

APPENDIX 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

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

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

This Agreement commences on (insert date) and will remain in force until the earlier of:

- (a) the Expiry Date; or
- (b) 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

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:

- (a) The Management Plan
- (b) MAF's written authority.

7. PAYMENT

- (a) The total AGS Grant payable under this Agreement is \$ (insert amount in figures and words).
- (b) 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.
- (c) 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.
- (d) 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.
- (e) The Grantee acknowledges that the Scheme Administrator will advise the Inland Revenue Department (IRD) of all grant payments.
- (f) 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
 - (i) the sum received to MAF and;

(ii) 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:

- (a) determining whether a forest has been established and/or maintained to a Minimum Establishment Standard
- (b) for monitoring, investigating or enforcing compliance with any or all of the clauses in this Agreement
- (c) for Protocol purposes

8.2. The exercise of the right of access stipulated in clause 8.1 above is subject to the following conditions:

- (a) the Grantee has been given reasonable but not less than 48 hours' notice, specifying:
 - (i) the full name of the person(s) accessing the Land;
 - (ii) the time and date they will be entering the Land; and
 - (iii) approximately how long they intend to remain on the Land; and
- (b) any person(s) accessing the Land carry and, at the Grantee's request, show, evidence of their identity; and
- (c) 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

The Grantee warrants and represents that:

- (a) it has full power, authority and capacity to enter into and execute this Agreement.
- (b) all information provided, or to be provided, to MAF by the Grantee is accurate, complete and true;
- (c) it is the holder of the Landholding in the Land.
- (d) it has obtained all necessary licences, permits and consents for establishing and maintaining a forest on the Land
- (e) 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.

- (f) it will not during the term of this Agreement, enter the Land for participation in any 1 of the following: the Emissions Trading Scheme, the Permanent Forest Sink Initiative or the East Coast Forestry Project.
- (g) 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

The Grantee will notify MAF as soon as reasonably practicable in the event of:

- (a) damage or destruction to all or part of the Grant-aided Forest
- (b) 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

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

A Party will not:

- (a) 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

(a) 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

(b) the Grantee materially breaches any of its obligations under this Agreement;

MAF will as soon as is reasonably 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

(a) 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

(b) 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(f) (ii) 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:

- (a) in the case of hand delivery, at the time of actual delivery to the recipient's address;
- (b) in the case of delivery by pre-paid post, on the 2nd Working Day after posting;
- (c) 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
- (d) in the case of delivery by email, the earlier of:
 - the sender's receipt of confirmation of successful delivery; or
 - one 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) 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 18.1.

19.6 This Clause shall survive the expiry or termination of this Agreement by twelve (12) Months.

20. WAIVER

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 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*).

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:

(i) 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

(ii) 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

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

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

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

26. JOINT AND SEVERAL LIABILITY

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.

27. ENTIRE AGREEMENT

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.

28. GOVERNING LAW AND JURISDICTION:

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

28.2. 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

Title

in the presence of:

Name

Name:

Title

Occupation:

Address:

SCHEDULE 1

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

SCHEDULE 2

Set out Management Plan