



Department of
Conservation
Te Papa Atawhai



Department of
Conservation
Te Papa Atawhai

Kauri Dieback Cleaning Stations Fabricators Contract.

Contract for Goods and Services

Between

Department of Conservation (“Lead Agency”)

and

MWDesign LTD (“Supplier”)

CONTRACT

THIS AGREEMENT is made this 20th day of July 2018

PARTIES:

1. HER MAJESTY THE QUEEN acting through the DIRECTOR-GENERAL OF CONSERVATION, ("Lead Agency")
2. MWDesign Limited ("the Supplier")

BACKGROUND

- a. The Director-General is the administrative head of the Department of Conservation Te Papa Atawhai (Lead Agency). The Lead Agency is responsible for managing and promoting conservation of the natural and historic heritage of New Zealand on behalf of, and for the benefit of, present and future New Zealanders.
- b. The Lead Agency issued a Request for Tender (RFT), seeking responses for the Provision of Goods and Services described in Schedule A to be provided to the Lead Agency and other Participating Agencies who have signed a Letter of Accession (Schedule D).
- c. An obligation of a Participating Agency is a reference to an obligation to be performed by that Participating Agency, as procured by the Lead Agency.
- d. Unless the context otherwise stipulates, references to the Buyer shall mean the Lead Agency or a Participating Agency who has requested the Goods and Services to be provided under this contract and recorded that request in a Cleaning Station Works Order (Schedule C).
- e. The Supplier has the skills and expertise necessary to provide the Goods and Services and wishes to contract for the supply of the Goods and Services.

THE PARTIES AGREE THAT:

1. DEFINITIONS AND INTERPRETATION

Definitions

- 1.1. In this contract, defined terms have capital initials and have the meaning indicated below:

Agency Information: means all

- (a) information and records belonging to a Buyer that are supplied to or collected by the Supplier for the purpose of enabling the Supplier to perform its obligations under a Cleaning Station Works Order;
- (b) information and records belonging to a Participating Agency that are supplied to or collected by the Supplier for the purpose of enabling the Supplier to perform its obligations under this Contract.

Appendix: means an attachment to a Schedule to this Contract with the title 'Appendix'.

Business Day: means any day of the year other than a Saturday, a Sunday and public holidays as defined in section 44 of the Holidays Act 2003. A Business Day starts at 8.30am and ends at 5pm.

Buyer: the Buyer is the purchaser of the Goods and Services. The Buyer is a Participating Agency and will be named as the Buyer in the Cleaning Station Works Order.

Charges: the total amount payable by the Buyer to the Supplier as stated in the Cleaning Station Works Order. The Supplier's Charges include Costs and any Expenses stated in the Cleaning Station Works Order.

Cleaning Station Works Order: means an order relating to the supply of Goods and Services issued by a Participating Agency and substantially in the form in Schedule C (Cleaning Station Works Order). If agreed between the Participating Agency and the Supplier, the Cleaning Station Works Order may contain additional information or further particularity in respect of the Goods and Services to be provided.

Confidential Information: information that:

- a. is by its nature confidential;
- b. is marked by either Party as 'confidential', 'in confidence', 'restricted' or 'commercial in confidence';
- c. is provided by either Party, or a third party 'in confidence';
- d. either Party knows or ought to know is confidential; or
- e. is of a sensitive nature or commercially sensitive to either Party.

Conflict of Interest: means any matter, circumstance, interest or activity of the Supplier, its Personnel or Subcontractors, arising by whatever means that directly or indirectly conflicts with:

- a. the duties of the Supplier and any of its Personnel or Subcontractors to the Buyer under the Cleaning Station Works Order;
- b. the duties of the Supplier and any of its Personnel or Subcontractors to a Participating Agency under this Contract; or
- c. the interests of any Participating Agency in relation to this Contract (including any Cleaning Station Works Order) or otherwise in respect to the provision of Goods and Services to the Participating Agency either before or after the Start Date;

or otherwise impairs or might appear to impair the ability of the Supplier (or any of its Personnel or Subcontractors) to provide the Goods and Services to any Participating Agency under a Cleaning Station Works Order diligently, independently, impartially and in the best interests of the Participating Agency;

Contract: the legal agreement between a Participating Agency and the Supplier that comprises this Contract, Schedule A, Schedule B, Schedule C any other Schedule, Appendix or attachment, and any Variation.

Contract Manager: the person named in Schedule A as the Contract Manager. Their responsibilities are listed in clause 13.

Contract Quarter means a period of three consecutive months commencing on 1 January, 1 April, 1 July or 1 October, except that:

- a. the first Contract Quarter will begin on the Start Date and end on the 30 September 2018; and
- b. the final Contract Quarter will end on the effective date of termination of the Contract

Control: means, in relation to the Supplier or any ultimate or intermediate holding company or Holding Entity of the Supplier, the power to

- a. manage, directly or indirectly, the operation of the business; or
- b. control, directly or indirectly, the composition of the board of directors or board of management or equivalent governing body;

of the Supplier or such ultimate or intermediate holding company or Holding Entity, whether through the ownership of voting securities, by contract or otherwise, and for these purposes "holding company" will have the same meaning as in section 5 of the Companies Act 1993.

Cost: the amount payable to the Supplier for the Goods and Services calculated on the basis stated in Schedule B excluding any Expenses.

Crown (The Crown): the Sovereign Her Majesty the Queen in right of New Zealand and includes a Minister, a government department and an Office of Parliament, but does not include a Crown entity or a State enterprise named in Schedule 1 of the State-Owned Enterprises Act 1986.

Delivery Address: the address where the Supplier must deliver the Goods as specified in the Cleaning Station Works Order or such other address as specified by the Buyer.

Description of Goods and Services: the specific requirements for the Goods and Services as described in Schedule A.

Documentation: means all advice, communications, documentation and reports (whether in paper, electronic, audio or audio-visual format).

Eligible Agency: means:

- a. each Public Service department, as defined in section 27 of the State Sector Act 1988;
- b. the New Zealand Defence Force, the New Zealand Police, the New Zealand Security Intelligence Service, the Parliamentary Counsel Office, the Office of the Clerk of the House of Representatives and the Parliamentary Service;
- c. each Crown Entity, as defined in section 7 of the Crown Entities Act 2004;
- d. each organisation listed in the fourth schedule to the Public Finance Act 1989;
- e. the Reserve Bank of New Zealand;
- f. the Office of the Controller and Auditor-General, the Office of the Ombudsmen, and the Office of the Parliamentary Commissioner for the Environment;
- g. each corporation listed in the first schedule to the State-Owned Enterprises Act 1986;
- h. each local authority, as defined in section 5 of the Local Government Act 2002; and
- i. any other organisation, agency or person that does not fall within the above categories but which the Lead Agency determines should be treated as an Eligible Agency for the purposes of this Contract.

End Date: the earlier of the date this Contract is due to end as stated in Clause 4 (Contract Term), the date of termination as set out in a Notice of termination, or any other date agreed between the Parties as the date that the Contract is to end.

Expenses: means any actual and reasonable out-of-pocket costs incurred by the Supplier in the delivery of the Goods and Services and agreed to in any Cleaning Station Works Order, and includes any freight and related costs, travelling and incidental expenses and other costs, disbursements, fees, charges and expenses directly or indirectly incurred by the Supplier;

Fit for Purpose: means, in relation to any Goods or Services or Documentation to be provided by the Supplier to a Participating Agency, that such Goods or Services or Documentation are, in descending order of priority, fit for the purpose(s):

- a. expressly made known in writing by that Participating Agency to the Supplier (including in a Cleaning Station Works Order); or
- b. for which the Supplier, given its knowledge of that Participating Agency and understanding why the Goods or Services or Documentation are required, has reason to expect such Goods or Services or Documentation to be used.

Force Majeure Event: means an event or circumstance beyond the reasonable control of either party which makes it impossible or illegal to perform, or prevents compliance with, or the performance of, a party's obligations under this Contract.

Goods: the Goods described in Schedule A.

GST: the goods and services tax payable in accordance with the New Zealand Goods and Services Tax Act 1985.

Holding Entity: means a trust, unit trust, partnership, limited partnership, unincorporated joint venture or other body corporate or unincorporated body of persons that Controls the Supplier and includes any natural person that Controls the Supplier.

Industry Best Practice: means the high professional standard that would reasonably be expected from a prudent and experienced Supplier of Goods and Services in New Zealand having regard to market practice at the relevant time.

Insolvency Event: means, in relation to the Supplier:

- a. the presentation of an application for its liquidation that is not discharged within 30 days of its filing or which is not demonstrated to the Lead Agency prior to the expiry of that 30 day period as being an application that is frivolous or vexatious;
- b. any step taken in or toward the making of any compromise, proposal or deed of arrangement with all or some of its creditors;
- c. the appointment of a liquidator, receiver, statutory manager, administrator or similar official, to it;
- d. the suspension or threatened suspension by it of the payment of its debts;
- e. cessation by it of a whole or any relevant part of its business in New Zealand;
- f. the enforcement of any security against the whole or a substantial part of its assets; or
- g. any other insolvency event or proceedings analogous to any of the foregoing occurring in any relevant jurisdiction.

Intellectual Property: means copyright, all rights in relation to inventions (including patents), registered and unregistered trademarks, registered and unregistered designs, trade or other proprietary rights or rights derivative of those rights (including licence rights) anywhere in the world as well as any other rights in intellectual property which are recognised or protected under Law.

Law: means

- a. any statute, regulation, bylaw, ordinance or subordinate legislation in force from time to time to which a Party is subject;
- b. the common law and the law of equity as applicable to the Parties from time to time;
- c. any binding court order, judgment or decree;
- d. any applicable industry code of practice or conduct, convention, policy, rule or standard to which a Party is bound; or
- e. any applicable direction, policy, permission, consent, licence, rule or order that is binding on a Party and that is made or given by any governmental or regulatory body having jurisdiction over a Party or any of that Party's assets, resources or business,

in any jurisdiction that is applicable to this Contract.

Lead Agency: means the Department of Conservation (The Department).

Losses: means liabilities, expenses, losses, damages and costs (including legal costs on a full indemnity basis).

Material Breach: means any breach by the Supplier of the terms of this Contract, or the occurrence of any event, having a material effect on the ability of the Supplier to perform its obligations under this Contract (other than a Force Majeure Event), including:

- a. the occurrence of an Insolvency Event in relation to the Supplier or the likely occurrence of an Insolvency Event;
- b. the occurrence of a change in Control of the Supplier or any ultimate or intermediate holding company or Holding Entity of the Supplier that the Lead Agency has not previously approved (acting reasonably);
- c. any representation or warranty made by the Supplier in terms of this Contract being found to be untrue or incorrect; and
- d. any failure on the part of the Supplier to comply with, observe or perform any of the terms of this Contract in circumstances where that contract breach or that contract breach together with other contract breaches is considered by the Lead Agency on reasonable grounds to cause the Supplier to be unable or unwilling, or be likely to be unable or unwilling, to perform its obligations under this Contract.

Notice: a formal or legal communication from one Party to the other that meets the requirements of clause 21.

Participating Agency: means the Lead Agency and an Eligible Agency who has signed a Letter of Accession substantially in the form in Schedule D.

Party: (the Parties): means the Lead Agency and the Supplier;

Personnel: All individuals engaged by either Party in relation to this Contract, or by a Participating Agency or the Supplier in relation to the supply of Goods and Services under a Cleaning Station Works Order. Examples include:

- a. the owner of the business, its directors, employees, subcontractors, agents, external consultants, specialists, technical support, and co-opted or seconded staff.

Quote: means a fixed price, capped price or other pre-agreed basis for establishing the Charges for Goods and Services required by the Participating Agency where the Supplier is prevented from increasing the Charges without the prior written consent of the Participating Agency;

Records: all information and data necessary for the management of this Contract and the supply of the Goods and Services in Schedule A. Records include but are not limited to, reports, invoices, letters, emails, notes of meetings, photographs and other media recordings. Records can be printed hard copies or soft copies stored electronically.

Reports: mean the reports generated by the Supplier specified in Schedule A, as amended from time to time by the Lead Agency.

Representative: a suitable qualified and experienced person to act for a Party in accordance with Clause 12 (Dispute Resolution).

Request for Tender (RFT): means the request for tender in relation to the supply of the Goods and Services described in Schedule A, issued by the Lead Agency.

RFT Response: means the Supplier's original response to the RFT, as clarified and amended by subsequent oral and written correspondence (including questions and answers) between the Lead Agency and the Supplier prior to the Start Date.

Schedule: means an attachment to this Contract with the title 'Schedule'.

Schedule of Prices: means the Schedule of Prices for the Goods and Services in Schedule B.

Services: means the services provided from time to time under the terms of this Contract, including any delivery and / or after-hours support.

Scope of Contract: means the scope of Goods and Services covered by this contract as more fully described in Schedule A.

Start Date: the date when this Contract starts as stated in Clause 4 (Contract Term).

Subcontractor: means any person to whom the Supplier has subcontracted any part of its obligations under this Contract or who is a supplier to the Supplier in respect of this Contract and includes the employees and subcontractors of that person and **Subcontract** will be construed accordingly.

Supplier: the person, business, company, or organisation named as the Supplier on page 1. It includes its Personnel, successors, and permitted assignees.

Term: means the term specified in Clause 4 (Contract Term).

Variation: a change to any aspect of this Contract that complies with Clause 20.1.

Interpretations

- 1.1. In this contract, unless the context indicates otherwise:

Headings: section, clause and other headings are for ease of reference only and will not affect this contract's interpretation;

Clauses/ Schedules/ Appendices/ Attachments: references to clauses, schedules, appendices and attachments are to clauses in, and the schedules, appendices and attachments to, this contract.

Statutory Provisions: references to any statutory provision are to statutory provisions in force in New Zealand and include any statutory provision which amends or replaces it, and any bylaw, regulation, order, statutory instrument, determination or subordinate legislation made under it;

Negative Obligations: any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done;

Inclusive Expressions: the term includes or including (or any similar expression) is deemed to be followed by the words 'without limitation'; and

Documents: references to any document (however described) are references to that document as modified, novated, supplemented, varied or replaced from time to time and in any form, whether on paper or in an electronic form.

Entire agreement

- 1.2. This Contract and each Cleaning Station Works Order (if a Cleaning Station Works Order is issued by a Participating Agency) is the entire agreement between the Supplier and the Participating Agency in relation to the provision of the Goods and Services and supersedes all agreements, arrangements, understandings or representations relating to the subject matter of this Contract and any Cleaning Station Works Order, except that the Supplier will continue to be bound by the statements, representations and warranties made or given in the RFT Response, and acknowledges that the Lead Agency has relied on such statements, representations and warranties in entering into this Contract and will be entitled to continue to rely on the same.
- 1.3. No other terms or conditions, including any conditions of sale, invoices or any other communication not included in this Contract or in a Cleaning Station Works Order will be incorporated into this Contract or any Cleaning Station Works Order.
- 1.4. For the avoidance of doubt, and without limiting clauses 1.3 to 1.4:
 - a. any communication which is expressed or intended to operate as an indemnity, warranty, representation, undertaking, condition or other term of such a nature is hereby disapplied and excluded from this Contract and each Cleaning Station Works Order.
 - b. any part of a Cleaning Station Works Order which describes the nature, scope, price or manner of delivery of the Goods and Services will, subject to clause 1.6a, form part of that Cleaning Station Works Order, but only to the extent that it does not conflict with any other part of this Contract or the terms of that Cleaning Station Works Order

Precedence

- 1.1. Subject to clause 1.8, if there is any conflict or inconsistency between any of the documents which form part of this Contract, the order of precedence is:
 - 1.1.a) any Variation to this Contract agreed between the parties pursuant to clause 022
 - 1.1.b) the Contract;

1.1.c) the Schedules; and

1.1.d) the Appendices.

- 1.1. If there is any conflict or inconsistency between this Contract and any Cleaning Station Works Order, this Contract prevails.
- 1.2. If there is any conflict or inconsistency between information contained within the documents having the same level of precedence, the information contained in later documents will prevail over information contained in earlier documents.

2. APPOINTMENT

Appointment

- 2.1. The Lead Agency appoints the Supplier to be a Supplier under this Contract and to provide the Goods and Services in Schedule A to Participating Agencies in accordance with this Contract.
- 2.2. The Supplier accepts this appointment.
- 2.3. The Supplier acknowledges that:
 - a. the Lead Agency may appoint one or more additional Suppliers during the Term to provide the Goods and Services to the Participating Agencies, and the appointment of the Supplier and any additional Supplier is non-exclusive;
 - b. under this contract a Participating Agency does not guarantee any quantity of work and the Supplier is not required to undertake any work unless it has received a Cleaning Station Works Order in accordance with this Contract; and
 - c. by accepting the appointment in Clause 2.2, the Supplier acknowledges that it has not relied on any representation made, or information provided to it, by a Participating Agency that has not been independently verified by the Supplier; and
 - d. the Lead Agency expressly disclaims any representation, warranty or undertaking, express or implied, as to the value, volume or nature of Goods and Services to be procured by the Participating Agencies under this Contract.

1. SYNDICATION

Benefit of this Contract

- 1.1. The Supplier acknowledges that the terms of this Contract are intended to confer benefits on each Participating Agency pursuant to the Contracts (Privity) Act 1982 and are enforceable by each Participating Agency.
- 1.2. Despite Clause 3.1, the Supplier acknowledges that:
 - a. the Lead Agency is entitled to exercise all rights, powers, authorities, discretions or remedies conferred on the Lead Agency (or any other Participating Agency) by this Contract or any applicable Law as if the Lead Agency were the sole beneficiary of the promises made and the obligations owed by the Supplier under this Contract (including any Cleaning Station Works Order);

- b. where a Participating Agency may, or is required to, provide any information, give a notification, make a request or take an action, the Lead Agency may provide that information, give the notification, make the request or take the action; and
- c. the Lead Agency may bring an action against the Supplier to enforce any obligation owed to a Participating Agency by the Supplier.

Becoming a Participating Agency

1.1. An Eligible Agency becomes a Participating Agency by:

- a. signing a Letter of Accession substantially in the form in Schedule D;
- b. providing a signed copy of that Letter of Accession to the Lead Agency and the Supplier; and
- c. receiving a Notice in accordance with Clause 21 (Notice) from the Lead Agency that the Lead Agency consents to the Eligible Agency becoming a Participating Agency.

1.1. The Notice from the Lead Agency described in Clause 3.3(c) will also be provided to the Supplier.

1.2. The terms and conditions of this Contract will apply to each Participating Agency and:

- a. the obligations of the Supplier are owed to each Participating Agency severally and separately (and not jointly with any other Participating Agency).
- b. no Participating Agency will be liable to the Supplier for the obligations of any other Participating Agency.

1.1. No commitment or guarantee is given that any Eligible Agency will participate in or procure any volume of goods/services during the term of this Contract.

Participating Agency in context

1.2. In this Contract, unless the context otherwise requires, a reference to:

- a. a party is a party to this Contract, being, as the context requires, the Lead Agency or the Supplier;
- b. a Participating Agency or the Participating Agencies is to any and all Participating Agencies (including the Lead Agency) and, in the context of the Goods and Services or a Cleaning Station Works Order, is to the Buyer that is procuring the Goods and Services or that has issued the Cleaning Station Works Order; and
- c. an obligation of a Participating Agency is a reference to an obligation to be performed by that Participating Agency, as procured by the Lead Agency.

The Lead Agency is not responsible for acts of Participating Agencies

1.1. If a Participating Agency fails to comply with any term of this Contract and the Supplier seeks to take action in respect of that failure:

- a. the Supplier will take action against the Participating Agency in accordance with, and subject to, clause 12 (Dispute resolution); and

- b. the Participating Agency will be liable to the Supplier in relation to the failure; and
- c. the Lead Agency will not be liable to the Supplier in relation to the failure.

Participating Agencies' responsibilities

- 1.1. Each Participating Agency has the following responsibilities in relation to the Goods and Services:
 - a. to manage its operational relationship with the Supplier, including in relation to the fulfilment of each Cleaning Station Works Order;
 - b. to notify the Supplier of all relevant policies, guidelines and procedures of the Participating Agency that the Supplier must comply with when providing the Goods and Services under each Cleaning Station Works Order;
 - c. to provide adequate instructions and information to the Supplier to allow it to provide the Goods and Services under each Cleaning Station Works Order;
 - d. to make timely decisions where approvals or consents are reasonably sought from the Participating Agency by the Supplier in providing the Goods the Services under each Cleaning Station Works Order;
 - e. to pay the Charges; and
 - f. to use its best efforts to resolve any dispute directly with the Supplier before involving the Lead Agency in accordance with clause 12 (Dispute resolution).

Agents may procure Services

- 1.1. A Participating Agency may, by notice to the Supplier and the Lead Agency, appoint one or more third parties to procure Goods and Services under a Cleaning Station Works Order on the Participating Agency's behalf and/or receive invoices, as if that agent was a Participating Agency, provided that any such procurement is for the sole benefit of the Participating Agency.

2. CONTRACT TERM

Contract term

- 2.1. This Contract will start on the 20 July and will continue for a period of three years (3) until 19 July 2021 unless:
 - a. it is terminated in accordance with clause 19 (Termination), or
 - b. the parties agree in writing to an extension of this Contract in accordance with clause 4.2

Rights of renewal

- 1.1. This Contract may be extended for an additional two terms of one year each at the sole discretion of the Lead Agency.

- 1.2. The Supplier acknowledges that any extension pursuant to clause 4.1b is at the discretion of the Lead Agency, that there is no obligation at Law or otherwise for the Lead Agency to grant an extension and that the Supplier has no legitimate expectation of any such extension.

2. SUPPLY OF GOODS and SERVICES

Goods and Services

- 2.1. The Supplier will provide the Goods and Services to each Participating Agency in accordance with the terms of this Contract (including any Cleaning Station Works Orders).

Requesting Information

- 2.2. A Participating Agency may contact the Supplier, either orally or in writing, about the Supplier providing the Goods and Services before it decides whether to issue a Cleaning Station Works Order.
- 2.3. Following such contact, the Supplier must promptly provide such information reasonably requested by the Participating Agency at no cost to the Participating Agency.

Quotes

- 2.4. The Participating Agency may at its sole discretion:
 - a. request a Quote from the Supplier for Goods and Services; and/or
 - b. request a Quote from one or more other Suppliers with whom the Lead Agency has a Contract for Goods and Services.
- 1.1. Schedule B (Schedule of Prices) shall be used to price the Quote except as stated in the request for a Quote or as agreed between the Participating Agency and the Supplier.
- 1.2. The Supplier may provide a Quote in response to a Participating Agency's request.
- 1.3. All Quotes will be provided at no cost to the Participating Agency.
- 1.4. All Quotes must specify the estimated timeframe to provide the Goods and Services requested and the Charges for providing the Goods and Services.
- 1.5. All Quotes must be provided to the Participating Agency in writing and, if the Participating Agency chooses to engage the Supplier, must be included in the Cleaning Station Works Order.
- 1.6. For the avoidance of doubt, the purpose of clause 5.4 to 5.9 is to allow a Participating Agency, at its discretion, to run a small secondary procurement process if the Goods and Services required are sufficiently extensive to merit obtaining a Quote from more than one Supplier. A secondary procurement process is not mandatory for a Participating Agency.

If Charges exceed the Quote

- 1.7. The Supplier acknowledges that the Buyer is not obliged to pay any Charges to the Supplier in relation to Goods and Services requested in a Cleaning Station Works Order if those Charges exceed any Quote provided in relation to that Cleaning Station Works Order, unless the Buyer has given its prior written consent in accordance with Clause 5.12.
- 1.8. If the Buyer agrees to allow the Supplier to increase the Charges
 - a. the Supplier will resubmit the Cleaning Station Works Order to the Buyer with the increased Charges; and
 - b. upon receipt the Buyer must promptly advise the Supplier (in writing) if the Cleaning Station Works Order with the increased Charges is accepted.

Cleaning Station Works Order

- 1.1. Each time a Participating Agency wishes to engage the Supplier to provide the Goods and Services, it must submit a Cleaning Station Works Order to the Supplier recording the terms agreed by those parties for the provision of the Goods and Services.
- 1.2. Each Cleaning Station Works Order must record
 - a. the quantity of the Goods required,
 - b. any Services required such as delivery,
 - c. a location for the Goods to be delivered to,
 - d. any charges payable for delivery and / or any other service specified
 - e. the date by which the Goods and Services must be provided,
 - f. the total amount chargeable and terms of payment. Unless otherwise agreed, the Supplier must apply the pricing set out in Schedule B; and
 - g. be substantially in the form of a Cleaning Station Works Order in Schedule C.
- 1.1. Participating Agency and a Supplier will each bear their own costs in respect of preparing, negotiating, agreeing and entering into any Cleaning Station Works Order.

Buyer's obligations

- 1.2. The Buyer must:
 - a. manage its operational relationship with the Supplier, including in relation to the fulfilment of each Cleaning Station Works Order;
 - b. Notify the Supplier of all relevant policies, guidelines and procedures of the Buyer that the Supplier must comply with when providing the Goods and Services under the Cleaning Station Works Order;
 - c. provide the Supplier with any information it has reasonably requested to enable the delivery of the Goods and Services under the Cleaning Station Works Order;
 - d. make timely decisions where approvals or consents are reasonably sought by the Supplier in providing the Goods and Services under the Cleaning Station Works Order; and

- e. pay the Supplier the Charges for the Services as long as the Supplier has delivered the Services and invoiced the Buyer, all in accordance with this Contract.

Suppliers obligations

1.1. The Supplier must

- a. respond promptly, accurately and adequately to any requests for information made by any Participating Agency in relation to the Goods and Services, including requests for advice;
- b. comply with all privacy and other policies and guidelines issued by the Buyer and notified or made available to the Supplier in providing the Goods and Services under a Cleaning Station Works Order;
- c. supply Goods and Services which meet the Description of Goods and Services in Schedule A, the requirements of this Contract, and in accordance to any Cleaning Station Works Order.
- d. deliver the Goods and Services to the Delivery Address stated in the Cleaning Station Works Order, or such other address the Buyer specifies, on time, and for the Charges.

- 1.1. If a warranty or maintenance obligation (including a warranty from a manufacturer) applies in relation to the Goods or any items incorporated into or supplied with the Goods, the Supplier must ensure that the benefit of the warranty or obligation is passed on to the Buyer.

Both Parties' obligations

1.2. The Participating Agency and the Supplier agree to:

- a. act in good faith and demonstrate honesty, integrity, openness and accountability in their dealings with each other;
- b. discuss matters affecting this Contract or the delivery of the Goods or Services, whenever necessary;
- c. notify each other immediately of any actual or anticipated issues that could:
 - i. impact on the performance of its obligations under this Contract, including the provision or quality of the Goods or Services or the Charges;
 - ii. receive media attention; and
- a. comply with all applicable Laws and regulations.

Timely Performance and Delay

- 1.1. The Supplier will ensure that the Goods and Services requested under a Cleaning Station Works Order are provided on or before the date specified for performance (if any) in the Cleaning Station

Works Order and, if no date is specified, within a reasonable time after the issue of the Cleaning Station Works Order. It is essential that the Goods are delivered on time.

1.2. If the Supplier considers that it is (or is likely to be) prevented or delayed from achieving the date for performance specified in a Cleaning Station Works Order (Delay), it will:

a. immediately provide notice verbally or in writing to the Buyer, setting out:

- i. the cause of the Delay and its expected duration;
- ii. the effect of the Delay on its ability to perform its obligations under the Cleaning Station Works Order;
- iii. what extension, if any, to the relevant date is being sought;
- iv. what steps, if any, the Buyer may take to mitigate the effect of the Delay; and
- v. take all reasonable steps necessary (including by the allocation of additional resources) to eliminate or avoid the Delay and, in all cases, mitigate its effects.

a. If the Supplier and Buyer agree that the Delay is acceptable or wish to amend the Date

- i. the Supplier will resubmit the Cleaning Station Works Order to the Buyer with the amended date; and
- ii. upon receipt of the Cleaning Station Works Order with the amended date, the Buyer must promptly advise the Supplier in writing if it is acceptable.

1.1. If the Supplier does not achieve the date (as amended from time to time) and the Buyer's acts or omissions, or those of its Personnel or third parties acting on its behalf, have not caused the Supplier to fail to achieve the date, the Buyer may, without prejudice to any other right or remedy, suspend payment of any Charges relating to that Cleaning Station Works Order until the Supplier remedies the relevant failure.

Quality Standards

1.2. The Supplier must provide the Goods and Services to a standard that reaches or exceeds the specified standard in Schedule A.

1.3. In particular, the Goods must:

- a. be of merchantable quality and free from defects in design, materials or construction;
- b. be fit for the purposes for which they are intended to be used;
- c. comply with any sample of the Goods provided by the Supplier, except if the Buyer has agreed otherwise in writing;
- d. be new and unused, unless the Buyer has agreed otherwise in writing or as set out in Schedule A; and

- e. be packaged so as to protect the contents and keep them clean, dry and in a new condition until they are first used, if appropriate.

1.1. In relation to the Services, the Supplier must:

- a. provide the Services diligently, efficiently, effectively and in accordance with Industry Best Practice;
- b. act in the best interests of the Buyer who issued the Cleaning Station Works Order in the provision of Services to that Buyer;
- c. provide information as outlined in Schedule A (Reporting) to the Lead Agency;
- d. keep the Lead Agency informed of all matters of which it ought reasonably to be made aware, and provide such information in relation to the provision of Goods and Services as may reasonably be required by the Lead Agency or by any Buyer with respect to the provision of Goods and Services to that Buyer, including under any Cleaning Station Works order between the Supplier and the Buyer; and
- e. provide the Services to the reasonable satisfaction of the Buyer who issued the Cleaning Station Works Order.

Spare parts

- 1.1. If stated in Schedule A or in any Cleaning Station Works Order, the Supplier must maintain an adequate stock of spare parts and equipment for the Goods, for supply to the Buyer as and when required.

2. ACCEPTANCE AND REJECTION OF GOODS

Inspection and acceptance

- 2.1. The signing of a delivery note by any of the Buyer's Personnel does not indicate the Buyer's acceptance of the Goods or Services.
- 2.2. If, following the Buyer's inspection of the Goods, any of the Goods do not meet the requirements of this Contract, then the Buyer may, within a reasonable time after completing the inspection, do any of the following at the Buyer's option, but at the Supplier's cost:
 - a. require the Supplier to repair the Goods;
 - b. require the Supplier to replace the Goods; or
 - c. reject the Goods.
- 1.1. The Buyer must give Notice to the Supplier if it decides to exercise any of the options under clause 6.2.

Repair or replacement

- 1.2. Subject to the Warranty Period and Conditions set out in Schedule A, if the Supplier receives a Notice from the Buyer to repair or replace the Goods, the Supplier must promptly repair or replace the Goods in question so that the Goods (or replacement Goods) comply with Clauses 5.23 and 5.24.
- 1.3. If the Buyer is not satisfied with the Supplier's progress in repairing or replacing the Goods, the Buyer may either:
 - a. reject the Goods, in which case clauses 6.6 to 6.7 will apply; or
 - b. arrange for the Goods to be repaired by someone else, in which case the Supplier will reimburse all costs and expenses incurred by the Buyer in doing so.

Rejection

- 1.1. If the Supplier receives a Notice from the Buyer rejecting the Goods, it must remove any rejected Goods from the Buyer's site at its own risk and expense. If the Supplier does not remove the rejected Goods within 15 Business Days of Notice of rejection, the Buyer may return the Goods and recover from the Supplier any cost and expense incurred.
- 1.2. If the Buyer rejects any Goods, the Supplier, at the Supplier's cost, will do whichever one of the following the Buyer elects. The Buyer must state the action required in its Notice issued under clause 6.3
 - a. provide a full refund of the Charges paid for the rejected Goods, within 10 Business Days of the Buyer electing to receive a refund; or
 - b. provide a credit for the Charges paid for the rejected Goods, against the Charges payable for other Goods; or
 - c. promptly replace the rejected Goods with Goods that meet the requirements of this Contract.

No limitation

- 1.1. The Buyer's rights under clauses 6.2 to 6.7 are in addition to, and do not limit, any other rights or remedies the Buyer may have.

2. CHARGES AND PAYMENT

Charges

- 2.1. Schedule B (Schedule of Prices) shall be used to calculate the Charges except where the Participating Agency and the Supplier have agreed otherwise.

- 2.2. The Charges comprise the total amount payable by the Buyer for the Goods and Services.
- 2.3. Unless otherwise stated in the Cleaning Station Works Order the Charges for the Goods and Services include all of the following:
 - a. costs of shipping, carriage and freight;
 - b. insurance charges;
 - c. customs duties and clearance charges; and
 - d. other costs incurred by the Supplier in delivering the Goods and Services to the Buyer.

Invoices

- 1.1. The obligation to pay the Charges arises when the Buyer receives a valid tax invoice from the Supplier for the Goods and Services procured by the Buyer.
- 1.2. The Supplier must provide valid tax invoices to the Buyer for all Charges on the dates or at the times specified in the Cleaning Station Works Order. The Buyer has no obligation to pay the Charges set out in an invoice, which is not a valid tax invoice. To be valid a tax invoice must:
 - a. clearly show all GST due;
 - b. be in New Zealand currency, or the currency stated in Schedule C;
 - c. be clearly marked 'Tax invoice';
 - d. contain the Supplier's name, address and GST number, if the Supplier is registered for GST;
 - e. contain the Buyer's name and address and be marked for the attention of the person stated in Schedule C;
 - f. state the date the invoice was issued;
 - g. name this Contract and provide a description of the Goods and Services delivered;
 - h. contain the Buyer's contract reference or purchase order number if there is one;
 - i. state the Charges due, calculated correctly; and
 - j. be supported by GST receipts if Expenses are claimed and any other verifying documentation reasonably requested by the Buyer.

Payment

- 1.1. Each correctly rendered invoice will be payable on or before the 20th day of the month following the month in which the invoice was received; and

- 1.2. The Buyer will have no obligation to pay any Charges which are invoiced more than 90 days after the date that such amount was required to be invoiced under the Cleaning Station works Order.
- 1.3. The Supplier may only invoice a Buyer for any Expenses at the cost actually incurred by the Supplier.

Invoice disputes

- 1.4. If a Buyer or the Supplier disputes an invoice:
 - a. it may withhold the disputed sum until the dispute is resolved;
 - b. the dispute will be resolved in accordance with Clause 12 (disputes) and
 - c. it will pay the undisputed portion in accordance with Clause 7 (Charges and Payment).
- 1.1. The Supplier will not be excused from performing its obligations under this Contract while an invoice is disputed by a Buyer.

Taxes

- 1.2. Except for any GST payable by a Buyer, any present or future tax, levy, impost, duty, charge, assessment or fee of any nature (including applicable interest and penalties) payable in connection with this Contract under any Law is to be paid by the Supplier and not passed on to a Buyer unless otherwise expressly agreed in writing by the Buyer.
- 1.3. The Buyer may deduct from any payment to be made to the Supplier any withholding taxes or other deductions that it is required by Law to make.

Suspension of payment

- 1.4. Without prejudice to any other right or remedy that may be available to a Buyer, a Buyer may suspend payment of all or any part of the Charges if the Buyer has notified the Supplier that the Supplier is in Material Breach, until that Material Breach is remedied.
- 1.5. If the Material Breach is not capable of remedy the Buyer and the Supplier agree to treat the Charges as being in dispute then Clause 12 will apply.

2. OWNERSHIP AND RISK

Ownership of Goods

- 2.1. Ownership in the Goods passes to the Buyer on the earlier of:
 - a. the date the Buyer has paid the Charges for those Goods;
 - b. the date those Goods have been delivered as specified in the Cleaning Station Works Order; or

- c. as agreed in the Cleaning Station Works Order.
- 1.1. Risk in the Goods passes to the Buyer on the date those Goods have been delivered.
 - 1.2. Ownership and risk in any Goods rejected by the Buyer under clauses 6.6 to 6.7 will pass back to the Supplier as follows:
 - a. if the Buyer has paid the Charges for those rejected Goods, once the Supplier has provided a refund, credit or replacement in accordance with clause 6.7, and
 - b. in all other cases, when the Goods are collected from the place to which they were delivered.
 - 1.1. Ownership of any replaced Goods by the Supplier under clauses 6.2 to 6.5 will pass back to the Supplier once the Supplier has delivered the replacement Goods.

2. WARRANTY

Supplier warranties

- 2.1. The Supplier warrants that:
 - a. supply of the Goods and Services in accordance with this Contract will not infringe the rights of any person;
 - b. when ownership is stated to pass in this Contract, full ownership of the Goods passes to the Buyer and no-one else has any rights in the Goods;
 - c. any documentation supplied with the Goods and Services is adequate (in terms of both quantity and quality) to enable the Buyer to use and maintain the Goods in the manner intended by the Buyer;
 - d. all information provided by the Supplier to the Buyer is accurate; and
 - e. the Supplier has told the Buyer about any Conflict of Interest relating to the supply of Goods and Services under this Contract.
- 1.1. The Supplier represents, warrants and undertakes that:
 - a. it will perform its obligations under this Contract with due care, skill, promptness and diligence at all times;
 - b. it will comply with the Description of Goods and Services, as stated in Schedule A;
 - c. it has, and will have throughout the Term, sufficient Personnel to supply the Goods and Services and to perform its other obligations under this Contract;
 - d. it, and each of its Personnel engaged in the provision of the Goods and Services
 - i. has and will have throughout the Term, the necessary expertise and all necessary governmental, regulatory or other approvals, permissions, consents,

- licences, qualifications, accreditations and requirements to provide the Services and perform its other obligations under this Contract;
- ii. will comply with all health, safety, security and other policies, codes of conduct, procedures and reasonable directions as may be reasonably required by a Buyer, when the Supplier enters onto land managed by the Buyer;
 - a. it will comply with the requirements of all Laws as they relate to the provision of Goods and Services by the Supplier;
 - b. the possession or use of any item of Intellectual Property supplied or licensed by it, or the use of any item of Intellectual Property by it to perform its obligations under this Contract, will not infringe the rights of any third party;
 - c. all Documentation and any information and data reported to a Participating Agency will be accurate, complete and Fit for Purpose;
 - d. there are no existing agreements, undertakings or arrangements which prevent it from entering into this Contract, or which would impede the performance of its obligations under this Contract, or that it would breach by entering into this Contract;
 - e. it is not (and nor is any of its Personnel) a party to any litigation, proceedings or disputes which could adversely affect its ability to perform its obligations under this Contract;
 - f. it has not offered any inducement in connection with the entering into or negotiation of this Contract, and will not offer any inducement in connection with the supply of Goods and Services to a Participating Agency;
 - g. in responding to the RFT and establishing the Charges, such decisions and prices were arrived at independently and without collusion; and
 - h. all representations, statements and warranties made in the RFT Response were true and correct when provided to the Lead Agency.

General warranties

1.1. Each Party represents, warrants and undertakes that:

- a. it has full power, capacity and authority to execute, deliver and perform its obligations under this Contract;
- b. it has, and will continue to have, all the necessary consents, permissions, licences and rights to enter into and perform its obligations under this Contract; and
- c. this Contract constitutes its legal, valid and binding obligations and is enforceable in accordance with its terms.

1.1. The warranties, representations and undertakings set out in Clauses 9.1, 9.2 and 9.3 will be deemed to be given by the Supplier continuously throughout the Term.

1.2. Each Party will promptly notify the other if at any time during the Term it breaches any of the warranties, representations and undertakings in Clauses 9.1, 9.2 and 9.3.

- 1.3. All warranties (statutory, express or implied) which are not expressly referred to in this Contract are excluded to the fullest extent permitted by the Law.

2. INTELLECTUAL PROPERTY

Intellectual Property owned by Supplier

- 2.1. The Participating Agencies acknowledges that all:

- a. Intellectual Property held by the Supplier before the Start Date;
- b. Intellectual Property developed independently from this Contract by the Supplier, and that is not developed, commissioned or created under or in connection with this Contract; and
- c. adaptations and modifications to the Intellectual Property described in Clauses 10.1(a) and (b)

remains the Supplier's sole and exclusive property (Supplier IP).

- 1.1. To the extent that a Participating Agency needs to use any of the Supplier IP to receive the full benefit of the Goods and Services, the Supplier grants to the Participating Agency a royalty-free, non-exclusive licence (including, if agreed in a Cleaning Station Works Order, the right to sublicense) to use, copy, modify and distribute during the Term any Supplier IP provided to the Participating Agency by or on behalf of the Supplier.

Intellectual Property owned by the Lead Agency

- 1.2. The Supplier acknowledges that each Participating Agency or its licensor has, and continues to have, sole and exclusive ownership of all Intellectual Property rights in all of that Participating Agency's Agency Information (Pre-Contract Participating Agency IP, and in the case of the Lead Agency, Pre-contract Lead Agency IP).
- 1.3. All Intellectual Property created or developed by the Supplier or its Personnel or Subcontractors in providing the Goods the Services to any Participating Agency will be owned by the Lead Agency from the date the Intellectual Property is created or developed (Post-contract Lead Agency IP and, together with the Pre-contract Lead Agency IP, the Lead Agency IP).
- 1.4. If the Supplier (or any of its Subcontractors) has under any Law any right in or claim to any of the Lead Agency IP or holds any of the Lead Agency IP, the Supplier (by itself and for its Subcontractors):
 - a. assigns to the Lead Agency all of its rights, title and interest in and to that Lead Agency IP from the date it was created or developed; and
 - b. waives all right of lien or similar rights as may now or later be claimed in that Lead Agency IP; and
 - c. waives all of its moral rights under Part 4 of the Copyright Act 1994 in that Lead Agency IP, and the Supplier will sign all documents and do all acts and things that are necessary to give effect to this Clause 10.5.

- 1.1. To the extent that the Supplier needs to use any of the Pre-Contract Participating Agency IP, or the Lead Agency's IP for the purpose of performing its obligations under this Contract, the Participating Agency and the Lead Agency grant to the Supplier, a royalty-free, non-exclusive, non-transferable licence to use and store that pre-Contract Participating Agency IP and the Lead Agency's IP for the sole purpose of performing its obligations under this Contract during the Term.

Intellectual Property owned by third parties

- 1.2. To the extent that the Supplier needs to use any Intellectual Property held or owned by a third party (Third Party IP) in performing the Services under a Cleaning Station Works Order issued by a Participating Agency, the Supplier will use its best endeavours to obtain the fullest rights of use and licence of that Third Party IP (on terms and at a cost to be agreed with the Participating Agency) as are necessary for the provision of those Goods and Services for the benefit of the Participating Agency.

2. LIABILITY

Indemnity

- 2.1. The Supplier will, to the extent permitted by Law, indemnify the Participating Agency against all Losses suffered or incurred by that Participating Agency as a result of any:
 - a. unlawful, malicious or negligent act or omission by the Supplier;
 - b. personal injury, sickness, death or loss of, or damage to, tangible property due to an act or omission of the Supplier; or
 - c. any other breach by the Supplier of its obligations under this Contract.
- 1.1. The Supplier will, subject to clause 11.3, indemnify the Participating Agency against all Losses suffered or incurred by the Participating Agency as a result of any claim that the possession or use of any Intellectual Property supplied or licensed by the Supplier, or the use of any Intellectual Property used to provide the Goods and Services, infringes any third party's rights.
- 1.2. The Supplier will have no liability under clause 11.2 to the extent that any IP Claim arises from any:
 - a. modification by the Participating Agency of any item of Intellectual Property supplied or licensed by the Supplier without the approval of the Supplier;
 - b. use by a Participating Agency of Intellectual Property supplied or licensed by the Supplier for any purpose disallowed by this Contract or the applicable Intellectual Property licence (but only if the licence has been provided to the Participating Agency prior to such use); or
 - c. use of Intellectual Property used to provide the Goods and Services if and to the extent that Intellectual Property was supplied by a Participating Agency.

IP Claims

- 1.1. In the event of a claim (an IP Claim):

- a. the affected Participating Agency, if it is not the Lead Agency, will give the Lead Agency notice of the IP Claim as soon as practicable.
 - b. the affected Participating Agency will give the Supplier notice of the IP Claim as soon as practicable and, to the extent permissible by Law, permit the Supplier (at the Supplier's cost) to handle all negotiations for settlement and to control and direct any litigation that may follow (Control of the IP Claim);
 - c. if the Supplier has Control of the IP Claim:
 - i. the affected Participating Agency will provide all reasonable assistance to the Supplier (at the Supplier's cost) in the handling of any negotiations and litigation; and
 - ii. the Supplier will keep the affected Participating Agency informed of the defence or negotiations of the IP Claim and diligently conduct any litigation or negotiations, using competent counsel and in a manner that does not adversely affect the name or reputation of any Participating Agency;
 - a. the Supplier will not enter into any settlement or compromise in relation to the IP Claim without the prior written consent of the affected Participating Agency (which will not be unreasonably withheld); and
 - b. the Supplier will notify the Lead Agency of the IP Claim, and the outcome within 5 Business Days of the claim being concluded.
- 1.1. If any IP Claim disrupts a Participating Agency's use or enjoyment of any Goods or Service, the Supplier will (unless otherwise requested by the Lead Agency), at its own expense and at its option, immediately:
- a. obtain for the Participating Agency the legal right to continued use of the infringing materials; or
 - b. replace, modify or resupply the infringing materials so that there is no further infringement, without adversely affecting the performance or functionality of those materials.

Maximum liability of a Buyer

- 1.1. In addition to its obligation to pay the Charges, the maximum aggregate liability of each Buyer to the Supplier under or in connection with a Cleaning Station Works Order will be, in respect of all Losses, limited to the total Charges paid and payable under the Cleaning Station Works Order.

Maximum liability of the Supplier

- 1.2. The maximum aggregate liability of the Supplier to each Buyer for all Losses under or in connection with a Cleaning Station Works Order in respect of all claims will not exceed 3 times the total charges paid and payable under the Cleaning Station Works order

Exclusions on liability

- 1.3. The limitations on liability set out in clauses 11.6 and 11.7 will not limit the liability of:
 - a. the Supplier under clauses 11.1 and 11.2 (other than in respect of negligent acts or omissions under clause 11.1(a) and breach by the Supplier of its obligations under this Contract under clause 11.1(c), which are subject to the limitations of liability in clauses 11.6 and 11.7);
 - b. the Supplier for any fraudulent act or omission; or
 - c. either party for any breach of confidentiality.

Categories of loss

- 1.1. Irrespective of how liability arises, no Participating Agency will, under any circumstances, be liable for any indirect loss or damage (including consequential loss) arising under or in connection with this Contract.
- 1.2. No Participating Agency will, under any circumstances, be liable for any loss of profits or loss of revenue suffered by the Supplier in connection with this Contract.
- 1.3. Losses relating to administration, operations, fines and penalties arising from the Supplier's act or omission will be considered direct loss or damage that the Participating Agency is not prevented from recovering by any term of this Contract.

Force Majeure Event

- 1.4. The Participating Agency and the Supplier (in clauses 11.12, 11.13 and 11.14 referred to as a party) will not be liable to the other for any failure to perform its obligations under this Contract during the time and to the extent that such performance is prevented, wholly or substantially, by reason of any Force Majeure Event.
- 1.5. The party subject to the Force Majeure Event (the non-performing party) must:
 - a. notify the other party (and, if the non-performing party is the Supplier, all affected Participating Agencies) as soon as practicable after the Force Majeure Event occurs and provide full information concerning the Force Majeure Event, including the extent of its inability to perform, an estimate of the time likely to be required to overcome the Force Majeure Event and the steps the non-performing party will take to comply with clause 11.13b and 11.13c;
 - b. use all reasonable endeavours to mitigate and remedy the effect of the Force Majeure Event and minimise the impact of the event on the other party (including, if the non-performing party is the Supplier, on the Participating Agencies); and
 - c. use all reasonable endeavours to perform its obligations under this Contract as far as is practicable, and a Participating Agency will not be required to pay Charges to the extent that the Supplier fails to perform its obligations to that Participating Agency due to a Force Majeure Event.
- 1.1. If the non-performing party affected by the Force Majeure Event is the Supplier, each affected Participating Agency may, to the extent that any Goods or Services requested by the Participating

Agency under a Cleaning Station Works Order have not been delivered and delivery has, or will be, delayed by the Force Majeure Event, terminate the Cleaning Station Works Order, by notice to the Supplier within five Business Days following receipt by the Participating Agency of Notice of the Force Majeure Event, at no cost to the Participating Agency, subject to the Participating Agency paying for Goods and Services delivered up to the date of the Force Majeure Event.

2. DISPUTE RESOLUTION

Dispute

- 2.1. In the event of any dispute, difference or question arising out of, or in connection with, this Contract or its formation (a dispute):
- a. the relevant Participating Agency or Lead Agency if applicable and the Supplier will each use its best efforts to resolve the dispute through good faith negotiations and informal dispute resolution techniques, and will continue to perform its obligations under this Contract as far as possible as if the dispute had not arisen, pending final settlement of the dispute; and
 - b. neither the Participating Agency, the Lead Agency nor the Supplier will commence any formal proceedings relating to the dispute unless it has complied with Clauses 12.3 and 12.4.

Escalation

- 1.1. The Participating Agency, or the Lead Agency and the Supplier will each advise its respective Representative (or equivalent person) of a dispute on the day that the dispute arises.
- 1.2. The Representatives will use their best efforts to resolve the dispute in accordance with clause 12.1b
- 1.3. If the dispute is not resolved:
 - a. within 10 Business Days, the dispute will be escalated to senior Representatives of the Supplier and the Participating Agency with delegated authority to resolve the dispute;
 - b. within a further 10 Business Days, the dispute will be escalated to the Lead Agency's Contract Manager, and the Supplier's Chief Executive.

Mediation

- 1.1. If a dispute is not resolved under Clauses 12.3 and 12.4, the Supplier or the Participating Agency or the Lead Agency may, by written notice to the other, refer the dispute to mediation, or they may agree in writing to refer the dispute to mediation.
- 1.2. The mediation will be conducted by a single mediator in accordance with the terms of the Resolution Institute Standard Mediation Agreement and at a fee to be agreed by the parties.

- 1.3. If the Supplier and the Participating Agency or Lead Agency fail to agree on the identity of the mediator and/or the mediator's fee within five Business Days of referral of the dispute to mediation, the mediator will be chosen, and the mediator's fee determined, by the chairperson for the time being of the Resolution Institute (or his or her nominee).

Urgent relief

- 1.4. Nothing in this Clause 12 will preclude either the Supplier or the Participating Agency or the Lead Agency from taking immediate steps to seek urgent relief before a New Zealand court.

2. CONTRACT MANAGEMENT

Contract Manager

- 2.1. The persons named in Schedule A (Appendix B) as the Contract Managers are responsible for managing the Contract, including:
 - a. managing the relationship between the Parties;
 - b. overseeing the effective implementation of this Contract; and
 - c. acting as a first point of contact for any issues that arise.

Changing the Contract Manager

- 1.1. If a Party changes its Contract Manager it must give Notice of the change to the other Party, including the name and contact details of the replacement, within 5 Business Days of the change.

2. INFORMATION MANAGEMENT

- 2.1. The Supplier must:
 - a. keep and maintain Records in accordance with prudent business practice and all applicable laws
 - b. make sure the Records clearly identify all relevant time and Expenses incurred in providing the Goods
 - c. make sure the Records are easy to access, and
 - d. keep the Records safe.
- 1.1. The Supplier must give information to the Participating Agency relating to the Goods and Services that the Participating Agency reasonably requests. All information provided by the Supplier must be in a format that is usable by the Participating Agency and delivered within a reasonable time of the request.

- 1.2. The Supplier must co-operate with the Participating Agency to provide information immediately if the information is required by the Participating Agency to comply with an enquiry, or its statutory, parliamentary or other reporting obligations.
- 1.3. The Supplier must make its Records available to the Participating Agency during the term of the Contract and for 7 years after the End Date (unless already provided to the Participating Agency earlier).
- 1.4. The Supplier must make sure that Records provided by the Participating Agency, or created for the Participating Agency, are securely managed and securely destroyed on their disposal.

2. REPORTING

- 2.1. At the end of each Contract Quarter, the Supplier must provide a report to the Lead Agency Contract Manager that at a minimum includes the following information
 - a. Details of any Goods and Services ordered by any Participating Agency, including the Charges; and
 - b. The Delivery Date of any Goods and Services ordered by any Participating Agency.

1. THE CONTRACTUAL RELATIONSHIP

Independent contractor

- 1.1. Nothing in this Contract constitutes a legal relationship between the Parties of partnership, joint venture, agency, or employment. The Supplier is responsible for the liability of its own, and its Personnel's, salary, wages, holiday or redundancy payments and any GST, corporate, personal and withholding taxes, ACC premiums or other levies attributable to the Supplier's business or the engagement of its Personnel.

Neither Party can represent the other

- 1.2. Neither Party has authority to bind or represent the other Party in any way or for any purpose.

Permission to transfer rights or obligations

- 1.3. The Supplier may transfer any of its rights or obligations under this Contract only if it has the Lead Agency's prior written approval. The Lead Agency will not unreasonably withhold its approval.

2. INSURANCE

Where insurance is a requirement

- 2.1. During the Term and for a period of two years following the termination of this Contract, the Supplier will, at its own expense, ensure that it maintains adequate insurance in respect of its potential liability for loss or damage under this Contract in accordance with Industry Best Practice, but as a minimum the Supplier must hold:
 - a. Public liability insurance (minimum cover \$2,000,000nzd) in respect of the Goods and Services provided under this Contract and other insurance to cover standard commercial risks (including in respect of Documentation which is the property of a Participating Agency and in the Supplier's possession or control);
 - b. Professional indemnity insurance (minimum cover \$2,000,000nzd); and
 - c. Statutory liability insurance (minimum cover \$2,000,000nzd).
- 1.1. The Supplier will, at the Lead Agency's request, promptly provide satisfactory evidence that it has complied with its obligations in this clause 171.
- 1.2. The Buyer may require the Supplier to hold additional insurance to those listed above in Clause 17.1, and this will be specified in the Cleaning Station Works Order.

2. CONFLICTS OF INTEREST

Warranty

- 2.1. The Supplier warrants that, as at the Start Date, it has no Conflict of Interest in supplying the Goods and Services or entering into this Contract.

Identifying and responding to Conflicts of Interest

- 2.2. The Supplier must, upon receipt of a Cleaning Station Works Order from a Participating Agency, make diligent inquiry whether it has any actual, potential or perceived Conflicts of Interest if it were to provide the Goods and Services specified in the Cleaning Station Works Order.
- 2.3. If the Supplier has an actual, potential or perceived Conflict of Interest, the Supplier must immediately Notify the Participating Agency who issued the Cleaning Station Works Order and must not commence any work under the Cleaning Station Works Order without the prior written approval of the Participating Agency.
- 2.4. If the Participating Agency approves in writing the Supplier continuing with the provision of the Goods and Services under the Cleaning Station Works Order, the Supplier must take all reasonable steps to ensure that:
 - a. a situation does not arise that might result in an actual, potential or perceived Conflict of Interest; and
 - b. any Personnel or Subcontractors of the Supplier do not engage in any activity or obtain interests that might result in the Supplier or such Personnel or Subcontractors having an actual, potential or perceived conflict of interest,

that cannot be managed to the satisfaction of the Participating Agency who issued the Cleaning Station Works Order.

- 1.1. If, after commencing work under the Cleaning Station Works Order, the Supplier becomes aware of any matter, circumstance, interest or activity that may give rise to any actual, potential or perceived Conflict of Interest, the Supplier must immediately Notify the Buyer of all relevant details and must immediately cease work under the Cleaning Station Works Order until such time as the Buyer provides written Notice confirming that the Supplier may continue to perform the work under the Cleaning Station Works Order or terminates the engagement of the Supplier in respect of the Goods and Services to be provided under the relevant Cleaning Station Works Order in accordance with Clause 18.6.
- 1.2. If the Buyer who issued a Cleaning Station Works Order considers that the Supplier has an actual Conflict of Interest of sufficient gravity that the Supplier can no longer provide the Goods and Services for it, the Buyer may, by written Notice to the Supplier, terminate the Cleaning Station Works Order with immediate effect on the date of termination specified in that Notice.
- 1.3. Any Notice given by the Participating Agency pursuant to Clauses 18.3 or 18.5 may require the Supplier to take steps reasonably required by the Participating Agency to manage the Conflict of Interest, and the Supplier must provide written Notice confirming its acceptance of those steps before it may commence or continue to provide the Goods and Services under that Cleaning Station Works Order.
- 1.4. The Participating Agency and the Supplier must each pay their own costs in relation to managing a Conflict of Interest.

Obligation to tell the Lead Agency

- 1.5. The Supplier must Notify the Lead Agency immediately, and in writing, if any actual, potential or perceived Conflict of Interest arises in relation to the Goods or Services or this Contract.
- 1.6. Upon receipt of this Notice by the Lead Agency, the Lead Agency, the Participating Agency and the Supplier must discuss, agree and record in writing whether it can be managed and, if so, how it will be managed.
- 1.7. Each Party must pay its own costs in relation to managing a Conflict of Interest.

2. TERMINATION

Termination by the Supplier

- 2.1. At any time during the Term of this Contract, the Supplier may Notify the Lead Agency that it wishes to terminate this Contract by giving 20 Business Days' Notice. The Lead Agency will, within 20 Business Days following receipt of the Supplier's Notice, Notify the Supplier whether, in its absolute discretion, it consents to the Supplier's Notice of termination.
- 2.2. If the Lead Agency:
 - a. consents, the Contract will be terminated on a date that is mutually agreed between the Parties, or

- b. does not consent, the Contract will continue in full force as if the Supplier's Notice of termination had not been given.
- 1.1. The Supplier may, in the event of Material Breach of this Contract by the Lead Agency, seek to recover damages, but will continue to fully perform its obligations under this Contract.

Termination by the Lead Agency

- 1.2. The Lead Agency may Terminate this Contract at any time by giving 20 Business Days' Notice to the Supplier.
- 1.3. The Lead Agency may Terminate this Contract by Notice to the Supplier, with immediate effect on the date of Termination specified in that Notice, if the Supplier:
- a. ceases for any reason to continue in business or to supply the Goods and Services;
 - b. is unable to supply the Goods and Services for a period of 20 Business Days or more due to a Force Majeure Event;
 - c. repeatedly fails to perform or comply with its obligations under this Contract, whether those obligations are minor or significant;
 - d. does something, or fails to do something, that, in the Lead Agency's opinion, results in damage to a Participating Agency's reputation or business or the reputation or business of the Crown;
 - e. has a Conflict of Interest that in the Lead Agency's opinion is so material as to impact adversely on the supply of the Goods, the Buyer or the Crown; or
 - f. provides information to a Participating Agency that is misleading or inaccurate in any material respect.
- 1.1. The Lead Agency may terminate this Contract by Notice to the Supplier, with immediate effect on the date of termination specified in that Notice, if the Supplier commits a Material Breach which is
- a. not capable of being remedied (and for the avoidance of doubt, paragraphs (a) and (b) of the definition of "Material Breach" are deemed incapable of being remedied); or
 - b. capable of being remedied but which is not remedied to the satisfaction of the Lead Agency by the time and date specified in the Notice of Material Breach.
- 1.1. A Notice of Material Breach must contain:
- a. a description of the Material Breach;
 - b. if it is capable of being remedied and (if applicable) what is required to remedy it; and
 - c. (if applicable) the time and date by which it must be remedied.

Consequences of Termination of Contract

1.1. In the event of Termination of this Contract

- a. the Supplier will not enter into any new Cleaning Station Works Orders;
- b. each Cleaning Station Works Order entered into on or before the effective date of Termination will remain in full force and effect until it expires or is terminated in accordance with its terms; and
- c. no Participating Agency will be obliged to make any payment to the Supplier except for any Charges payable for Goods and Services supplied pursuant to a Cleaning Station Works Order entered into on or before the effective date of Termination.

1.1. Termination will not, unless otherwise provided in this Contract, affect

- a. the provisions of this Contract relevant to the performance of any Cleaning Station Works Order entered into on or before the effective date of Termination;
- b. any rights and remedies available to either Party which have accrued up to and including the date of Termination; and
- c. the provisions of this Contract which expressly, or by their nature, survive Termination, including the sections titled 'Definitions', 'Entire Agreement', 'Precedence', 'Confidentiality', 'Intellectual Property', 'Liability', 'Dispute Resolution', 'Consequences of Termination' and 'General'.

1.1. After expiry of the Contract or Termination of the Contract for any reason, each Party will, within 5 Business Days of receiving notice from the other Party, return or, if requested, destroy all Documentation, Confidential Information or other property belonging to the Party, and (in the case of the Supplier) to each Participating Agency that issued a Cleaning Station Works Order to the Supplier, except to the extent that any such Documentation, Confidential Information or other property is required to be retained by any Law.

Termination of Cleaning Station Works Order

1.2. The Buyer may terminate a Cleaning Station Works Order for convenience by giving the Supplier at least 20 Business Days prior written Notice.

1.3. The Buyer may terminate a Cleaning Station Works Order by Notice to the Supplier, with immediate effect on the date of Termination specified in that Notice

- a. if the Supplier commits a Material Breach which is:
not capable of being remedied (and for the avoidance of doubt, paragraphs (a) and (b) of the definition of "Material Breach" are deemed incapable of being remedied), or
capable of being remedied but which is not remedied to the satisfaction of the Buyer by the time and date specified in the Notice of Material Breach.
- a. in accordance with Clause 18.6 (Conflict of Interest); or
- b. if the Supplier is unable to supply the Goods and Services for a period of 20 Business Days or more due to a Force Majeure Event.

1.1. A Notice of Material Breach must contain:

- a. a description of the Material Breach;
- b. if it is capable of being remedied and (if applicable) what is required to remedy it; and
- c. (if applicable) the time and date by which it must be remedied.

Consequences of Termination of Cleaning Station Works Order

1.1. In the event of Termination of a Cleaning Station Works Order, the Supplier must

- a. stop supplying the Goods and Services;
- b. comply with any conditions contained in the Notice;
- c. immediately do everything reasonably possible to reduce its losses, costs, and expenses, arising from the Termination of the Cleaning Station Works Order; and

1.1. In the event of Termination of a Cleaning Station Works Order, the Buyer:

- a. will only be liable to pay the Charges that were due for Goods and Services delivered before the effective date of Termination; and
- b. may recover from the Supplier, or set off against sums due to the Supplier, any Charges paid in advance that have not been incurred.

1.1. Termination of a Cleaning Station Works Order will not, unless otherwise provided in this Contract, affect any rights and remedies available to either the Buyer or the Supplier which have accrued up to and including the date of Termination.

1.2. After termination of a Cleaning Station Works Order for any reason, the Buyer and the Supplier will, within 5 Business Days of receiving Notice from the other party, return or, if requested, destroy all Documentation, Confidential Information or other property belonging to the party, except to the extent any such Documentation, Confidential Information or other property is required to be retained by any Law.

2. CONFIDENTIAL INFORMATION

Protection of Confidential Information

2.1. The Supplier and the Participating Agencies confirm that they have adequate security measures to safeguard any Confidential Information they receive from another party from unauthorised access, or use by third parties, and that they will not use or disclose any other party's Confidential Information to any person or organisation other than:

- a. to the extent that such use or disclosure is authorised by this Contract;
- b. if the party from whom the Confidential Information was first received gives prior written approval to the use or disclosure;

- c. to any professional advisor for the purposes of rendering professional services to a party in relation to this Contract;
- d. if the Confidential Information was lawfully known to the recipient prior to the date it was received;
- e. if the Confidential Information becomes available to the recipient from a source other than a party to this Contract or a Participating Agency, provided that the recipient has no reason to believe such source is itself bound by an obligation of confidence to the person that disclosed that information or is otherwise prohibited under Law from disclosing such information;
- f. if the use or disclosure is required by Law (including under the Official Information Act 1982), Ministers or parliamentary convention, so long as the recipient provides Notice of the required disclosure promptly to the party from whom the Confidential Information was first received (if it is permitted to do so by Law); or
- g. in relation to disclosure, if the information has already become public, other than through a breach of the obligation of confidentiality by a Participating Agency or the Supplier.

1.1. The Supplier will:

- a. ensure that all Confidential Information of any Participating Agencies (and any backup archives containing such Confidential Information) in the possession or control of the Supplier from time to time is kept secure and managed and protected and only disclosed or otherwise dealt with in accordance with this Contract;
- b. not use any Agency Information for its own purposes or for any purposes different from those contemplated by this Contract; and
- c. advise the Lead Agency in writing if any Confidential Information of a Participating Agency will be transferred or stored outside New Zealand before such information is transferred and will confirm that the requirements of this clause 19.2 will be met while such Confidential Information is stored outside New Zealand.

Obligation to inform staff

1.1. The Participating Agencies and the Supplier will ensure that their Personnel:

- a. are aware of the confidentiality obligations in this Contract, and
- b. do not use or disclose any of the Participating Agencies or Suppliers' Confidential Information except as allowed by this Contract.

Limited disclosure

1.1. The Supplier may, subject to clause 20.7, disclose the Confidential Information of a Participating Agency to its Subcontractors, Personnel, related entities and professional advisers who need to

know the same for the sole purpose of enabling the Supplier to perform its obligations and exercise its rights under this Contract.

- 1.2. A Participating Agency may, subject to clause 20.7, disclose the Confidential Information of the Supplier to its third-party suppliers, Personnel and professional advisers and any other Participating Agency (including the Lead Agency) who need to know the same in connection with the Services.
- 1.3. The Lead Agency may disclose the Confidential Information to:
 - a. Eligible Agencies and other persons who need to know the same in connection with this Contract, the performance of the Lead Agency's obligations and the exercise of the Lead Agency's rights under this Contract; and
 - b. Eligible Agencies for the purpose of promoting informed procurement practices among Eligible Agencies in relation to the supply of the goods and services.
- 1.1. The Supplier will not disclose a Participating Agency's Confidential Information to any of its Subcontractors, related entities or professional advisers, and a Participating Agency will not disclose the Supplier's Confidential Information to any of its third party suppliers or professional advisers, unless the recipient has given a written confidentiality undertaking to the disclosing party in terms substantially similar to those set out in this clause 20.
- 1.2. Any undertaking given pursuant to clause 20 will be provided to the other party to this Contract or the relevant Participating Agency on request.

2. NOTICES

Delivery of Notices

- 2.1. All Notices to a Party must be delivered by hand or sent by post, courier, fax or email to that Party's address for Notices stated in Clauses 21.4 and 21.5.
- 2.2. The information in Clause 21.4 may be amended by the Lead Agency, and the information in Clause 20.5 may be amended by the Supplier, by Notice to the other Party at any time.
- 2.3. Notices must be signed, or in the case of email sent, by the appropriate manager or person having authority to do so.
- 2.4. The Lead Agency's postal address, physical address and email address is set out below

The Department of Conservation

Person: National Procurement team

Address: 18 Manners Street, Wellington, 6011

Email: procurement@doc.govt.nz

- 2.5. The Suppliers postal address, physical address and email address is set out below

MWDesign Limited

Person: Mike Williams

Address: Studio 205, Hamilton, 3204

Email: mike@mwdesign.co.nz

From 1 August 2018, the address will be

88 Duke Street, Frankton, Hamilton

Receipt of Notices

2.6. A Notice will be considered to be received:

- a. if delivered by hand, on the date it is delivered;
- b. if sent by post within New Zealand, on the 3rd Business Day after the date it was sent;
- c. if sent by post internationally, on the 7th Business Day after the date it was sent;
- d. if sent by courier, on the date it is delivered;
- e. e. if sent by fax, on the sender receiving a fax machine report that it has been successfully sent; or
- f. if sent by email, at the time the email enters the recipient's information system and it is not returned undelivered or as an error.

1.1. A Notice received after 5pm on a Business Day, or on a day that is not a Business Day, will be considered to be received on the next Business Day.

2. GENERAL

Changes to this Contract

2.1. Any change to this Contract is called a Variation. A Variation must be agreed by both Parties and recorded:

- a. in writing and signed by both Parties, or
- b. through an exchange of emails where the authors have delegated authority to approve the Variation.

1.1. For the avoidance of doubt, a Participating Agency that is not the Lead Agency cannot vary the Contract.

Severability

- 1.2. If any term or provision of this Contract is held to be illegal, invalid or unenforceable it will be severed from this Contract without affecting the legality, validity or enforceability of the remaining provisions.

Costs

2. A Party who has an obligation to do anything under this Contract will perform that obligation at its own cost, unless a term of this Contract expressly provides otherwise.

Waiver

- 2.1. If a Party breaches this Contract, and the other Party does not immediately enforce its rights resulting from the breach that:
 - a. does not mean that the Party in breach is released or excused from its obligation to perform the obligation at the time or in the future, and
 - b. does not prevent the other Party from exercising its rights resulting from the breach at a later time.

Remedies cumulative

- 1.1. Except as expressly stated otherwise in this Contract
 - a. the rights, powers and remedies provided in this Contract are cumulative and are not exclusive of any rights, powers or remedies provided by Law or under this Contract; and
 - b. the exercise of any rights, powers and remedies provided in this Contract will not prejudice the exercise of any other right, power or remedy under this Contract or existing at Law.

Signing the Contract

- 1.1. The date of execution is the date this Contract is signed.
- 1.2. The Contract is properly signed if each Party signs the same copy, or separate identical copies.
- 1.3. If this Contract is signed on two separate dates or separate copies are signed, the date of execution is the later of the two dates,
- 1.4. If the Contract is signed on two separate dates, each copy will be deemed to be an original, but both together are to constitute a single instrument.

New Zealand law, currency and time

- 1.5. This Contract will be governed and interpreted in accordance with the laws of New Zealand. All money is in New Zealand dollars. Dates and times are New Zealand time.

Publication of information about this Contract

- 1.6. The Supplier may disclose the existence of this Contract but must obtain the Lead Agency's prior written approval before making reference to the Lead Agency or this Contract in its publications, public statements, promotional material or promotional activities about this Contract.

2. Acceptance of Contract for Cleaning Stations

*By signing
below each
Party accepts
and authorises
this Contract for
Cleaning
Stations*

For and on
behalf of **the
Lead Agency:**

For and on
behalf of the
Supplier:

Signature

Signature

Name: _____

Name: _____

Position: _____

Position: _____

Date: _____

Date: _____



Department of
Conservation
Te Papa Atawhai

Kauri Dieback Cleaning Stations Fabricators Contract.

Schedule A

Description of Goods and Services

Context

- a) Kauri trees, [a native New Zealand Tree] generally grow in the Northern part of the North Island. Native trees are an important part of New Zealand's Ecosystem and Kauri trees are under threat of extinction as a result of a pathogen known as Kauri Dieback.
- b) The plants, animals and ecosystems that Kauri create and support are indirectly under threat from Kauri Dieback, as without Kauri they cannot live and develop the way they do now.
- c) As a result of the importance of Kauri, a number of initiatives and mitigating actions have been commenced under the Kauri Dieback Project with the purpose of *saving Kauri*.
- d) Cleaning Stations are one of the key initiatives under the Kauri Dieback Project.
- e) Cleaning Stations work by providing visitors with an opportunity to remove any dirt from their footwear and then applying a disinfectant solution. The Cleaning Station is located at the entry/exit points of areas of bush that have Kauri trees. The Cleaning Station has been designed to make;
 - i. it easy for visitors to have their footwear cleaned, and
 - ii. visitors aware of the need to clean footwear and has been developed around an analysis of human behaviour to maximise its use.
- a) Cleaning Stations are to be placed on land that is;
 - i. managed by DOC or,
 - ii. land that is not managed by DOC, such as regional parks, or private land.
- a) This Contract is available for syndication (see Clause 3 of the Contract [Syndication]) to other Eligible Agencies who manage public land, such as councils and regional councils so that they can order Cleaning Stations for delivery to their own sites.

Preamble

1. The Goods and Services set out and described in this Schedule A are in scope and are to be delivered in accordance with Cleaning Station Works Order in Schedule C of the Contract.
2. For the avoidance of doubt, only when a Cleaning Station Works Order has been signed by both the Supplier and the Participating Agency should the Supplier proceed with producing the Goods and Services.
3. No Participating Agency guarantees any volume of orders that will be placed under this Contract.
4. The Charges set out in Schedule B shall apply to the Goods and Services defined in this Schedule A, unless otherwise agreed by the Participating Agency and the Supplier.

5. Quotes must be provided in accordance with Clause 5 of the Contract.
6. Geographically it is expected that the Goods, when ordered, will need to be delivered to locations near where Kauri Dieback disease has been detected, which is currently in the Northern part of the North Island.
7. The design of the Cleaning Station is constantly developing and evolving based on *in the field experience* and is therefore subject to improvements during the term of this contract. These design improvements are not in scope of this contract.

Description of Goods and Services to be provided

1 Cleaning station and accessories

The Kauri Dieback Cleaning Station

1.1 A complete Cleaning Station as per the Drawings as provided in Appendix A of this Schedule A and the associated CAD files provided by the Lead Agency to the Supplier. Part number 671-000.

1.1.1 All Cleaning Stations are supplied with the required Accessories and Consumable parts. Should the Buyer have requirements for additional Accessories and Consumable parts these must be ordered separately and stated on each Cleaning Station Works Order [Paragraph 1.9 to 1.11 refers].

1.2 The most recent Drawings and the applicable CAD files shall together be referred to as the Specification.

1.3 The Buyer and the Supplier acknowledge that Lead Agency reserves the right to update the Drawings (Specification) from time to time (refer to Schedule A paragraph 3 [Design Changes]).

1.4 The Supplier agrees to produce the Goods in accordance with Specification or as agreed with the Buyer.

1.5 The Buyer acknowledges that the prices set out in Schedule B[prices] are for Cleaning Stations components that are made from galvanised steel. Subject to the Buyers Delivery Address (such as coastal locations whereby galvanised parts will erode due to the salt air), the Buyer will be provided with the option to have relevant cleaning station components manufactured from Stainless Steel.

1.5.1 The Buyer acknowledges that Cleaning Stations manufactured using Stainless Steel will be subject to price change. This is due to the price differential between galvanised and stainless steel. In such circumstances the Buyer and the Supplier must agree:

- 1.1.i. Whether the applicable cleaning stations components manufactured from stainless steel else invalidate the warranty (paragraph 5.5 – 5.8 refer); and
- 1.1.ii. Agree on the price of the Cleaning Stations in advance of signing a Cleaning Station Works Order.

1.1 All other standard conditions relating to the Warranty, specific to the Cleaning Station are also set out in the Contract and detailed in paragraph 5.5-5.8 of this Schedule A.

1.2 Any special conditions such as, but not limited to, delivery requirements, any other specific warranty matters, payment terms, storage and spares parts must be set out in the Cleaning Station Works Order and must be agreed by the Buyer and the Supplier prior to commencement of the order.

1.3 Minimum order quantities are specified in Schedule B. Minimum order quantities are determined based on aggregate demand across multiple cleaning station works orders and buyers. Once the minimum order quantity for the initial order has been met, the subsequent order price list will be in effect.

Consumables, Parts and Accessories

1.4 The Buyer should specify, on each Cleaning Station Works Order, the quantity of consumables and accessories required for each cleaning station ordered.

1.5 Minimum order quantities are specified in Schedule B.

1.6 The consumable and accessories to the Cleaning Station are listed below.

Item	Part number	Stock status
Hand Brush Assembly	671-027	Held to order
Brush Foot	671-032	Held to order
Brush Hand with scraper blade	671-028	Held to order
Drench Gun Assembly	671-037	Held to order
Drench Gun only	671-033	
Scrubbing brush (roller brush only)	671-821	Held to order
Wet Clean Unit Full Assembly (tredle) (including pump)	671-700	Held to order

Item	Part number	Stock status
Pump Assembly	671-950	Held to order
Access Ramp Assembly (both sides)	671-250	Held to order
Water tank (500l)	671-451	Held to order

Spare parts

1.7 Any requirement for spare parts is to be agreed with the Supplier on each Cleaning Station works Order.

Installation

1.8 The Buyer is responsible for arranging the assembly and installation of a Cleaning Station once it has been delivered to the Buyers Delivery Address.

1.9 The Supplier will provide the Buyer with an assembly procedure manual, which describes the correct assembly procedures for the Cleaning Stations.

1.10 The warranty provisions set out in the Contract and described in paragraph 5, is void if the Buyers installer fails to follow the installation manual, amends the design, is negligent in transport, handling or installation of the station.

2 Transportation and Lead time

Buyers Delivery Address

2.1 Cleaning Stations are to be delivered to a Buyer's specified Delivery Address, as set out in the Cleaning Station Works Order.

Delivery

2.2 A Cleaning Station is to be fabricated and prepared in kitset form for Transportation to the Delivery Address as agreed and set out in each Cleaning Station Works Order.

2.3 Delivery of the Goods, unless otherwise agreed, will be to a 'typical' delivery point such as a third-party or the Buyer's facility (e.g. yard) or publicly accessible delivery point (e.g. a carpark). Any requirements that the Buyer may have to deliver the Goods to locations other than those described would need to be specified by the Buyer and agreed to by the Supplier in the Cleaning Station Works Order.

2.4 Cleaning Stations will be shipped in two parts – the cleaning station and the water tank, as separate units but shipped together.

Delivery Charges

2.5 Costs of transportation to the Buyers specified Delivery Address will be confirmed by the Supplier, once the Delivery Address is confirmed, and must be specified in the Cleaning Station Works Order.

Lead time Initial Order

2.6 For the Initial Order, the Supplier agrees to supply the first Cleaning Station within 90 days of receipt of a fully signed Cleaning Station Works Order.

2.7 The minimum order quantity for the initial orders are set out in Schedule B.

2.8 Once the minimum order quantity has been satisfied then the subsequent order conditions come into effect.

Lead time Subsequent Order

2.9 For the Subsequent Orders, the Lead time will be agreed with each Participating Agency, and subject to current demand, but won't be any more than 90 days.

2.10 The minimum order quantity for the subsequent orders are set out in Schedule B.

2.11 For Subsequent Orders, the Supplier will endeavour to meet the Buyers preferred lead time.

Storage

2.12 Any requirement for storage of any quantity of Cleaning Station must be agreed and specified in the Cleaning Station Works Order.

Performance and improvements

3 Design Changes

Opportunities register

3.1 The Supplier, with input from the Lead Agency, maintain an opportunities register which contains a detailed log of any performance issue that is raised or is identified with any specific cleaning station design, including associated parts and accessories.

3.2 If applicable, Buyers should raise any specific performances issues via the preferred communication channel as set out in Paragraph 4[Communications].

3.3 The Supplier and the Lead Agency will review the performance issue raised and identify a root cause.

3.4 Warranty provisions set out in the Contract and described in Paragraph 5 (5.5 to 5.8] will apply where the root cause of a performance issue is identified as a result of a manufacturer or supplier fault, including where the Cleaning Station, and the Consumable, Parts and Accessories have not been provided to the agreed Specification.

Updates to drawings

3.5 Where Design Improvements have been made to the Cleaning Station and a new Specification issued by the Lead Agency, the Supplier should always confirm with the Buyer as to what Specification will apply before accepting any Cleaning Station Works Order.

3.6 The Lead Agency will introduce design improvements by Notifying the Supplier and all Participating Agencies through the reissue of Schedule A, Appendix A, including where applicable, updated CAD files.

3.7 Clause 4 of Schedule B sets out how the pricing for the design improvements are incorporated.

3.8 Only the Lead Agency is authorised to introduce design improvements or changes.

Review periods

3.9 The Lead Agency and the Supplier will meet at least quarterly to discuss the operations of the contracts, including any issues relating to the performance of the contract.

4 Communications

4.1 All Participating Agencies will be provided access to the Suppliers preferred project system, Basecamp.

4.2 Basecamp provides up to date information to Buyers on the status of any given Cleaning Stations works Order

4.3 Buyers must use Basecamp to record any performance issues specific to the Cleaning Station, Parts or Accessories.

4.4 The Supplier agrees to acknowledge receipt of performance issue within 24 hours (1 business day).

5 Performance Standards

Quality

5.1 All Goods and Services must be produced in accordance to the Specification using the materials specified or as otherwise agreed, such as the use of stainless steel.

5.2 The Cleaning Stations must be free from sharp edges, burrs, finger traps or other poor-quality finishes that could cause injury to users.

Biosecurity

5.3 The Cleaning Stations will be installed in environmentally sensitive areas, and therefore they must be free from all organic matter that may carry diseases.

5.4 The Cleaning Station must also be free of any pests that may be harmful to the native plants and animals.

Warranty and Aftersales support

5.5 The Supplier acknowledges that aftersales may be required from time to time, to inspect the Goods and / or rectify any quality and performance issues after the Goods have been delivered to the Buyers Delivery Address.

5.6 Unless otherwise agreed in each Cleaning Station Works order, the Goods provided shall have a warranty period of 1 year.

5.7 The Warranty period is applicable;

1.1.i. From the date of which the Cleaning Station is delivered to the Buyers Delivery Address; and

1.1.ii. For Cleaning Stations, Parts and Accessories which are manufactured to the most recent Specification;

or

- 1.1.iii. For Cleaning Stations to be delivered to coast areas, manufactured using Stainless Steel (in lieu of Galvanised steel components [paragraph 1.5 refers]); and
- 1.1.iv. From the date of which the Cleaning Station is delivered to the Buyers Delivery Address; and
- 1.1.v. Notwithstanding paragraph 1.5 and 5.7(iii) for Cleaning Stations, Parts and Accessories which are manufactured to the most recent Specification.

For the avoidance of doubt in respect to Paragraph 5.7iii to 5.7v, where a Buyers Delivery Address is deemed to be a coastal location and a high corrosion area, the Warranty conditions apply only where component parts that otherwise would be manufactured out of galvanised steel are manufactured from stainless steel.

1.1 Under the provisions of Warranty (Specifically repair and replacement), the Supplier shall be responsible for all costs attributed to the Manufacture of the goods, including transportation to the Buyers Delivery Address. And unless otherwise agreed, the Buyer shall be responsible for all costs associated with installing the replacement (or repaired) goods and services.

1.2 The following part numbers are either excluded from the warranty (as they are high use parts) or have a manufactures warranty.

Item	Part number	Warranty provisions
Drench Gun Assembly	671-037	90 days manufacturer warranty
Nozzle	671-780	Excluded
Check valves	671-055	Excluded
Roof Sign	671-022	Excluded
Side Gate	671-130	Excluded
One-way hinge gate	671-340	90 days manufacturer warranty

Specific code of conduct / health & safety / legislative requirement/s

1.3 The Supplier may be required to come on to land managed by the Buyer to inspect the Goods if there is an identified deficiency in the fabrication that needs to be validated by the Supplier. In such cases the Supplier must adhere to the health and safety policies of the Buyer.

1.4 In fabricating the Goods, the Supplier must comply with their obligations under the Health and Safety at Work Act 2015 and apply good health and safety practice in a fabrication workshop or factory.

1.5 It is not anticipated that the Supplier will be handling the chemicals (disinfectant) used in the Goods. However, if the Supplier is to undertake any testing at their own discretion using liquids that may be considered dangerous or harmful in dilute or concentrate form, then the Supplier must take adequate precautions in the handling of those chemicals and remove any residue before delivery of the stations.

1.6 Any special health and safety considerations related to the Buyers Delivery Address would need to be taken in to account by the Buyer.

1.7 The Supplier is to ensure maximum care when transporting the Goods to the Buyers Delivery Address and ensure that they have in place third party [car] insurance.

Reporting

1.8 At the end of each Contract Quarter, prior to schedule review meetings, the Supplier must send to the Lead Agency Contract manager a report that as minimum sets out the following information:

- 1.1.i. Details of any Goods that have been ordered by any participating agency, including;
 - 1.1.i.a. When the order was placed.
 - 1.1.i.b. Any special conditions (such as the use of stainless steel).
 - 1.1.i.c. Intended delivery location.
- 1.1.ii. Lead time status of any Goods ordered.
- 1.1.iii. Stock levels.
- 1.1.iv. Any issues.

Schedule of Goods and Services

Schedule A

Appendix A

Drawings

Contract for Cleaning Stations

Attached as a separate file

Schedule of Goods and Services

Schedule A Appendix B Contract Managers

	Lead agency Contract Manager	Supplier's Contract Manager
Name:	Procurement Team, or Brett Campbell	Mike Williams
Title / position:		Director
Address:	18 Manners Street, Wellington, 6011	24 garden place Hamilton
Phone:		0274 801 935
Fax:		N/A
Email:	procurement@doc.govt.nz bcampbell@doc.govt.nz	Mike@mwdesign.co.nz



Kauri Dieback Cleaning Stations Fabricators Contract.

Schedule B

Schedule of Prices

Version 2

Prices set at 17 July 2018

SCHEDULE OF PRICES

1. Introduction

This Schedule sets out general principles underlying the Charges.

2. Principles

Buyers will only pay for Goods and Services ordered

The Supplier will invoice the Buyer for the Charges applicable to that Buyer in accordance with each Cleaning Station Works Order.

No minimum volume

Notwithstanding the Minimum Order Quantities set out in this Schedule B, no Participating Agency is required to meet a minimum aggregate expenditure or volume level for any Goods or Services.

3. Charges

- a) The Charges payable by the Buyer for the Goods and Services must be calculated based on the prices recorded in this Schedule B, unless the Buyer and the Supplier agree otherwise.
- b) The price of any Goods or Services which are not recorded in this Schedule B, such as delivery charges, storage, option of stainless steel components, will be agreed between the Buyer and the Supplier.
- c) All prices stated are quoted in NZD.
- d) All prices stated are ex works.
- e) All prices stated are based on the use of galvanised steel.
- f) It is advisable that the Buyer verify the pricing at the time of contacting the Supplier to obtain costs of transportation and estimated lead times.

Minimum Aggregate quantity (minimum order quantity)

- g) Minimum aggregate quantity shall could mean quantities across multiple Buyers and Cleaning station works order
- h) The Supplier will take responsibility for co-ordinating and collating orders from Participating Agencies on a quarterly basis by asking for orders for each quarter in advance in order to meet the minimum aggregate quantity required.

Charges – Initial Order

- i) The charges below are applicable to initial order quantities only and are required to recover the cost of tooling. Once the minimum aggregate quantity has been ordered, these prices are no longer applicable, and Buyers should refer to Charges – Subsequent Orders (Paragraph 3j of this Schedule B).

Item	Part-number	Cost each	Minimum aggregate Quantity
Cleaning Station in full	671-000	\$17,858	5
Brush Foot	671-032	\$20	Not applicable
Brush Hand with scraper blade	671-028	\$12	Not applicable
Drench Gun Assembly	671-037	\$68.51	Not applicable
Drench Gun Only	671-033	\$25	Not applicable
Scrubbing brush (roller brush only)	671-821	\$72	Not applicable
Wet Clean Unit Full Assembly (tredle) (including pump)	671-700	\$1,310	Not applicable
Pump Assembly	671-950	\$393	Not applicable
Nozzle part	671-780	\$20.25	Not applicable
Check valve part	671-055	\$13.70	Not applicable
Water tank 500l	671-451	\$420	Not applicable
Access ramp both sides	671-250	\$623	Not applicable

Charges – Subsequent Order

- j) The charges below are applicable to subsequent Orders

Item	Part number	Cost each	Minimum aggregate quantity
Cleaning Station in full	671-000	\$11,841	20
Hand Brush Assembly	671-027	\$82.62	Not applicable
Brush Hand with scraper blade	671-028	\$12	Not applicable
Drench Gun Assembly	671-037	\$71	Not applicable
Drench Gun Only	671-033	\$25	Not applicable
Drench Gun Only	671-033	\$25	Not applicable
Scrubbing brush (roller brush only)	671-821	\$72	Not applicable
Wet Clean Unit Full Assembly (tredle) (including pump)	671-700	\$1,310	Not applicable
Pump Assembly	671-950	\$393	Not applicable
Nozzle part	671-780	\$20.25	Not applicable
Check valve part	671-055	\$13.70	Not applicable
Water tank 500l	671-451	\$420	Not applicable
Adjustable scaffolding foot assembly (set of two)	671-007	POA	Not applicable

Discounts applicable

k) The Supplier offers, subject to the conditions specified, the following discounts on the associated parts and accessories

Item	Part-number	Discount available	Conditions
Wet Clean Unit Full Assembly (tredle) including the Pump Assembly	671-700	25% (\$982.50 per unit)	Minimum Aggregate quantity - 20
Pump Assembly standalone	671-950	15% (\$334 per unit)	Minimum Aggregate quantity - 20
Access Ramp Assembly (Both Sides)	671-250	15% (\$529 per set)	Minimum Aggregate quantity - 20

1. Special Pricing Conditions

- a) Prices proposed in the RFT Response and recorded in this Schedule B will be fixed for six months from the Start Date of the Contract and for six months after each subsequent price change.
- b) Participating Agencies will be able to order from the Supplier at the published prices in this

Schedule B.

- c) The Supplier may revise the pricing in this Schedule B:
 - i. after six months from the Start Date of this Contract;
 - ii. when the Lead Agency Notifies the Supplier of design improvements in accordance with Paragraph 3 of Schedule A; or
 - iii. if the costs of the station increase significantly at any time.
- d) The Supplier will Notify the Lead Agency of their request to revise the pricing in this Schedule B.
- e) The Lead Agency must Notify the Supplier within 10 Business Days of receipt of the request to revise pricing whether or not the revised pricing is accepted by the Lead Agency.
- f) If the Lead Agency accepts the revised pricing, the Lead Agency will Notify the Supplier and all Participating Agencies of the revised pricing by the reissue of this Schedule B. The revised pricing will take effect 30 Business Days after the date on which the Lead Agency reissues this Schedule B.
- g) If the Lead Agency chooses not to accept the revised pricing, the Supplier can continue to provide the Goods and Services in accordance with the existing Charges specified in Schedule B or can terminate the Contract in accordance with Clause 19.

[insert Buyer Agency logo]

**Kauri Dieback Cleaning Stations Fabricators
Contract.**

Schedule C

Cleaning Station Works Order (CSWO)

Particulars

Supplier Name	[insert supplier name] (“The Supplier”)	Buyer (Agency) Name	[insert buying Agency name] (“The Buyer”)
Date of CSWO	[insert date of CSWO]	Buyers Contact Name	[insert contact name at Buyer Agency]
Buyers full address (for invoicing)	[insert buyers full address for the purposes of invoices]	Buyers Email	Insert buyers contact email

The Supplier agree to provide the Goods and Services and the Buyer agrees to buy the Goods and Services described in this Schedule C

The documents forming this agreement are

1. This Cleaning Station Works Order
2. The Contract and it’s Schedules

Description of Goods and Services required

Table 1: Please provide the Cleaning Stations as detailed below			
Cleaning Station (state Specification)	Delivery Address	Please specify if Stainless steel required*	Agreed Delivery Date
E.g. 1 x MK Hybrid + water tank	E.g. Waipoua Forest		1 Jan 2018

*if left blank the component parts will be made using Galvanised steel

Table 2: Please provide the following additional consumable and accessory items

Component (include part number)	Quantity to be delivered	Quantity to be held in stock	Total quantity ordered

Table 3: Please provide the following services

Service	Description of services required
Delivery Services	Please deliver the Cleaning Stations and consumable items to the Locations listed in table 1 in accordance with the agreed Delivery Date Or Not applicable
Storage / Warehousing Services	As required
Other insurance	
Other (please specify) [note add lines as necessary]	

Please outline any other special information relating to this Cleaning Station Works Order

Charges payable

Summary of Charges

The following section sets out the Charges. Charges are the total maximum amount payable by the Buyer to the Supplier for delivery of the Goods and Services. Charges include Cost, and where agreed, Expenses.

Table 1: Total Charges Payable (NZD) | \$ _____

Table 2: Total Charges Payable (NZD)	\$
Table 3: Total Charges Payable (NZD)	\$
Total Charges Payable under this CSWO	\$

Payment terms

The Buyer agrees to pay the Supplier in accordance with the following payment conditions

Invoices

The Supplier must send the Buyer an invoice for the Charges at the following times

Acceptance of Cleaning Station Works Order

*By signing
below each
Party accepts
and authorises
this Cleaning
Station Works
Order*

For and on
behalf of **the
Buyer:**

For and on
behalf of the
Supplier:

_____ Signature	_____ Signature
Name: _____	Name: _____
Position: _____	Position: _____
Date: _____	Date: _____



Kauri Dieback Cleaning Stations Fabricators Contract.

Schedule D

Letter of Accession

[Date]

[Insert name of Eligible Agency]

RE: Kauri Dieback cleaning stations contract

The Lead Agency has agreed preferential terms with the Supplier for the supply of Goods and Services to your agency, as an Eligible Agency, as set out in the enclosed Contract. The Contract governs the relationship between the Lead Agency and participating Eligible Agencies in relation to the supply of Goods and Services by the Supplier.

Capitalised terms used but not defined in this letter have the same meaning as in the Contract.

In accordance with Clause 3 of the Contract, to participate and benefit from the preferential terms of the Contract, your agency must accept and agree to comply with the terms and conditions of the Contract (which are not negotiable) as if it were a Party to the Contract.

If your agency wishes to procure the Goods and Services under the Contract and is willing to be bound by the terms of the Contract, please complete and sign this letter and return (or scan and email) that signed copy to:

Lead Agency: procurement@doc.govt.nz

Supplier: mike@mwdesign.co.nz

The identity and contact details of the representative of your agency must be included below:

- Representative Name: [insert details here]
- Physical address: [insert details here]
- Telephone number: [insert details here]
- Email address: [insert details here]

Please retain a copy of the signed letter and the enclosed Contract for your records.

Yours sincerely,

[Insert signatory for Lead Agency]

[Insert name of Eligible Agency] accepts and agrees to comply with the terms of the Contract.

_____ Signed for and on behalf of [Insert name of Eligible Agency].

[Insert Name of signatory] [Insert Title of signatory]

_____ [Insert Date]