

FUNDING AGREEMENT FOR THE AFFORESTATION GRANT SCHEME

Date: 2008

BETWEEN HER MAJESTY THE QUEEN IN RIGHT OF NEW ZEALAND, acting by and through the Director-General of the Ministry of Agriculture and Forestry (MAF)

AND **NORTHLAND REGIONAL COUNCIL**
AUCKLAND REGIONAL COUNCIL
WAIKATO REGIONAL COUNCIL
BAY OF PLENTY REGIONAL COUNCIL
TARANAKI REGIONAL COUNCIL
GISBORNE DISTRICT COUNCIL
HAWKE'S BAY REGIONAL COUNCIL
MANAWATU-WANGANUI REGIONAL COUNCIL
WELLINGTON REGIONAL COUNCIL
CANTERBURY REGIONAL COUNCIL

established under the Local Government Act 2002 (the *Recipients*)

1. BACKGROUND

- 1.1 The Afforestation Grant Scheme (the Programme) is an initiative under the government's Sustainable Land Management and Climate Change Plan of Action.
- 1.2 It aims to encourage greater levels of greenhouse gas absorption by increasing the area of Kyoto Compliant new forest in New Zealand. An additional objective is to reduce the impact of climate change and generate other environmental benefits such as erosion control, improved water quality and flood protection.
- 1.3 Under section 15 of the Forests Act 1949, the Minister has the power to make financial grants to persons in the forestry sector.
- 1.4 MAF has agreed to provide Funding to the Recipients, in accordance with this Agreement, for subsequent allocation to persons for planting new forests on Kyoto Compliant land.
- 1.5 The Recipients have entered into a Memorandum of Understanding (MOU) dated the day of 2008 between themselves for the delivery of the Programme. Pursuant to this MOU, the Recipients have nominated **Hawke's Bay** Regional Council for the purposes of receiving Funding and Costs from MAF and to report to and communicate with MAF on their behalf.

THE PARTIES AGREE AS FOLLOWS:**2 DEFINITIONS**

- 2.1 In this Agreement unless the context otherwise requires:

Agreement means this funding agreement, as amended from time to time;

Best Currently Accepted Principles and Practices means those set out in the New Zealand Forest Owners Associations Code of Environmental Practice, as amended from time to time;

Costs mean the expenditure incurred by the Recipients in administering the Programme as specified in Schedule 2;

Expiry Date means the date on which MAF pays the Funding instalment relating to the Financial Year ending on 30 June 2014;

Financial Year means the period of 12 months from 1 July to 30 June;

Forest Land has the meaning set out in Schedule 1;

Funding and Funding Instalment means the amounts stipulated in Schedule 2 of this Agreement to be paid by MAF to the Recipients;

Grant means any grant made by the Recipients to a person in accordance with the Programme;

Grant Criteria means the criteria stipulated in Schedule 2, which an applicant must satisfy before being awarded a Grant by the Recipients;

Grant Terms mean the terms on which any Grant is to be made by the Recipient;

Grantee means the recipient of a Grant;

GST means goods and services tax payable pursuant to the Good and Services Tax Act 1985;

Kyoto Compliant means land that was not forested land as at midnight on 31 December 1989;

Month means a calendar month;

MOU means the Memorandum of Understanding entered into between the Recipients for the delivery of the Programme and referred to in clause 1.5;

Nominated Recipient means the **Hawke's Bay** Regional Council which has been nominated by the Recipients under the MOU to receive Funding and to report to and communicate with MAF;

Objectives mean the objectives of the Programme set out in clause 1 of Schedule 1;

Outcomes mean the outcomes of the Programme set out in clause 2 of Schedule 1;

Parties means MAF and the Recipients and **Party** means either one of them;

Programme means the Afforestation Grant Scheme described in Schedule 1;

Protocol has the meaning given to it in the Climate Change Response Act 2002;

Sequestration means the removal and retention of carbon dioxide from the atmosphere which results in an increase in New Zealand's carbon stocks;

Six month period means a period of six (6) consecutive Months that ends with the last day of June or December;

Six monthly report means the report to be provided by the Recipients to MAF within fifteen (15) Working Days of the end of each Six month period specifying:

- (a) Grants approved within the Six month period but not yet paid;
- (b) Grants paid within the Six month period with the following details for each grant:
 - (i) Grant area
 - (ii) Grant amount
 - (iii) A map of the area planted provided showing species, year planted, legal and planted boundaries mapped according to MAF specifications and provided as a GIS shape file
 - (iv) Land owner's name
 - (v) Name of any other entity with a land use right over the land
 - (vi) Species planted
 - (vii) Planted stocking per hectare
 - (viii) Year planted
 - (ix) Management plan for natural or assisted reversion areas
- (c) Trust fund reconciliation showing the following:
 - (i) Opening balance
 - (ii) Funding received
 - (iii) Funding paid
 - (iv) Any Costs reimbursement received from MAF
 - (v) Costs incurred
 - (vi) Interest received on the Funding
 - (vii) Closing balance

Working Day means a day on which registered banks are open for general banking business, other than a Saturday or Sunday, in Wellington, New Zealand.

3 CONSTRUCTION

- 3.1 In interpreting this Agreement, unless the context requires otherwise:
 - 3.1.1 headings are for guidance only and shall not affect interpretation;
 - 3.1.2 words denoting the singular shall include the plural and vice versa;
 - 3.1.3 any references to a Clause or Schedule or Appendix shall be a reference to a clause or appendix or schedule of this Agreement;
 - 3.1.4 all references to *Dollars* or \$ shall be references to the lawful currency of New Zealand;

- 3.1.5 any schedule or appendix to this Agreement is deemed to form part of the Agreement;
- 3.1.6 a reference to any statute includes any amendments, re-enactments or replacements of that statute from time to time;
- 3.1.7 a reference to a person includes a body corporate and an unincorporated body;
- 3.1.8 a reference to 'including' and similar words do not imply any limitation.

4 PROGRAMME

- 4.1 In consideration for the Funding, the Recipients agree to deliver the Programme in accordance with:
 - 4.1.1 the terms of this Agreement; and
 - 4.1.2 best currently accepted principles and practices applicable to the field(s) of expertise relating to the Programme.

5 TERM

- 5.1 This Agreement commences on **the date on page 1 of this agreement** and will remain in force until the earlier of:
 - 5.1.1 the Expiry Date ; or
 - 5.1.2 the date on which this Agreement is terminated in accordance with its terms.

6 THE FUNDING AND PARTIES RESPONSIBILITIES

- 6.1 The Funding will be paid to the Recipients in accordance with Clause 7 to an interest bearing bank account held with a New Zealand registered bank and nominated by the Recipients in writing. This account will be held by the Nominated Recipient on trust for the Recipients in accordance with the MOU and for the purposes of the Programme.
- 6.2 The Recipients shall provide a copy of the MOU to MAF prior to the execution of this Agreement.
- 6.3 The Recipients shall allocate the Funding between themselves in a manner that is efficient, economical and that best accords with the Objectives and the MOU.
- 6.4 The Recipients shall allocate the Funding to Grantees in accordance with the Grant Criteria and in a manner that is fair, reasonable and that best accords with the Objectives.
- 6.5 No part of the Funding, received, shall be used for any purpose other than undertaking the Programme.
- 6.6 GST on the Funding will be paid by MAF to the Nominated Recipient upon receipt of a GST invoice from the Nominated Recipient. To avoid doubt, the parties acknowledge that the provision of any grant under this Scheme constitutes a taxable supply for the purposes of the Goods and Services Tax Act 1985.

- 6.7 Notwithstanding any provision to the contrary, MAF shall not be obliged to provide any Funding after the date of termination or expiry of this Agreement.

7 PAYMENT

- 7.1 Subject to clauses 7.3 and 7.4.1 Funding will be paid in annual instalments on production of an invoice by the Nominated Recipient.
- 7.2 The first Funding Instalment will be paid within twenty (20) Working Days of the date of signing of this Agreement
- 7.3 Each subsequent Funding Instalment will be paid provided that:
- 7.3.1 MAF has received two (2) Six monthly reports covering the immediately preceding Financial Year in accordance with this Agreement; and
- 7.3.2 MAF determines in its sole discretion that the Recipients have:
- 7.3.2.1 undertaken best endeavours to achieve the Objectives of the Programme; and
- 7.3.2.2 complied with the Agreement in all material respects including achievement of Outcomes.
- 7.4 Subject to clauses 7.3 and 7.4.1 each subsequent Funding Instalment will be paid within twenty (20) Working Days of the beginning of a Financial Year:
- 7.4.1 Each subsequent Funding Instalment will be the amount required to increase the Funding held in the bank account referred to in clause 6.1 to the maximum amount agreed on for that particular Financial Year.

8 ADMINISTRATION COSTS

- 8.1 The Recipients Costs in each Financial Year shall be met from interest accruing on the Funding held in the bank account referred to in clause 6.1.
- 8.2 In the event such interest is insufficient to meet the Recipients' Costs, MAF shall pay the balance of the Costs to the Nominated Recipient within twenty (20) Working Days of the end of a Financial Year provided it has received a GST invoice from the Nominated Recipient setting out the Costs and is satisfied that the Costs have been reasonably incurred in the administration of the Programme.
- 8.3 Payment shall be to the bank account referred to in clause 6.1.
- 8.4 MAF shall pay the Nominated Recipient GST on the balance of the Costs for each Financial Year.

9 RECIPIENTS' WARRANTIES

- 9.1 The Recipients warrant and represent that:
- 9.1.1 The Nominated Recipient has authority to act on behalf of the Recipients for the purposes specified in this Agreement.
- 9.1.2 All information provided, or to be provided, to MAF by the Recipients is accurate, complete and true;

- 9.1.3 The Programme will be administered with due diligence, care and skill, and by appropriately trained, qualified, experienced and supervised persons;
- 9.1.4 They will adequately monitor progress in relation to meeting the Objectives of the Programme;
- 9.1.5 They will undertake the Programme in a reasonably economical and expeditious manner so as to minimise the Programme cost;
- 9.1.6 All goods and services purchased by the Recipients in the course of undertaking the Programme will be purchased at (or below) true market value;
- 9.1.7 They will publicise the Programme in an appropriate and effective manner;
- 9.1.8 They will acknowledge MAF as a source of funding in all publications and publicity regarding the Programme (the form and content of such acknowledgement MAF may specify);
- 9.1.9 The person responsible for the general management of the Programme is not also the person primarily responsible for the financial management of the Programme. Nothing in this subclause is intended to prevent different officers from the same Regional or Unitary Authority undertaking those respective roles;
- 9.1.10 The MAF will be notified as soon as is reasonably practicable if the Nominated Recipient changes.

10. GRANTS

- 10.1 In providing any Grant in the course of the Programme, the Recipients shall:
 - 10.1.1 not purport to act as an agent of MAF when dealing with such Grantee;
 - 10.1.2 only provide the Grant in strict accordance with the Grant Criteria;
 - 10.1.3 ensure that Grants do not exceed \$3,000 per hectare of forest for grants made in the high sequestration category, and \$1,000 per hectare of forest for grants made in the low sequestration category;
 - 10.1.4 procure the signing of a contract by the Grantee with the Recipients on the same or substantially similar terms as the template agreement set out in Schedule 3;
 - 10.1.5 procure and in particular provide in such a contract that there shall be a right of access to the Grantees' land enforceable by or on behalf of the Crown for the purposes of carbon measurement or other Protocol purposes;
 - 10.1.6 immediately upon becoming aware that any part of the Grant has been used other than in accordance with the Grant Terms, terminate the Grant contract with the Grantee, and use its best endeavours to secure a refund from the Grantee of the Grant in accordance with the Grant Terms or as otherwise permitted by law.

11. VARIATION

- 11.1 This Agreement may be varied from time to time as agreed by the Parties.
- 11.2 No variation of this Agreement is effective unless it is in writing and executed by the Parties.

12. REPORTING

- 12.1 The Nominated Recipient must:
 - 12.1.1 deliver to MAF a Six monthly report within fifteen (15) Working Days of the end of each Six month period;
 - 12.1.2 promptly deliver to MAF any information regarding the Programme which MAF requests;
 - 12.1.3 deliver to MAF a Final Report as soon as reasonably possible after completion of the Programme, but in any event within two (2) Months of completion of the Programme.

13. ACCESS

- 13.1 The Recipients will allow MAF (including its employees and agents) access to any property or information relevant to the Programme owned or controlled by the Recipients at any reasonable time and for any reasonable purpose.

14. CONFIDENTIALITY

- 14.1 The Parties will keep confidential and secure and not misuse or disclose to any third party any information relating to this Agreement which would reasonably be expected to be confidential or proprietary to the other Party except:
 - 14.1.1 to professional advisers or officers, employees or agents directly concerned with the implementation or operation of this Agreement and for the purpose of performing this Agreement; or
 - 14.1.2 as required by law; or
 - 14.1.3 to the extent necessary to perform their respective obligations under this Agreement; or
 - 14.1.4 to the extent necessary to sub-contract third parties under Clause 19 of this Agreement; or
 - 14.1.5 with the prior written authority of the other Party; or
 - 14.1.6 information that subsequently becomes part of the public domain through no fault of the Party receiving confidential information from the other Party;
 - 14.1.7 information that is required to be reported under the Protocol;
 - 14.1.8 information regarding the Programme for publicity purposes;
- 14.2 If the Recipients receive a request under the Official Information Act 1987 or Local Government Official Information and Meetings Act 1982 for any of the information referred to in clause 14.1, they shall notify MAF of such a request as soon as is

reasonably practicable. The Recipients shall give MAF reasonable opportunity for comment on whether there are good or conclusive reasons for withholding the information requested.

- 14.3 The obligations contained in this Clause 14 shall survive the termination or expiration of this Agreement.

15. MEDIA RELATIONS

- 15.1 Except as provided for in clause 15, the Recipients shall not comment to the media or any person on the terms or performance of the Agreement, without express written authorisation from MAF.
- 15.2 If authorised to comment under Clause 15.1 the Recipients must obtain approval from MAF for every comment before it is communicated to the media or any other person.
- 15.3 The Recipients must refer any enquiries from the media or any other person about the terms or performance of the Agreement to the person nominated in Clause 24.1.
- 15.4 If the individual nominated in Clause 24.1 cannot be contacted, the Recipients shall contact the person holding the office of MAF Director of Corporate Communications.

16. RECORDS

- 16.1 The Recipients will keep all accounts and other records (including itemised expenditure records and reports from Grantees) as are reasonably necessary to allow prompt and accurate audit of any matter in relation to the Programme, and in particular how payments from the Funding have been or will be used. All accounts and records required to be kept under this Clause must be made available without charge to MAF on request for review, copying and use.
- 16.2 This Clause 16 shall survive the expiry or termination of this Agreement by two (2) years.

17. RECIPIENTS' INDEMNITY

- 17.1 The Recipients will reimburse MAF for the cost of defending or settling any claim for which MAF could have liability caused or contributed to by the Recipients' breach of this Agreement or their negligent or wrongful actions or omissions.
- 17.2 The Recipients' liability shall be limited to the amount(s) provided by the Recipients under the Grant contract(s) which is/are the subject matter of the Recipients' breach or negligent or wrongful actions or omissions referred to in clause 17.1.
- 17.3 The Recipients will provide any reasonable assistance requested by MAF for the purpose of defending or settling any claim described in Clause 17.1.

18. MAF'S LIABILITY

- 18.1 Except to the extent of direct damage or loss to the Recipients caused by a breach of this Agreement by MAF or by the negligent or wrongful act or omissions of MAF,

MAF has no liability for any direct, indirect or special loss suffered (including, but not limited to, any loss of profits or savings) or costs incurred by the Recipients or any other person.

- 18.2 The extent of MAF's liability to the Recipients for direct damage or loss caused by a breach of this Agreement or by the negligent or wrongful act or omission of MAF will be limited to the Costs actually paid to the Recipients under this Agreement during the Financial Year immediately prior to the date the cause of action first arose.
- 18.3 Without limiting Clause 18.1, the Recipients' employees, agents, contractors and any entity involved in performing the Recipients' obligations under this Agreement are provided at the risk of the Recipients. MAF has no liability to any persons (including the Recipients) for any injury, deterioration, damage, or loss, whether direct or indirect, in respect of any of them.
- 18.4 This Clause 18 shall survive the termination or expiration of this Agreement

19. ASSIGNMENT AND SUB-CONTRACTING

- 19.1 The Recipients will not:
- 19.1.1 directly or indirectly assign any of its benefits or burdens under any Agreement; or
 - 19.1.2 sub-contract any of its obligations or responsibilities under any Agreement;
 - 19.1.3 to any third party without the prior written approval of MAF.
- 19.2 The Recipients shall not be relieved of any of their liabilities or obligations under this Agreement by entering into a sub-contract and the Recipients shall be liable to MAF for the acts, defaults and omissions of the sub-contractor as fully as if they were the acts, defaults or omissions of the Recipients.
- 19.3 The Recipients shall be responsible for ensuring the suitability of the sub-contractor for the work proposed to be carried out and for ensuring that the work performed by the sub-contractor meets the requirements of this Agreement.

20. DISPUTES

- 20.1 Except where a Party seeks urgent interlocutory relief, neither Party may commence court proceedings against the other without complying with this Clause 20.
- 20.2 Where any dispute, disagreement, question or difference (a Dispute) arises between the Parties on any matter arising out of this Agreement, either Party ('the Initiator') may notify the other Party ('the Respondent') in writing of the Dispute. Such notice must specify:
- 20.2.1 the nature of the dispute;
 - 20.2.2 a representative of the Initiator authorised to resolve the Dispute;
 - 20.2.3 the Initiator's full and complete view of the facts and its 'without prejudice' legal position on the Dispute; and

- 20.2.4 a reasonable suggestion or suggestions for resolving the Dispute.
- 20.3 The Respondent must respond to the Initiator's notice within five (5) Working Days. The Respondent's response must specify:
- 20.3.1 a representative of the Respondent authorised to resolve the Dispute;
- 20.3.2 the Respondent's full and complete view of the facts and its 'without prejudice' legal position on the Dispute;
- 20.3.3 a reasonable suggestion or suggestions for resolving the Dispute.
- 20.4 The Parties will enter into negotiations to resolve the dispute within five (5) Working Days of the Initiator receiving the Respondent's response.
- 20.5 Where the Parties are unable to negotiate a resolution to the Dispute within twenty Working Days of the Respondent's receipt of the Initiator's notice (or such other time as the Parties agree), the Dispute will be referred to mediation.
- 20.6 The Parties will use best efforts to agree on a mediator and a fee for that mediator. However, if the Parties cannot agree within five (5) Working Days of referral to mediation, the mediator will be selected, and the mediator's fee determined by the Chair for the time being of the organisation known as LEADR NZ (Leading Edge Alternative Dispute Resolvers) (or his/her nominee).
- 20.7 Mediation will be conducted in all respects in accordance with the LEADR New Zealand Inc. Standard Mediation Agreement, and the Parties will use their best efforts to ensure that mediation is commenced and conducted expeditiously.
- 20.8 Pending settlement of the Dispute, the Parties will continue to perform their obligations under the Agreements as far as is practicable as if the Dispute had not arisen.

21. TERMINATION BY MAF

- 21.1 MAF may immediately terminate this Agreement by notice in writing if:
- 21.1.1 any or all of the Recipients have in the reasonable opinion of MAF failed over a period of two (2) Quarters to undertake best endeavours to achieve the Objectives;
- 21.1.2 any or all of the Recipients do or omit to do something, or any matter concerning the Recipients comes to MAF's attention, which, in MAF's opinion, may seriously damage the business or reputation of MAF; or
- 21.1.3 any or all of the Recipients substantially fail to achieve the Outcomes by the dates specified in Schedule 1;
- 21.1.4 any or all of the Recipients materially breach any of their other obligations under this Agreement;
- 21.1.5 any or all of the Recipients do not or cannot rectify any deficiencies identified, through audit or otherwise, within a reasonable time;
- 21.2 Without prejudice to the rights in Clause 21.1 MAF may terminate the whole or any severable part of this Agreement by giving the Nominated Recipient one Month's written notice.

22. TERMINATION BY RECIPIENTS

- 22.1 The Recipients may immediately terminate this Agreement by notice in writing if:
- 22.1.1 MAF does or omits to do something, or any matter concerning MAF comes to the Recipients' attention, which, in Recipients' opinion, may seriously damage the business or reputation of the Recipients; or
 - 22.1.2 MAF materially breaches any of its obligations under this Agreement.
- 22.2 Without prejudice to the rights in Clause 22.1 the Recipients may terminate the whole or any severable part of this Agreement by giving MAF one Month's written notice.

23. EFFECT OF TERMINATION AND EXPIRY

- 23.1 Termination of this Agreement is without prejudice to the rights and obligations of the Parties accrued up to and including the date of termination.
- 23.2 For the avoidance of doubt, termination of this Agreement does not affect any existing agreement(s) between the Recipients and Grantees in relation to the Programme.
- 23.3 For the avoidance of doubt, MAF may terminate this Agreement in relation to one or more Recipients or one or more Recipients may terminate this Agreement. In either event, this Agreement shall continue to have effect between MAF and the other Recipients who are not the subject of the termination or who have not initiated the termination.
- 23.4 On termination or expiry of this Agreement, MAF may (without limiting any of its other rights or remedies):
- 23.4.1 require the Recipients to provide evidence of how the Funding has been spent; and/or
 - 23.4.2 require the Recipients to refund to MAF (or deal with in the manner directed by MAF) any of the Funding that has not been spent or committed by the Recipients. For the purposes of this Clause, Funding is committed where it has been provided or promised to a third party for the purpose of carrying out the Programme and the Recipients, after using reasonable endeavours, is unable to secure a refund or release from that promise (as the case may be).
- 23.5 If the Funding has been misused, or misappropriated, by the Recipients, the Recipients must within ten (10) Working Days of the date of termination/expiry refund all Funding paid up to the date of termination/expiry, together with interest at the rate of 10 per cent per annum from the date the Recipients were paid the Funding to the date the Recipients return the Funding.

24. CONTACT PERSONS AND NOTICE

- 24.1 Any notice or other communication to be given under this Agreement must be in writing addressed to the other Party at the address, facsimile number or email from time to time notified by that Party in writing to the sending Party. Until a

change is so notified, the address, facsimile number and email of each Party are as follows:

MAF

Address: PO Box 2526
Wellington
Fax: 04 894 0720
Attention: Ruby Iyer
MAF Legal

Recipients

Name	Contact name	Address	Fax	Email
Northland Regional Council	Ken Paterson	36 Water Street Whangarei 0110	09 438 0012	kenp@nrc.govt.nz
Auckland Regional Council	Peter Winder	21 Pitt Street Auckland 1142	09 366 2162	peter.winder@arc.govt.nz
Waikato Regional Council	Clare Crickett	401 Grey Street Hamilton East Hamilton 3216	07 856 5497	Clare.crickett@ew.govt.nz
Bay of Plenty Regional Council	Bill Bayfield	Quay Street Whaktane 3120	07 922 3345	billb@envbop.govt.nz
Taranaki Regional Council	Basil Chamberlain	47 Cloton Road Stratford 4352	07 765 5097	Basil.chamberlain@trc.govt.nz
Gisborne District Council	Lindsay McKenzie	Fitzherbert Street Gisborne 4010	06 867 9265	Lindsay@gdc.govt.nz
Hawke's Regional Council	Andrew Newman	159 Dalton Street Napier 4110	06 835 3601	Andrew@hbrc.govt.nz
Manawatu-Wanganui Regional Council	Michael McCartney	11-15 Victoria Avenue Palmerston North 4442	06 952 2929	Michael.mccartney@horizons.govt.nz
Wellington Regional Council	David Benham	142-146 Wakefield Street Wellington 6011	04 384 5023	David.benham@gw.govt.nz
Canterbury Regional Council	Bryan Jenkins	58 Kilmore Street Christchurch 8013	03 379 9550	Bryan.jenkins@ecan.govt.nz

24.2 Delivery may be effected by hand, or by post with postage prepaid, or by facsimile, or (subject to the limitation below) by email. A notice or other communication will be deemed to have been received:

24.2.1 in the case of hand delivery, at the time of actual delivery to the Recipients' address;

24.2.2 in the case of delivery by pre-paid post, on the 2nd Working Day after posting;

24.2.3 in the case of delivery by facsimile, at the time of transmission specified in a transmission report from the sending machine which indicates that the facsimile was sent in its entirety to the facsimile number of the Recipients; and

24.2.4 in the case of delivery by email, the earlier of:

- the sender's receipt of confirmation of successful delivery; or
- one (1) Working Day after dispatch (being when the relevant email first leaves the sender's network for delivery to the Recipients'

address), provided the sender does not receive any indication of the failure of, or delay in, delivery within one day after dispatch.

- 24.3 However, if a notice or other communication is received or deemed to have been received after 5 pm on a Working Day, or on a day which is not a Working Day, it will be deemed not to have been received until the next Working Day.

25. AUDIT

- 25.1 At any time during the term of this Agreement, MAF (or its agents, employees or contractors) may conduct an audit or audits of the Recipients' progress made towards achieving Objectives and the Recipients' performance under this Agreement, including achievement of Outcomes. The Recipients will, at their expense, allow access to appropriate staff to assist MAF in conducting such audit(s). MAF will pay all other costs associated with the audit.
- 25.2 At least twenty (20) working days prior to commencing an audit under Clause 25.1, MAF will notify the Recipients in writing of its intention to conduct an audit and of the intended scope and timing of the audit.
- 25.3 Where an audit conducted under this Clause identifies any material non-compliance with the terms of the Agreement, MAF may require an additional audit or audits to be carried out at the Recipients' expense (such expenses including MAF personnel costs at external charge-out rates). The Recipients will, at their expense, allow access to appropriate staff to assist MAF (including its officers, employees and agents) in any such audit. MAF will pay all other costs associated with the audit.
- 25.4 MAF will advise the Recipients in writing of the scope and timing of any additional audit or audits required under this Clause.
- 25.5 MAF will promptly notify the Recipients in writing of the results of any audit conducted under this Clause. Where any deficiencies are identified in such an audit, the Recipients will immediately take steps to remedy such deficiency. If the deficiency is not rectified, or cannot be rectified, MAF may elect to terminate this Agreement under clause 21.1.
- 25.6 This Clause shall survive the expiry or termination of this Agreement by two (2) years.

26. WAIVER

- 26.1 No waiver of any rights or benefits arising under an Agreement is effective unless it is in writing and signed by the Party waiving. A waiver of a breach does not prejudice the waiving Party's rights in respect of any other breach. No delay, failure or forbearance by MAF to exercise (in whole or in part) any right, power or remedy under any Agreement shall operate as a waiver.

27. FORCE MAJEURE

- 27.1 Neither Party will be liable for failure to fulfil its obligations under this Agreement if its performance is, in the reasonable opinion of MAF, prevented due to a force majeure event, including an act of God, third party industrial action, riots, war,

terrorism, epidemics, change in Government policy, change in appropriation by Parliament, fire, communication line failures, power failures, earthquakes or other disasters (Force Majeure Event).

27.2 The exclusion of liability in this Clause does not extend to strikes, lockouts or any other form of labour dispute or any other form of delay caused by contractual or labour relations between either Party and any of its employees, agents, sub-contractors or suppliers.

27.3 The Party seeking to exclude liability under this Clause will:

27.3.1 within three (3) Working Days after the event causing the failure to fulfil its obligations, give written notice to the other Party of the reasons for its failure and the effects of such failure; and

27.3.2 use all reasonable endeavours to avoid or remove the cause and perform its obligations under the Agreements.

27.4 Where a situation of a kind referred to in this Clause continues for more than five (5) Working Days, MAF, in its sole discretion, may terminate any Agreement.

28. COMPLIANCE WITH LAWS

28.1 The Recipients will ensure that in performing their obligations under this Agreement they will comply with all relevant laws, codes and standards of New Zealand and any other relevant jurisdiction.

28.2 The Recipients are responsible for ensuring that every necessary and prudent authorisation (including consents, permits and licences) is obtained to allow the Recipients to perform their obligations under this Agreement.

29. CONTRACTS (PRIVITY) ACT

29.1 Except as expressly provided in this Agreement, this Agreement will not and is not intended to confer any benefit on or create any obligation enforceable at the suit of any person not a party to this Agreement.

30. JURISDICTION

30.1 This Agreement is governed by and will be construed in accordance with the laws of New Zealand. Both Parties submit to the exclusive jurisdiction of the New Zealand courts.

31. ENTIRE AGREEMENT

31.1 This Agreement constitutes the entire agreement between the Parties in relation to the subject matter of this Agreement. It replaces all earlier negotiations, representations, warranties, understandings and agreements, whether oral or written, between the parties relating to the subject matter of this Agreement.

32. SEVERABILITY

32.1 If any part of this Agreement is held by any court or administrative body of competent jurisdiction to be illegal, void or unenforceable, such determination will not impair the enforceability of the remaining parts of this Agreement.

33. TAXES

33.1 Unless otherwise agreed by the Parties in writing, all taxes, duties and levies assessed or levied on the Recipients in relation to this Agreement or the Programme shall be borne entirely by the Recipients.

34. NO AGENCY RELATIONSHIP

34.1 Neither Party is a partner, agent, or employee of the other.

35. JOINT AND SEVERAL LIABILITY

35.1 The Recipients shall have joint and several liability in respect of their obligations under this Agreement

EXECUTED AS AN AGREEMENT:

HER MAJESTY THE QUEEN in right of the Government of New Zealand acting by and through the Director-General of the Ministry of Agriculture and Forestry

Name

Title

in the presence of:

Name

Title

Name:

Occupation:

Address:

Recipients

Name

The Common Seal of the Northland Regional Council was affixed in the presence of:

Chairman

Chief Executive

The Common Seal of the Auckland
Regional Council was affixed in the
presence of:

Chairman

Group Manager, Democracy
Services

The Common Seal of Waikato
Regional Council was affixed in the
presence of:

Chairman

Acting Chief Executive

The Common Seal of Bay of Plenty
Regional Council was affixed in the
presence of:

Chairman

Chief Executive

The Common Seal of the Taranaki
Regional Council was affixed in the
presence of:

Chairman

Chief Executive

The Common Seal of Gisborne
District Council was affixed in the
presence of:

Mayor

Chief Executive

Signed under the Seal of the
Hawke's Bay Regional Council in
the presence of:

Chairman

Chief Executive

The Common Seal of Manawatu-
Wanganui Regional Council was
affixed in the presence of:

Chairman

Chief Executive

The Common Seal of Wellington
Regional Council was affixed in the
presence of:

Chairman

Chief Executive

The Common Seal of the
Canterbury Regional Council was
affixed in the presence of:

Hon. Sir Kerry Burke
Chairman

Dr Bryan Jenkins
Chief Executive

SCHEDULE 1**1. Description of the Programme and objectives**

The Afforestation Grant Scheme (AGS) is an initiative under the government's Sustainable Land Management and Climate Change Plan of Action. It aims to encourage greater levels of greenhouse gas absorption by increasing the area of Kyoto compliant new forest in New Zealand. An additional objective is to reduce the impact of climate change and generate other environmental benefits such as erosion control, improved water quality and flood protection.

Under the AGS, landholders who decide to afforest Kyoto compliant land can tender for an AGS grant. Under section 15 of the Forests Act 1949, the Minister has the power to make financial grants to persons in the forestry sector.

A portion of AGS funds will be allocated to the Recipients for further allocation to Grantees for the purposes of the Objectives.

2. Outcomes to be achieved by the Recipients

Outcome	Date to be achieved by
1. Hire additional staff/ up skill existing staff and/or acquire other resources to the extent necessary to deliver the Programme in a competent manner.	Through out term of agreement
2. Publicise the Programme to owners of landholdings	Throughout term of agreement
3. Put in place a mechanism for the allocation of the Funding whether by tender or otherwise	30 September 2008
4. Allocate the Funding in accordance with the Grant Criteria.	Through out term of agreement
5. Provide other information services on the Government's Climate Change Plan of Action, forestry provisions of the Emission Trading Scheme and the Permanent Forest Sinks Initiative.	Through out term of agreement
6. Administer the trust account and report to MAF on the Programme and trust account reconciliation.	As required under the Agreement

Grant Criteria**Eligible Land**

Land eligible for a grant must be land that:

- a) was not forest land on 31 December 1989; or
- b) was forest land on 31 December 1989 but;
 - was deforested between 1 January 1990 and 31 December 2007; or

- was deforested on or after 1 January 2008; and in respect of which any liability to surrender units arising to the Crown under the Kyoto Protocol have been satisfied.

Where:

"Forest Land" means:

- (a) *an area of land of at least 1 hectare that has, or is likely when the forest species reach maturity to have, a tree crown cover from forest species of more than 30% in each hectare; and*
- (b) *includes an area of land that temporarily does not meet the definition in paragraph (a) due to human intervention or natural causes but that is likely to revert to land meeting the definition in paragraph (a).*

"Forest species" means a tree species capable of reaching at least 5 metres in height at maturity in the place where it is located.

A guide for determining forest land eligibility is available on the MAF climate change website www.maf.govt.nz/climatechange and applies to afforestation under the AGS, the New Zealand Emissions Trading Scheme (NZ ETS), and the Permanent Forest Sink Initiative (PFSI).

Ineligible Land

Significant Natural Areas (SNAs), Sites of Special Wildlife Interest (SSWIs) and Recommended Areas for Protection (RAPs) are not eligible for an afforestation grant, except for indigenous afforestation applications that will enhance the protected area.

An afforestation grant cannot be used on sites registered with the Historic Places Trust; and/or recorded on District Council Plans.

The AGS will not be available on land that has entered into the New Zealand ETS, the PFSI or the East Coast Forestry Project (ECFP). East Coast District landowners may apply for an AGS grant on any additional non-ECFP target land that can't be accommodated in an ECFP application (an objective in the ECFP is that 50% of the total grant area is to be target land as assessed at a regional level).

Land owned or administered by central government agencies is ineligible.

Eligible Species

The species in an application must have the potential to meet the definition of "forest land", and must be compatible with the site where they will be planted. Indigenous species should be "eco-sourced" i.e. endemic to the locality. Natural forest reversion

projects could include the establishment of exotic trees as a nurse crop in a transition to indigenous forest.

Forest species that have been identified in Regional Council Pest Management Strategies as having weed potential are ineligible.

Minimum application size

The minimum application size is 5 hectares. This area may consist of multiple areas of at least 1 hectare.

Shelterbelts or riparian strips less than 30 metres wide (canopy-edge to canopy-edge) are not eligible. However, afforestation on both sides of a waterway can be assessed as one riparian strip with the width of the waterway excluded from the width measurement.

Priority

Priority must be given to grant applications that will create environmental co-benefits related to either soil and water conservation, and/or flood protection, and/or improvement of water quality and/or biodiversity.

SCHEDULE 2

FUNDING AND ADMINISTRATION COSTS

1. **Funding amount (exclusive of GST): up to a maximum of \$25 million (Twenty-Five Million dollars)**

2. **Funding Instalment (exclusive of GST):**

For the Financial	Year 2008/09	\$ 2,500,000
	Year 2009/10	\$ 5,000,000
	Year 2010/11	\$ 5,000,000
	Year 2011/12	\$ 5,000,000
	Year 2012/13	\$ 5,000,000
	Year 2013/14	\$ 2,500,000

3. Administration costs each Quarter

The administrative costs of providing the outcomes in Schedule 1 are in addition to any Funding paid for the particular Financial Year and will be met/ reimbursed according to clause 8.

The agreed reimbursement of costs for 2008/09 shall be 7.5% of the Grant(s) allocated for each Quarter. This is subject to review one year from the date of signing of this Agreement to determine the actual cost incurred by the Recipients. Any reviewed rate will be payable in the first quarter of 2009/10.

Any dispute arising over the issue of costs will be referred to the dispute resolution process prescribed in clause 20.

SCHEDULE 3

AFFORESTATION GRANT AGREEMENT

Date: 20

BETWEEN The Minister of Agriculture and Forestry (*MAF*)

AND X (the Grantee)

1. BACKGROUND

- 1.1 The Afforestation Grant Scheme (AGS) aims to encourage greater levels of greenhouse gas absorption by increasing the area of Kyoto compliant new forest in New Zealand. An additional aim is to reduce the impact of climate change and generate other environmental benefits.
- 1.2 Under the AGS, landholders who decide to afforest Kyoto compliant land can tender for an AGS grant. Under section 15 of the Forests Act 1949, the Minister has the power to make financial grants to persons in the forestry sector.
- 1.3 The Grantee has successfully tendered for an AGS grant and in consideration of payment of the same agrees to establish and maintain a forest on the terms and conditions set out in this agreement.

THE PARTIES AGREE AS FOLLOWS:

2. DEFINITIONS

- 2.1 In this Agreement unless the context otherwise requires:

Agreement means this grant agreement, as amended from time to time by the Parties in writing;

AGS Grant means payment (exclusive of GST) to be provided by MAF to the Grantee in accordance with this Agreement;

Deforest means to convert forest land to non-forest land.

East Coast Forestry Project means an initiative for the payment of grants to control erosion on target land in accordance with the Forest (East Coast) Grants Regulations 2000

Emissions Trading Scheme means the scheme created by the Climate Change Response Act 2002

Expiry Date means (insert date which will be 10 years from the date of execution of the agreement)

Forest Land has the same meaning as in the Climate Change Response Act 2002

Grant aided Forest means the forest to be established and maintained on the Land in exchange for an AGS Grant.

Grantee means the person eligible to receive the AGS Grant in accordance with this Agreement.

GST means goods and services tax payable pursuant to the Good and Services Tax Act 1985;

Land means the land identified in Schedule 1

Landholding means an estate, right, title, or interest of any kind held by the Grantee in or over an area of land by or under which timber may be harvested; but does not include an interest by way of charge or security.

Management Plan means the plan described in Schedule 2

Minimum Establishment Standard means "seedlings, cuttings or other plant material achieving a minimum stocking of 750 stems per hectare and free of weed competition" (this is taken from the AGS Draft guidelines, pg 9)

Parties means MAF and the Grantee and **Party** means either one of them;

Permanent Forest Sink Initiative means the initiative under Part 3 B of the Forests Act 1949

Protocol has the meaning given to it in the Climate Change Response Act 2002

Scheme Administrator means the person for the time being employed or contracted by MAF to administer the Afforestation Grant Scheme.

Units has the meaning given to it in the Climate Change Response Act 2002

Working Day means a day on which registered banks are open for general banking business, other than a Saturday or Sunday, in Wellington, New Zealand.

3. INTERPRETATION

3.1 In this Agreement, unless the context requires otherwise:

Clauses and Schedules: a reference to a Clause or a Schedule is to a Clause or Schedule of this Agreement;

Currency: a reference to any monetary amount is to New Zealand currency;

Documents: a reference to any document, including this Agreement, includes a reference to that document as amended or replaced from time to time;

Headings: headings are included in this Agreement as a matter of convenience and do not affect the construction of this Agreement;

Negative obligations: a reference to a prohibition against doing anything includes a reference to not permitting, suffering or causing that thing to be done;

Person: a reference to a person includes a corporation sole and also a body of persons, whether corporate or unincorporated;

Related terms: where a word or expression is defined in this Agreement, other parts of speech and grammatical forms of that word or expression have corresponding meanings;

Singular and plural: the singular includes the plural and vice versa;

Statutes and regulations: a reference to a statute, any regulations or other statutory instrument is a reference to that statute, those regulations or that

statutory instrument as amended, or to any statute, regulations or statutory instrument substituted for that statute, those regulations or that statutory instrument;

Writing: a reference to "written" or "in writing" includes all modes of presenting or reproducing words, figures and symbols in a tangible and permanently visible form; and

No limitation: "including" and similar words do not imply any limitation.

4. TERM

- 4.1 This Agreement commences on _____ and will remain in force until the earlier of:
- 4.1.1 the Expiry Date; or
- 4.1.2 the date on which this Agreement is terminated in accordance with its terms.

5. GRANTEE'S OBLIGATIONS

- 5.1 The Grantee shall establish and maintain a forest on the Land, in accordance with the Management Plan.
- 5.2 The Grantee shall establish the forest to the Minimum Establishment Standard.
- 5.3 The Grantee shall take all reasonable steps to protect the Grant-aided Forest from damage or destruction due to any cause, including fire, wind and theft.

6. RESTRICTIONS

- 6.1 During the term of this Agreement, the Grantee must not deforest or otherwise destroy all or any part of the Grant-aided Forest except in accordance with:
- 6.1.1 the Management Plan;
- 6.1.2 MAF's written authority.

7. PAYMENT

- 7.1 The total AGS Grant payable under this Agreement is \$ (insert amount in figures and words).
- 7.2 A Grantee may lodge a written claim for payment of the AGS Grant with (insert contact details) when the forest is established to the Minimum Establishment Standard.
- 7.3 A claim will be paid within 30 Working Days of written receipt of the claim provided the Scheme Administrator is satisfied that the forest has been established to the Minimum Establishment Standard.
- 7.4 The AGS Grant will be paid to the Grantee to a bank account held with a New Zealand registered bank and nominated by the Grantee in writing.
- 7.5 The Grantee acknowledges that the Scheme Administrator will advise the Inland Revenue Department (IRD) of all grant payments.
- 7.6 If, following the payment of the AGS Grant, information comes to MAF's attention that shows the Grantee was not eligible to receive the whole or part of the AGS Grant, the Grantee shall be liable to repay:
- 7.6.1 the sum received to MAF; and

- 7.6.2 interest from the date the payment was made by MAF (to the Grantee) to the date of repayment to MAF at the rate of 10% p.a. or at the rate of 2% above the Official Cash Rate for the time being, whichever is higher.

8. SCHEME ADMINISTRATOR'S RIGHT OF ACCESS TO LAND

- 8.1 Subject to clause 8.2, the Scheme Administrator or duly authorised person shall have reasonable access to the Land for the following purposes:
- 8.1.1 determining whether a forest has been established and/or maintained to a Minimum Establishment Standard;
 - 8.1.2 for monitoring, investigating or enforcing compliance with any or all of the clauses in this Agreement;
 - 8.1.3 for Protocol purposes.
- 8.2 The exercise of the right of access stipulated in clause 8.1 above is subject to the following conditions:
- 8.2.1 the Grantee has been given reasonable but not less than 48 hours' notice, specifying:
 - 8.2.1.1. the full name of the person(s) accessing the Land;
 - 8.2.1.2 the time and date they will be entering the Land; and
 - 8.2.1.3 approximately how long they intend to remain on the Land; and
 - 8.2.2 any person(s) accessing the Land carry and, at the Grantee's request, show, evidence of their identity; and
 - 8.2.3 any person(s) accessing the Land shall not unreasonably disrupt the Grantee's use of the Land and shall comply with the Grantee's reasonable health and safety requirements, having regard to proper forestry practice.
- 8.3 The Grantee must provide, at its own cost, reasonable co-operation to enable the Scheme Administrator to exercise his or her rights under clause 8.1.

9. GRANTEE'S WARRANTIES

- 9.1 The Grantee warrants and represents that:
- 9.1.1 it has full power, authority and capacity to enter into and execute this Agreement.
 - 9.1.2 all information provided, or to be provided, to MAF by the Grantee is accurate, complete and true;
 - 9.1.3 it is the holder of the Landholding in the Land.
 - 9.1.4 it has obtained all necessary licences, permits and consents for establishing and maintaining a forest on the Land;
 - 9.1.5 in the event of the Grantee transferring ownership of its Landholding to another person (the Transferee), the Grantee will procure that the Transferee executes a Deed of Novation as set out in Appendix 4 of this Agreement.

- 9.2 it will not during the term of this Agreement, enter the Land for participation in any one of the following: the Emissions Trading Scheme, the Permanent Forest Sink Initiative or the East Coast Forestry Project.
- 9.3 it will not during the term of this Agreement agree to a forestry right holder or lessee in relation to the Land, registering as a participant under the Emissions Trading Scheme.

10. NOTIFICATION

- 10.1 The Grantee will notify MAF as soon as reasonably practicable in the event of:
- 10.1.1 damage or destruction to all or part of the Grant-aided Forest;
- 10.1.2 a voluntary transfer or other event which results in the Grantee being divested of its Landholding.

11. OWNERSHIP OF CARBON CREDITS AND DEFORESTATION LIABILITIES

- 11.1 MAF will retain ownership of all Units arising out of the establishment and maintenance of the Grant-aided Forest.
- 11.2 MAF shall have responsibility for all harvesting and deforestation liabilities under the Protocol. Subject to clause 5.3, the Grantee shall have no liabilities in this regard.
- 11.3 The Grantee shall retain ownership of the trees in the Grant-aided Forest and all products thereof, including timber.

12. VARIATION

- 12.1 This Agreement may be varied from time to time as agreed by the Parties in writing.

13. RECORDS

- 13.1 The Grantee will keep all accounts and other records (including, without limitation, itemised expenditure records) as are reasonably necessary to allow prompt and accurate audit of any matter in relation this Agreement.
- 13.2 All accounts and records required to be kept under this Clause must be made available to MAF on request for review, copying and use.
- 13.3 This Clause 13 shall survive the expiry or termination of this Agreement by twelve (12) Months.

14. RISK AND MAF'S LIABILITY

- 14.1 Except to the extent of direct damage or loss to the Grantee caused by a breach of this Agreement by MAF or by the negligent or wrongful act or omissions of MAF, MAF has no liability for any direct, indirect or special loss suffered (including, but not limited to, any loss of profits or savings) or costs incurred by the Grantee or any other person.
- 14.2 The extent of MAF's liability to the Grantee for direct damage or loss caused by a breach of this Agreement or by the negligent or wrongful act or omission of MAF will be limited to the amount actually paid to the Grantee under this Agreement.
- 14.3 Subject to clause 5.3, MAF shall bear the risk of loss of Units arising from loss, damage or destruction to the Grant-aided Forest.
- 14.4 This Clause 14 shall survive the termination or expiration of this Agreement.

15. ASSIGNMENT AND SUB-CONTRACTING

15.1 A Party will not:

- 15.1.1 directly or indirectly assign any of its benefits or burdens under any Agreement or sub-contract any of its obligations or responsibilities under this Agreement to any third party without the prior written approval of the other Party.

16. DISPUTES

- 16.1 Except where a Party seeks urgent interlocutory relief, neither Party may commence court proceedings against the other without complying with this Clause 16.
- 16.2 Where any dispute, disagreement, question or difference (a Dispute) arises between the Parties on any matter arising out of this agreement, the parties shall endeavour in good faith to negotiate a resolution of the Dispute.
- 16.3 If a Dispute is not resolved within 10 Working Days, the Parties shall submit the Dispute to mediation conducted by an agreed Mediator or failing agreement, by a mediator appointed by the President for the time being of the New Zealand Law Society or nominee.
- 16.4 Pending settlement of the Dispute, the Parties will continue to perform their obligations under the Agreements as far as is practicable as if the Dispute had not arisen.

17. TERMINATION AND CONSEQUENCES

17.1 If::

- 17.1.1 the Grantee does or omits to do something, or any matter concerning the Grantee comes to MAF's attention, which, in MAF's reasonable opinion, may damage the business or reputation of MAF in a manner that is more than trivial; or

17.1.2 the Grantee materially breaches any of its obligations under this Agreement:

- MAF will as soon as is reasonable practicable notify the Grantee in writing ("the Notice") to remedy the said breach. If such breach has not been remedied to MAF's reasonable satisfaction within 10 Working Days (or such greater period as has been expressed in the Notice) after the date the Notice has been given to the Grantee, MAF may immediately terminate this Agreement in writing. ☞

17.2 MAF may immediately terminate this Agreement by notice in writing to the Grantee if:

17.2.1 the Grantee becomes insolvent or bankrupt or goes into receivership, statutory management or liquidation or is subject to any form of insolvency action or administration; or

17.2.2 the Grantee is divested of its Landholding otherwise than through voluntary transfer of the same.

17.3 In the event of termination of this Agreement under Clauses 17.1 or 17.2 the Grantee shall repay to MAF any AGS Grant paid to the Grantee, in addition to interest from the date payment of the AGS Grant was made to the date of repayment to MAF at the rate stipulated in clause 7.6.2 above.

17.4 For the avoidance of doubt, this Agreement shall not terminate by reason only of the fact that the Protocol ceases to have effect or New Zealand withdraws from it.

18. CONTACT PERSONS AND NOTICE

- 18.1 Any notice or other communication to be given under this Agreement must be in writing addressed to the recipient at the address, facsimile number or email from time to time notified by that Party in writing to the sending Party. Until a change is so notified, the address, facsimile number and email of each Party are as follows:

Ministry of Agriculture and Forestry (MAF)

25 The Terrace

PO Box 2526

Wellington

Fax

email:

Attention:

Grantee

Fax: []

[email:]

[Attention:]

- 18.2 Delivery may be effected by hand, or by post with postage prepaid, or by facsimile, or (subject to the limitation below) by email. A notice or other communication will be deemed to have been received:
- 18.2.1 in the case of hand delivery, at the time of actual delivery to the recipient's address;
- 18.2.2 in the case of delivery by pre-paid post, on the 2nd Working Day after posting;
- 18.2.3 in the case of delivery by facsimile, at the time of transmission specified in a transmission report from the sending machine which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient; and
- 18.2.4 in the case of delivery by email, the earlier of:
- the sender's receipt of confirmation of successful delivery; or
 - one (1) Working Day after dispatch (being when the relevant email first leaves the sender's network for delivery to the recipient's address), provided the sender does not receive any indication of the failure of, or delay in, delivery within one day after dispatch.
- 18.3 However, if a notice or other communication is received or deemed to have been received after 5 pm (New Zealand time) on a Working Day, or on a day which is not a Working Day, it will be deemed not to have been received until the next Working Day.

19. AUDIT

- 19.1 MAF may conduct an audit or audits under this Agreement to ascertain compliance with the terms of the Agreement, including ascertaining whether a forest has been established to the Minimum Establishment Standard. The Grantee will, at its expense, allow access to appropriate staff to assist MAF in ascertaining such compliance. MAF will pay all other costs associated with the audit.
- 19.2 At least ten (10) Working Days prior to commencing an audit under Clause 19.1, MAF will notify the Grantee in writing of its intention to conduct an audit and of the intended scope and timing of the audit.

- 19.3 Where an audit conducted under this Clause identifies any material non-compliance with the terms of the Agreement, MAF may require an additional audit or audits to be carried out at the Grantee's expense (such expenses including MAF personnel costs at external charge-out rates). The Grantee will, at its expense, allow access to appropriate staff to assist MAF (including its officers, employees and agents) in any such audit. MAF will pay all other costs associated with the audit.
- 19.4 MAF will advise the Grantee in writing of the scope and timing of any additional audit or audits required under this Clause.
- 19.5 MAF will promptly notify the Grantee of the results of any audit conducted under this Clause. Where any deficiencies are identified in such an audit, the Grantee will immediately take steps to remedy such deficiency. If the deficiency is not rectified, or cannot be rectified, MAF may elect to terminate this Agreement under clause 17.1.
- 19.6 This Clause shall survive the expiry or termination of this Agreement by twelve (12) Months.

20. WAIVER

- 20.1 No waiver of any rights or benefits arising under an Agreement is effective unless it is in writing and signed by the Party waiving. A waiver of a breach does not prejudice the waiving Party's rights in respect of any other breach. No delay, failure or forbearance by MAF to exercise (in whole or in part) any right, power or remedy under any Agreement shall operate as a waiver.

21. FORCE MAJEURE

- 21.1 Neither Party will be liable for failure to fulfil its obligations under this Agreement if its performance is, in the reasonable opinion of either Party, prevented due to a force majeure event, including an act of God, third party industrial action, riots, war, terrorism, epidemics, change in Government policy, change in appropriation by Parliament, fire, communication line failures, power failures, earthquakes or other disasters (*Force Majeure Event*).
- 21.2 The exclusion of liability in this Clause does not extend to strikes, lockouts or any other form of labour dispute or any other form of delay caused by contractual or labour relations between either Party and any of its employees, agents, sub-contractors or suppliers.
- 21.3 The Party seeking to exclude liability under this Clause will:
- 21.3.1 within three (3) Working Days after the event causing the failure to fulfil its obligations, give written notice to the other Party of the reasons for its failure and the effects of such failure; and
- 21.3.2 use all reasonable endeavours to avoid or remove the cause and perform its obligations under the Agreements.
- 21.4 Where a situation of a kind referred to in this Clause continues for more than five (5) Working Days, MAF, in its sole discretion, may terminate any Agreement but without the Grantee being liable to repay the Grant.

22. CONTRACTS (PRIVITY) ACT

22.1 Except as expressly provided in this Agreement, this Agreement will not and is not intended to confer any benefit on or create any obligation enforceable at the suit of any person not a party to this Agreement.

23. NO PARTNERSHIP, JOINT VENTURE OR AGENCY RELATIONSHIP

23.1 Nothing in this Covenant shall evidence or be deemed to constitute a partnership or joint venture between the parties, nor will either party constitute an agent of the other party.

24. SEVERABILITY

24.1 If any part of this Covenant is held by any court or administrative body of competent jurisdiction to be illegal, void or unenforceable, such determination shall not impair the enforceability of the remaining parts of this Covenant

25. JOINT AND SEVERAL LIABILITY

25.1 Where at any time, the Grantee consists of more than one person, each person shall be jointly and severally liable in respect of the obligations under this Agreement.

26. ENTIRE AGREEMENT

26.1 This Agreement constitutes the entire agreement between the Parties in relation to the subject matter of this Agreement. It replaces all earlier negotiations, representations, warranties, understandings and agreements, whether oral or written, between the parties relating to the subject matter of this Agreement.

27. GOVERNING LAW AND JURISDICTION:

27.1 This Agreement shall be governed by and construed in accordance with New Zealand law.

27.2 Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New Zealand for the purpose of hearing and determining any disputes or proceedings arising out of or in connection with this Agreement ("Proceedings").

EXECUTED AS AN AGREEMENT:

THE MINISTER OF AGRICULTURE AND FORESTRY:

By the Grantee:

Name

in the presence of:

Title

Name:

Name

Occupation:

Address:

Title

SCHEDULE 1

Description of Land on which Grant-Aided Forest to be established (with map attached showing Land).

SCHEDULE 2

Set out Management Plan

SCHEDULE 4**DEED OF NOVATION****DEED OF NOVATION dated**

Parties: The Minister of Agriculture and Forestry (*MAF*)

: The Grantee

: The Transferee

INTRODUCTION:

- A.** MAF and the Grantee have entered into an agreement dated (date) for a term of . Under the Agreement, the Grantee is obliged to plant and maintain a forest in exchange for the payment of a grant from MAF.
- B.** The Grantee wishes to be released from the Agreement and its obligations thereunder. The Transferee wishes to assume the rights and obligations under the Agreement to the extent specified in this Deed.
- C.** MAF has agreed to release the Grantee to the extent specified in this Deed upon condition that the Transferee undertakes to perform the terms of the Agreement and be bound by the terms contained in this Deed.

It is agreed:**1. DEFINITIONS AND INTERPRETATION**

- 1.1 In this Deed unless the context otherwise requires, any term used in this Deed and which is a defined term in the Agreement has the same meaning in this Deed.

2. TRANSFEE TO PERFORM OBLIGATIONS OF GRANTEE

- 2.1 Except as provided under Clause 3, the Transferee agrees to perform all the obligations of the Grantee under the Agreement to the extent they have not already been performed by the Grantee. The Transferee is bound by the Agreement as if the Transferee were named in the Agreement in place of the Grantee.

3. CONTINUING OBLIGATIONS

- 3.1 The Parties acknowledge that the Grantee continues to have the following obligations under the Agreement:
 - 3.1.1 Obligations under Clause 13 of the Agreement relating to the keeping of accounts and records and making them available for review, copy and use on MAF's request. These obligations endure for the period of twelve (12) months from the Effective Date.

4. RELEASE OF THE GRANTEE

4.1 Except as otherwise provided in this Deed, MAF releases the Grantee from the Grantee's obligations under this Agreement and accepts the liabilities of the Transferee in place of the liabilities of the Grantee in respect of the Agreement.

5. TRANSFER OF RIGHTS OF GRANTEE

5.1 The Grantee transfers to the Transferee the rights of the Grantee under the Agreement with effect from ____ (Effective Date). MAF recognises that the Transferee is entitled to those rights as if the Transferee were named in the Agreement in place of the Grantee.

6. WARRANTIES BY THE GRANTEE

6.1 The Grantee warrants to MAF and the Transferee that it has carried out its obligations under the Agreement to the Effective Date.

7. FURTHER ASSURANCES

7.1 Each party must promptly at its own cost do all things (including executing all documents) necessary or desirable to give effect to this Deed.

7.2 The Transferee warrants that if it transfers its Landholding to another person, it will procure that that person signs a Deed of Novation incorporating the terms and conditions of the Agreement and of this Deed.

8. NOTICES

8.1 The Transferee's address for service is:

9. NO ASSIGNMENT WITHOUT MAF APPROVAL

9.1 Neither the Grantee nor the Transferee may assign or transfer any of its rights or obligations under this Deed without prior written approval from MAF.

10. GOVERNING LAW AND JURISDICTION

10.1 The law of New Zealand governs this Deed and the parties submit to the non-exclusive jurisdiction of the Courts of New Zealand.

EXECUTED as a Deed and delivered on the date shown on the first page.

Signed for MAF

Signature of Officer	Signature of Witness
Name of Officer	Name of Witness
Office Held	Office Held

Signed for the Grantee

Signature of Officer

Signature of Witness

Name of Officer

Name of Witness

Office Held

Office Held

Signed for the Transferee

Signature of Officer

Signature of Witness

Name of Officer

Name of Witness

Office Held

Office Held