of any notification to the regulator for work health and safety of an incident related to safety or health, and
- f) consult, cooperate and coordinate with the Principal at progress meetings in relation to any health or safety matters arising out of, or in connection with, the Site.

#### **9.4.6 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 connections 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 the Clause 9.4 or its duties under the *WHS Act* or the *WHS Regulation*
- 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.

#### **9.5 Mining and Quarrying Safety and Health Act 1999 (Qld)**

This Clause 9.5 is to be used where any quarrying activities which may be caught by the *Mining and Quarrying Safety and Health Act 1999 (Qld)* are undertaken. It is not required if the quarrying pit is directly adjoining the road area under construction.

### **9.5.1 Application of special conditions in addition to existing work health and safety obligations**

Nothing in this clause 9.5 shall in any way limit or exclude any of the Contractor's obligations or liabilities under the Contract, including the application of Clause 9.4 of the Contract.

### **9.5.2 Appointment of Contractor as Operator**

- a) From the date of the possession of site, the Principal relinquishes, and the Contractor assumes, control of the Quarry Site for all purposes.
- b) The Contractor acknowledges and agrees that from the date of the possession of site the Contractor will be the Operator for the purposes of the *Mining and Quarry Safety and Health Act*.
- c) The Contractor shall appoint a Site Senior Executive for the Quarry Site.
- d) The Quarrying Activities shall not be carried out unless:
  - i. Site Senior Executive has been, and remains, properly appointed; and
  - ii. the Contractor has ensured that the Site Senior Executive has developed and implemented an appropriate Safety and Health Management System in place for the Quarrying Activities.
- e) The Contractor is authorised by the Principal to have Management and Control of the Quarry Site and to discharge its obligations as Operator under Part 3 of the *Mining and Quarry Safety and Health Act*.
- f) The Contractor shall discharge its duties and comply with all relevant obligations under the *Mining and Quarry Safety and Health Act*, including the duties of an Operator.

### **9.5.3 Discharge of duties under *Mining and Quarry Safety and Health Act***

Without limiting the obligations in Clause 9.4 of the Contract or this Item 9.5:

the Contractor shall ensure the Contractor, and its officers, employees, agents and Subcontractors are familiar with and comply with all their obligations and exercise due diligence in discharging all their duties under the *Mining and Quarry Safety and Health Act*.

### **9.5.4 Definitions for this special condition**

In this Item 9.5:

- a) MQSH Act means the *Mining and Quarrying Safety and Health Act* 1999 (Qld) as amended from time to time
- b) Operator has the meaning provided in the *Mining and Quarry Safety and Health Act*
- c) Quarrying Activities means the operations to produce road building material within the meaning provided by the *Mining and Quarry Safety and Health Act*
- d) Quarry Site means the part of the Site which is a quarry within the meaning provided by the *Mining and Quarry Safety and Health Act*
- e) Safety and Health Management System has the meaning provided in the *Mining and Quarry Safety and Health Act*, and

- f) Site Senior Executive has the meaning provided in the *Mining and Quarry Safety and Health Act*.

## **9.6 Traffic management at Work Sites**

### **9.6.1 Traffic guidance schemes**

The Contractor shall make all arrangements and do all things necessary to guide traffic safely past any of the Work under the Contract and take all precautions for the safety of workers and Road users.

The Contractor shall supply, install and maintain all traffic signs and control devices and make arrangements for control of traffic in accordance with a traffic guidance scheme (TGS) based on Part 3 of the *Manual of Uniform Traffic Control Devices* (Queensland).

The Contractor shall also comply with the *WHS Act* and any relevant prohibition notices.

The Contractor shall ensure that any individual who controls traffic within the Works shall be licensed under the Principal's traffic control accreditation scheme.

Where any Work under the Contract involves:

- a) expected traffic delays exceeding the times as set out in Form C6095
- b) closure of the normally travelled access from residential or commercial premises
- c) likely traffic queues across intersections
- d) detours using local roads
- e) closure of the normally travelled carriageway, and
- f) maintenance of side tracks, detours, and so on

then the TGS shall be documented and submitted at least two working Days in advance, or as otherwise agreed, to the Principal for direction as to its suitability.

### **9.6.2 Public notification**

Where directed by the Principal, dissemination of information to the community regarding significant changes on the nature and effect of Work under the Contract to traffic shall be provided to the public.

The Contractor shall ensure:

- a) adequate information is advertised publicly to keep the community informed of significant changes to normal traffic movements, such as detours over other Roads, and of any possible disruptions
- b) as much notice as possible of such changes must be given to the public, but it must not be less than 24 hours or as otherwise agreed
- c) the agreement of the Principal to the extent and nature of all such publicity prior to implementation is obtained.

The cost of any dissemination of information ordered and agreed by the Principal shall be included as a variation in accordance with Part F.

### **9.6.3 Other traffic management issues**

No motor vehicle traffic lane shall be left closed overnight without first obtaining the Principal's written approval of the closure and of the traffic arrangements to apply.

### ***Minerals, fossils and relics on Site***

The Contractor, his agent or employees shall not take any action to exploit the discovery of valuable minerals on the Site, but shall immediately advise the Principal of such discovery.

Any fossils, articles of antiquity or of anthropological or archaeological interest, treasure trove, coins and articles of value found on the Site shall be the property of the Principal.

### ***9.7 Public Utility Plant, ancillary Works and encroachments***

#### **9.7.1 Liaise with owner and Principal**

Where any of the Work under the Contract involves the alteration (including relocation, repairs and protection) of Public Utility Plant (PUP) or significant ancillary Works and encroachments (AWEs) as nominated by the Principal located on the Site, the Contractor shall liaise with the owner of such plant or AWE and the Principal and accept responsibility for arranging and coordinating such alteration.

Subject to the prior written approval of the Principal, the cost of any alteration shall be included as a variation in accordance with Clause 7.

#### **9.7.2 Cost of alteration**

Where PUP or AWEs are altered as a result of the Contractor's activities, or to facilitate the Contractor's Work, and such Work is not necessary for the Work under the Contract, the cost of such Work shall be borne by the Contractor and paid directly to the relevant owner by the Contractor.

#### **9.7.3 Indemnity**

The Contractor shall indemnify the Principal against any damage or loss of PUP or AWEs caused by the Contractor while executing Work under the Contract.

### ***9.8 Suspension of the Work***

#### **9.8.1 Suspension by Principal**

The Principal 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 thinks fit, if the Principal 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 or an employee, consultant or agent of the Principal
  - ii. the Contractor, a Subcontractor or an employee or agent of either.
- b) For the protection or safety of any Person or property.
- c) To comply with an order of a court.

#### **9.8.2 Suspension by Contractor**

If the Contractor wishes to suspend the whole or part of the Work under the Contract, otherwise than under Clause 11.8 or as required by a statutory requirement, the Contractor shall obtain the prior written approval of the Principal.

The Principal may approve of the suspension and may impose conditions of approval. The Principal is not obliged to approve the suspension.



### **9.8.3 Recommencement of Work**

As soon as the Principal becomes aware that the reason for any suspension no longer exists, the Principal 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 by the Contractor under Clause 11.8, the Contractor may recommence Work at any time after reasonable advance notice to the Principal.

### **9.8.4 Cost of suspension**

Any cost incurred by the Contractor by reason of a suspension under this Clause shall be borne by the Contractor, but if the suspension is due to an act or omission of the Principal, the Principal 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 7.

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.

## **Part I: Quality system**

### **10 Requirements of the quality system**

#### **10.1 General**

RMPC quality system requirements may be satisfied by addendums to the Contractor's existing quality management systems. The Contractor's quality system should be accredited to ISO 9001: 2015 *Quality management systems – Requirements*. If this has not been achieved, the Contractor must either submit a plan to gain / regain certification or, with the written consent of the Principal, adopt the use of the department's Form C6089 which sets out the department's minimum quality requirements for RMPC Works.

If the Contractor's quality system is not certified, or the Contractor is unable to maintain its certification, the Contractor must seek approval from the Principal to continue Works under RMPCs.

The Contractor must include, in its Quality Plan, details of its Maintenance organisation structure, clearly setting out the nominated Persons and their responsibilities for achieving the Quality Plan requirements.

#### **10.2 Quality system**

The Contractor shall establish, review, maintain and update the various plans comprising the quality system, including:

- a) Quality Plan
- b) Safety Plan, and
- c) EMP (Maintenance).

The Contractor shall submit any changes to its existing plans (and quality system) to the Principal for direction as to their suitability immediately after any audit and, in any case, at least four weeks prior to commencement of any Work under the renewed Contract.

In the case of the Principal indicating that any of the plans is not suitable, the Contractor must amend and resubmit the relevant plans to the Principal as part of its quality system.

#### **10.3 Quality Plan**

##### **10.3.1 Systematic Approach to the Management of Maintenance**

The Contractor's Quality Plan for management must evidence a Systematic Approach to the Management of the Maintenance of the Network.

The Contractor must include, in its Quality Plan, its procedures for:

- a) identification of Work in advance
- b) planning, prioritising and scheduling of Maintenance
- c) recording all completed Work
- d) making payment Claims
- e) managing the process
- f) changing / improving the system
- g) auditing the Contractor's management / supervision procedures.

The Contractor must maintain accurate, up-to-date files (whether computer-based or manual) of:

- a) Network inspection reports, and
- b) Forward List of Work including:
  - i. issued Works orders
  - ii. list of completed Activities.

The Contractor must submit these files (including the Forward List of Works) to the Principal on the 25<sup>th</sup> of each month, unless requested otherwise by the Principal.

### **10.3.2 Operations**

The Contractor must provide its standards and procedures in its Quality Plan for recording of Defects and carrying out the various Maintenance Activities. Standards must be in accordance with the Maintenance Activity Standards and Intervention Level / Response Time standards as set out respectively in Chapter 4 and Chapter 5 of the Guidelines.

Unless the Principal approves otherwise, the Quality Plan must adopt the Principal's Activity Standards as set out in the Guidelines for undertaking Routine Maintenance for Maintenance Activity numbers and descriptors and units of measurement, including sequential steps and check points. These procedures may be based on the details contained in the Maintenance Activity Standards.

### **10.4 Work health and safety management plan (safety plan)**

The safety plan must clearly indicate the Contractor's hierarchy and responsibility for managing safety and include details of the Contractor's procedures, including safety matters (as detailed in Part H) of:

- a) advice to the Principal of incidents involving third parties, and
- b) management of traffic at Work Sites in accordance with Part 3 of the *Manual of Uniform Traffic Control Devices* (Queensland).

### **10.5 Environmental management**

#### **10.5.1 General obligations**

The Contractor shall:

- a) At all times during the term, comply with the requirements of:
  - i. all relevant environmental and heritage statutory requirements
  - ii. the Environmental Management Plan (EMP (Maintenance)), and
  - iii. any environmental requirements set out in the Specifications.
- b) Identify activities that have the potential to cause environmental harm and 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 any other statutory requirements relating to environmental management.
- d) Ensure all applicable environment protection measures are implemented prior to proceeding with any relevant Work under the Contract.

### **10.5.2 EMP (Maintenance)**

The Contractor shall be responsible for environmental management associated with the activities of the Contract and shall develop and implement an EMP (Maintenance) for that purpose. This shall include auxiliary activities under the control of the Contractor, such as the obtaining of resources (water, gravel) for Works associated with the Contract, and activities at auxiliary Sites used by the Contractor, such as stockpile Sites.

The EMP (Maintenance) is the Contractor's management plan to ensure that all Works undertaken by the Contractor, its employees, agents and Subcontractors shall have minimal impact on the environment. The EMP (Maintenance) shall be in accordance with all relevant state, federal and local government laws, regulations and rules, and shall comply with and incorporate the requirements of this Contract.

As a minimum, the EMP (Maintenance) should include the administrative and management requirements outlined below.

### **10.5.3 Administrative requirements**

Administrative requirements are:

- a) A statement of the Contractor's environmental management policy relevant to activities carried out under the Contract.
- b) The Contractor's environmental training and/or induction programs for relevant staff, including staff acting as environmental representatives for Activities.
- c) A list of permits and licences obtained, relevant to the Maintenance Works, including Principal exemptions or licences being used for undertaking of the Work - where exemptions, permits or licences have a reporting requirement, the EMP (Maintenance) shall clearly state who is responsible for reporting (Principal or Contractor) and how and when the Contractor will provide necessary information to the Principal.
- d) Details of the Contractor's system to manage complaints, undertake inspections and conduct audits, including undertaking and recording corrective actions.
- e) Details of the Contractor's document control procedures for monitoring, review and periodic update of the EMP (Maintenance).

### **10.5.4 Management measures**

The EMP (Maintenance) shall contain the Contractor's proposed environmental protection measures and strategies for activities under the Contract. This should include standard measures to address all activities which are to be included as part of the Contract, as well as the triggers for additional Site-specific environmental assessment and/or control measures.

The strategies shall address:

- a) Cultural Heritage – including potential effects on indigenous and historical heritage.
- b) Biodiversity – minimising the effects on flora and fauna and managing the effects of activities, such as slashing on weed spread.
- c) Amenity – managing potential nuisance issues such as dust, vehicle emissions, noise, vibration and lighting.

- d) Resource use – ensuring that obtaining resources for Maintenance (water, quarry material) is done in a legal and sustainable manner and that storage of goods, including fuels and paints, is undertaken in a suitable manner.
- e) Waste management – including Contractor's location and method for storage and/or disposal of waste collected under the Contract (for example, litter, tyres, dead animals) and waste or unsuitable material produced through activities of the Contract (including stockpile management).
- f) Water quality – minimising effects on water quality, including erosion and sediment control methods and procedures.
- g) Any specific environmental measures nominated by the Principal.
- h) Details of the Contractor's environmental preparedness and response procedures, including:
  - i. procedures for minor incidents such as a burst hydraulic hose, and
  - ii. procedures for significant incidents, including notification to the Principal, the state Department of Environment and Heritage and/or other relevant state or federal departments, regarding incidents including, but not limited to, those causing 'material' or 'serious environmental harm' (*Environmental Protection Act 1994 (Qld)*) as a result of Works carried out.

#### **10.5.5 Requirements**

The Contractor should be aware of requirements for environment and heritage management, but the Principal may impose additional Contract-specific requirements within the Contract.

#### **10.5.6 Environmental representative**

All crews and projects shall have a nominated environmental representative. This representative shall have undergone environmental training, including information on general environmental duty, under the *Environmental Protection Act 1994 (Qld)*, within the last two years.

#### **10.5.7 Burning**

Burning of material is prohibited within the Road reserve without the written approval of the Principal.

#### **10.5.8 Weed management**

The Contractor must take all precautions to ensure that activities undertaken under the Contract do not cause the spread of weeds or new weed infestations.

The Contractor shall rectify any weed infestations (including at stockpile Sites) caused by its activities at the Contractor's cost.

Where declared weed management is being completed under the Contract, the Contractor's representative shall be competent in the identification of declared weeds within the Network.

#### **10.5.9 Erosion and sediment control**

Where the area of disturbance of natural ground to be open at any one time is greater than 2500 m<sup>2</sup>, the Contractor shall prepare an erosion and sediment control plan. The plan shall include location of all proposed erosion and sediment control devices.

#### **10.5.10 Stockpile Sites**

The use of old stockpile Sites is preferred over the creation of new Sites. Stockpile Sites should be delineated and not expanded without the written approval of the Principal. Stockpiles of any material type shall be located a minimum distance of 100 m away from any watercourse and a minimum 10 m away from remnant vegetation.

The Sites should be located on relatively flat, well drained ground. Appropriate sediment controls (for example, bunding or sediment control fencing) must be installed. Temporary stockpile Sites are to be remediated at the completion of construction Works.

#### **10.5.11 Cultural heritage**

Where the proposed Works will affect previously undisturbed ground, the Contractor shall ensure that an assessment as required by the *Aboriginal Cultural Heritage Act 2003 (Qld)* has been undertaken.

If, during an Activity, items of cultural heritage significance are discovered, construction shall cease immediately in the vicinity of the find. Any items found shall be left in an as-found condition and a temporary barrier shall be erected to prevent access to the find.

The Contractor shall immediately notify the Principal who will inform the department's cultural heritage officer.

### **10.6 Audits**

The Principal may carry out audits of the Contractor's quality system at any time. Such an audit may be one or a combination of:

- a) compliance with the Principal's quality system requirements
- b) compliance with the Contractor's quality procedures
- c) independent testing on completed Activities.

The Principal may carry out an audit of the EMP (Maintenance) and its implementation at any time.

The Contractor and/or its environmental representative shall be present during the audit and shall supply the Principal with all documentation, access and assistance as required.

The Contractor shall undertake at least one internal audit as part of the EMP (Maintenance) during the term of the Contract so relevant operational changes are made to reduce the risk of environmental harm.

#### **10.6.1 Keeping records**

The Contractor must keep all records for a period of at least six years, notwithstanding the requirements of any relevant legislation (including the *Local Government Finance Standard 2005 (Qld)*).

## **Part J: Default and termination**

### **11 Default**

#### **11.1 General**

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

#### **11.2 Default by the Contractor**

If the Contractor commits a substantial breach of the 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) failing to comply in any respect with Clause 2.7
- b) failing to use the materials or standards of workmanship required by the Contract, in breach of Clause 3.7
- c) failing to provide satisfactory performance, in breach of Clause 4.3
- d) failing to provide evidence of insurance, in breach of Clause 8
- e) suspension of Work, in breach of Clause 9.9, and
- f) any other substantial breach nominated in the Contract.

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

A notice under Clause 11.2 shall:

- a) state that it is a notice under this Clause
- b) specify the alleged substantial breach
- c) require the Contractor to show cause in writing why the Principal should not exercise a right referred in Clause 11.4
- d) specify the time and date by which the Contractor must show cause (which time shall be no fewer than seven Days after the notice is given to the Contractor), and
- e) specify the place at which cause must be shown.

#### **11.4 Rights of the Principal**

If, by the time specified in a notice under Clause 11.3, the Contractor fails to show reasonable cause why the Principal should not exercise a right referred in Clause 11.4, 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 11.2, 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 11.4(a) or Clause 11.4(b), and
- iii. the date which is seven Days after the last day for showing cause in the notice under Clause 11.3.

If the Principal exercises the right under Clause 11.4(a), the Contractor shall not be entitled to any further payment for the Work taken out of the hands of the Contractor unless a payment becomes due to the Contractor under Clause 11.5.

#### **11.5 Procedure and adjustment on completion when the Principal takes over Work**

If the Principal takes Work out of the hands of the Contractor under Clause 11.4(a), the Principal shall complete that Work.

When Work taken out of the hands of the Contractor under Clause 11.4(a) is completed, the Principal shall ascertain the cost incurred by the Principal in completing the Work and shall issue a certificate to 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 and owing 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 and owing 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 11.5 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.

#### **11.6 Default of the Principal**

If the Principal commits a substantial breach of the 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 5.4, or
- b) failing to give the Contractor sufficient access to a Site in breach of Clause 9, but only if the failure continues for longer than 28 Days.

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

A notice under Clause shall:

- a) state that it is a notice under Clause 11
- b) specify the alleged substantial breach
- c) require the Principal to show cause in writing why the Contractor should not exercise a right referred in Clause 11.8



- d) specify the time and date by which the Principal must show cause (which shall not be fewer than seven Days after the notice is given to the Principal), and
- e) specify the place at which cause must be shown.

### **11.8 Rights of the Contractor**

If, by the time specified in a notice under Clause 11.3, the Principal fails to show reasonable cause why the Contractor should not exercise a right referred in Clause 11.8, 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 11.8, 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.

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

If the Contract is terminated under Clause 11.4 or Clause 11.8, 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.

### **11.10 Termination without cause**

Either party may terminate the Contract without cause by giving the other party notice in accordance with Clause 2.5 and nominating the period of notice.

- a) Notice by the Contractor shall be for a minimum period of two years.
- b) Notice by the Principal shall be for a minimum period of one year.
- c) Where the Contractor is an LG, the Contractor is dissolved under the provisions of the *Local Government Act 2009* (Qld).

In each case, where the Guaranteed Renewal Period is less than the nominated minimum period, then the minimum notice requirement will be the Guaranteed Renewal Period.

## **Part K: General provisions**

### **12 Miscellaneous**

Contractor shall comply with all state and federal government policies where applicable.

#### **12.1 Confidential information**

##### **12.1.1 Contractor's responsibility**

The Contractor shall:

- a) treat as confidential and not disclose, copy, use or permit the use of, at any time, or in any way, the Confidential Information, other than for the purpose of performing this Contract
- b) ensure and protect the confidentiality of the Confidential Information
- c) limit the disclosure of the Confidential Information to those Persons to whom such disclosure is strictly necessary for the performance of this Contract and shall ensure that those Persons are bound by obligations of confidentiality for the Confidential Information equal to those contained in this Clause and shall use its best endeavours to ensure that those Persons abide by such obligations of confidentiality, and
- d) accept full liability for, and indemnify the Principal against, any loss, cost or damage which it may suffer or incur as a result of any wrongful use, copying or disclosure of the Confidential Information.

##### **12.1.2 Termination**

The obligations of the Contractor under Clause 12.1 survive the termination of the Contract by either party upon any grounds whatsoever.

#### **12.2 Information Privacy Act**

For the purposes of this Clause 12.2, 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, or
- 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 these matters, 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:

- a) 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
- b) privacy complaints made to the Principal, including any privacy complaints to which the Principal is a respondent
- c) the Contractor shall, as soon as possible following the Principal's request, but no later than two Business Days after such request from the Principal:
  - i. submit to the Principal a document specified by the Principal
  - ii. amend or notate a document specified by the Principal
  - iii. provide information to the Principal concerning the Contractor's discharge of its obligations under this Clause 12.2
  - iv. 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, the Principal's Representative shall act as an agent of the Principal.

### **12.3 The Queensland Code**

Where stated in Item 4 of Form C6094, the *Queensland Code of Practice for the Building and Construction Industry* (the Queensland Code) apply to this Contract.

The Queensland Code is available on the following website:

<https://www.treasury.qld.gov.au/resource/building-construction-code-practice-2000/>

The 'Client Agency' in relation to this Contract is the Department of Transport and Main Roads.

#### **12.3.1 Primary obligation**

The Contractor shall comply with, and meet any obligations imposed by the Queensland Code.

The Contractor shall notify the Australian Building Construction Commission (ABCC) (or nominee) and the Client Agency of any alleged breaches of the Queensland Code and of voluntary remedial action taken within 24 hours of becoming aware of the alleged breach.

Where the Contractor is authorised to engage a Subcontractor or consultant, and it does so, the Contractor shall ensure that any secondary Contract imposes on the Subcontractor or consultant are equivalent obligations to those in this 'Primary Obligation', including that the Subcontractor or consultant shall comply with, and meet any obligations imposed by, the Queensland Code.

The Contractor shall not appoint or engage another party in relation to the project where that appointment or engagement would breach a sanction imposed on the other party in relation to the Queensland Code.

### **12.3.2 Access and information**

The Contractor shall maintain adequate records of compliance with the Queensland Code by it, its Subcontractors, consultants and related entities.

The Contractor shall allow, and take reasonable steps to facilitate, Queensland Government-authorized personnel (including personnel of the ABCC) to:

- a) enter and have access to Sites and premises controlled by the Contractor, including the project Site
- b) inspect any Work, material, machinery, appliance, article or facility
- c) access information and documents
- d) inspect and copy any record relevant to the project
- e) have access to personnel
- f) interview any Person

as is necessary for the authorized personnel to monitor and investigate compliance with the Queensland Code by the Contractor, its Subcontractors, consultants and related entities.

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

### **12.3.3 Sanctions**

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 that would have precluded it from tendering for Work to which the Queensland Code apply.

If the Contractor does not comply with, or fails to meet any obligation imposed by, the Queensland Code, a sanction may be imposed against it in connection with the Queensland Code.

### **12.4 Ethical Supplier Threshold and Ethical Supplier Mandate**

- a) In this clause 12.4,
  - i. Ethical Supplier Mandate means the Queensland Government policy titled 'Ethical Supplier Mandate' or any policy that replaces that policy
  - ii. Ethical Supplier Threshold means the Ethical Supplier Threshold in paragraph 2.3 of the Queensland Procurement Policy
  - iii. Government Department or instrumentality means any governmental regulator, including Work Health Safety Queensland, the Queensland Building and Construction Commission, the Fair Work Commission, and
  - iv. The Tripartite procurement advisory panel is a singular body established by government to provide objective advice and recommendations to the decision makers regarding non-compliance with the mandate and threshold.
- b) The Contractor shall comply with the ethical supplier threshold.
- c) The Principal may obtain information about the Contractor relevant to the Contractor's compliance with the ethical supplier threshold and ethical supplier mandate that may be held

by the Tripartite procurement advisory panel, or any Government department, or instrumentality, and take the information into account in assessing the offer. The Contractor agrees to provide all information requested during an audit or investigation, including the information of any Subcontractors.

- d) The Contractor acknowledges that a failure to comply with the Principal's policies that apply to the Work under the proposed contract or the Contractor's obligations under the proposed contract may result in the imposition of a demerit or sanction under the Ethical Supplier Mandate, in addition to any other remedies available to the Principal under this Contract.
- e) Failing to comply with the requirements of this clause 12.4(b) is a substantial breach of Contract for the purpose of Clause 11.2(f) of this General Conditions of Contract.

**Appendix A: Schedules**

**Appendix B: Activity Standard**

