

Ministry for Primary Industries
Manatū Ahu Matua



Growing and Protecting New Zealand

EROSION CONTROL FUNDING PROGRAMME (EAST COAST) LAND TREATMENT GRANT AGREEMENT

BETWEEN

MINISTRY FOR PRIMARY INDUSTRIES

AND

[GRANTEE NAME]

Agreement number: **[201xxxx]**

Date: **[dd Month 20xx]**

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GRANT AGREEMENT

BETWEEN

HER MAJESTY THE QUEEN IN RIGHT OF NEW ZEALAND acting by and through the Ministry for Primary Industries (through its authorised delegate) ("**MPI**" or the "**Grantor**")

AND

[insert recipient's full legal name and if applicable its NZBN] (the "**Grantee**")

BACKGROUND

- A. The aim of the Erosion Control Funding Programme (**ECFP**) is to address severe soil erosion by achieving sustainable land management on severely eroding land or erosion-prone land.
- B. Under the ECFP, grants may be awarded for the following specified erosion treatments:
 - a) Forestry
 - b) Pole planting
 - c) Indigenous reversion
- C. The Grantee has been awarded an ECFP grant by the Grantor, and in consideration of payment of the grant, agrees to establish and maintain one or more specified erosion treatments on the land defined in this Agreement, on the terms and conditions set out in this Agreement.

AGREEMENT

In consideration of the transfer of grant monies to the Grantee by the Grantor, the Grantee agrees to be bound by the conditions set out in this Agreement.

SIGNATURES

SIGNED for and on behalf of **MPI** by the person named below, being a person duly authorised to enter into obligations on behalf of MPI:

SIGNED for and on behalf of the **Recipient** by the person named below, being a person duly authorised to enter into obligations on behalf of the Recipient:

Signature

Name: Morag McConnell

Title: Manager Sustainable Growth Programmes

Date: 06 March 2018

Signature

Name:

Title:

Date:

GENERAL TERMS

1. DEFINITIONS

In this Agreement unless the context otherwise requires:

Actual Treated Area means an area within a Landholding that is the actual area to which one or more Specified Erosion Treatments have been applied; regardless of whether that area is the same as the Grant-aided Area;

Agreement means has the meaning given in clause this grant agreement (including all schedules), as varied from time to time by the Parties in writing in accordance with clause 16.1;

Approved Establishment Year means the year in which establishment of the Specified Erosion Treatment by the Grantee is required, as specified in Schedule 1;

Commencement Date means the date this Agreement commences as set out in Schedule 1;

Conditions means any conditions set out in Schedule 2;

Confidential Information includes the terms of this Agreement and any information exchanged during the negotiation of this Agreement, and, in relation to each Party, means information provided by, obtained from, or relating to that Party, that becomes known to the other Party under or in connection with this Agreement, which:

- a) is specified in Schedule 1 as being confidential;
- b) is by its nature confidential;
- c) is marked as 'confidential', 'in confidence', 'restricted', 'commercial in confidence' or with a similar designation;
- d) is provided in confidence;
- e) the other Party knows or ought to know is confidential; or
- f) is commercially sensitive to that Party;

but does not include 'personal information' within the meaning of the Privacy Act 1993;

Control measures has the same meaning as in regulation 3 of the Health and Safety at Work (General Risk and Workplace Management) Regulations 2016;

ECFP Guidelines means any guidelines or policies from time to time issued by the Grantor regarding eligibility for and administration of grants under the Erosion Control Funding Programme (East Coast);

Eligible Land means land that the Grantor has determined from time to time (and notified publicly) as eligible to be included in the ECFP scheme;

Eligible Landholding means a Landholding of any of the following types:

- (a) Any *freehold title* (including Maori freehold title) in Eligible Land that is equal to or greater than the proposed or actual Grant-aided Area;
- (b) Any *leasehold title*, where (to MPI's reasonable satisfaction):
 - (i) the terms of the lease permit the use of Specified Erosion Treatments of the type for which the Grantee has applied;
 - (ii) the lease is fixed-term; and
 - (iii) the duration of the lease is equal to or longer than the proposed duration of the relevant Grant Agreement,
- (c) Any land over which the Grantee or proposed Grantee is the holder of a registered forestry right where (to MPI's reasonable satisfaction) the terms of the forestry right permit the use of Specified Erosion Treatments of the type for which the Grantee has applied, and the duration of the forestry right is equal to or longer than the proposed duration of the relevant Grant Agreement.
- (d) Any other type of Landholding, where MPI is reasonably satisfied that the proposed Grant activities can be carried out unimpeded for the proposed duration of the Grant Agreement (provided that MPI in its sole discretion may determine whether these criteria have been met);
- (e) but for the avoidance of doubt does not include land on a periodic tenancy.

Establishment means:

- a) for forestry Establishment, that the successful planting and survival of seedlings of a forest species, or poles, to a minimum stem per hectare density is achieved (in accordance with erosion control standards and forestry best practice) in the Grant-aided Area, and all other grant conditions are met; and
- b) for pole Establishment, that the successful planting and survival of seedlings, or poles, to a minimum stem per hectare density is achieved (in accordance with erosion control standards) in the Grant-aided Area, and all other grant conditions are met; and
- c) for native reversion Establishment, that the approved area is stock-free, stock-proof and feral animals are controlled, and all other grant conditions are met;

and **Establish** and **Established** have corresponding meanings. The date of Establishment for a treatment will be derived from the site inspection report under subclause 8.5 confirming that the treatment has been established to the satisfaction of the Grantor;

Expiry Date of this Agreement means:

- a) a date 15 years from the date of Establishment of the Specified Erosion Treatment; or
- b) where this Agreement provides for more than one Specified Erosion Treatment (treatment), a date 15 years from the Establishment date which is the latest in time for those treatments; or
- c) any earlier date in the event that the Grantor terminates this agreement under clause 9 or 10, or the Parties cancel this Agreement by mutual consent;

Extraordinary Event for the purposes of clause 16.12 – 16.15, means an event beyond the reasonable control of the Grantee, including:

- a) acts of God, lightning strikes, earthquakes, tsunamis, volcanic eruptions, floods, storms, explosions, fires, pandemics and any other natural disaster;
- b) acts of war (whether declared or not), invasion, actions of foreign enemies, military mobilisation, requisition or embargo;
- c) adverse events affecting the primary sector, as defined by the Grantor from time to time in its internal policies;
- d) acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage, rebellion, insurrection, revolution or military usurped power or civil war; and
- e) contamination by radio-activity from nuclear substances or germ warfare or any other such hazardous properties,

but does not include bankruptcy, insolvency, or any other lack of financial means on the part of the Grantee to carry out any required activities under this Agreement;

Grant means a grant for one or more Specified Erosion Treatments payable (exclusive of GST) by the Grantor under this Agreement, as set out in Schedule 1;

Grant-aided Area means:

- a) the land area specified in Schedule 2, on which a Specified Erosion Treatment(s) will be established and maintained in exchange for the Grant; or
- b) the Actual Treated Area, if (i) different from the original Grant-aided Area, and (ii) the Grantor has agreed in writing to vary the Grant to include that different area pursuant to clauses 6.6 – 6.8, and (iii) the Actual Treated Area has been mapped to the Grantor's satisfaction;

Grant Eligibility Criteria means the criteria specified in the ECFP Guidelines and used by the Grantor to determine eligibility of land for a Grant, as at the Commencement Date;

Grantee's Representative means the person authorised as the formal representative for the Grantee under Schedule 1;

Grantor's Representative means the person authorised as the formal representative for the Grantor under Schedule 1;

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

HSW Act means the Health and Safety at Work Act 2015;

HSW Legislation means the HSW Act and includes all regulations made under that Act and any other health and safety-related legislation relevant to either the Grantee's Establishment of a Forest, or otherwise related to its performance of this Agreement;

Landholding means the land within which the Grant-aided Area is located.

Milestone means the milestones set out in Schedule 2;

Milestone Deliverables means the activities set out under each Milestone in Schedule 2;

Milestone Due Date means the date listed in Schedule 2 by which the Milestone must be completed.

Minimum Establishment Stocking Rate means the minimum establishment standard to ensure an effective erosion control treatment, as set out in Schedule 2;

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

Penalty Interest Rate means the rate specified in clause 6.10(b);

Representative means the Grantor's Representative and/or the Grantee's Representative, as the context requires.

Specified Erosion Treatment means the erosion treatment/s the Grantee is required to establish and maintain on its Grant-aided Area, being one or more of forestry, pole planting, and/or indigenous reversion, as specified in Schedule 1, and includes all milestones required to achieve the treatment/s;

Term means the term of this agreement as set out in clause 3;

Treatment Conditions means the conditions applying to establishment and maintenance of the Specified Erosion Treatment/s, applying across all Grants of the same type under Schedule 2;

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.

2. INTERPRETATION

In this Agreement, unless the context requires otherwise:

- (i) **Clauses and Schedules:** a reference to a Clause or a Schedule is to a Clause or Schedule of this Agreement;
- (ii) **Documents:** a reference to any document, including this Agreement, includes a reference to that document as amended or replaced from time to time;
- (iii) **Headings:** headings are included in this Agreement as a matter of convenience and do not affect the construction of this Agreement;
- (iv) **No limitation:** "including" and similar words do not imply any limitation;
- (v) **Person:** a reference to a person includes a corporation sole and also a body of persons, whether corporate or unincorporated;
- (vi) **Singular and plural:** the singular includes the plural and vice versa;
- (vii) **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;
- (viii) **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.

3. TERM

This Agreement commences on the Commencement 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, (the “Term”).

4. STRUCTURE OF AGREEMENT

This Agreement includes the following schedules, together with any appendices or attachments to the Schedules:

Schedule 1: Specific Terms

Schedule 2: Funding

5. GRANTEE’S OBLIGATIONS

5.1 During the Term the Grantee shall:

- a) Establish the Specified Erosion Treatment in the Grant-aided Area set out in Schedule 2 and in the year of Establishment set out in Schedule 1;
- b) maintain the Specified Erosion Treatment in the Grant-aided Area at or above the minimum Treatment Conditions (if any);
- c) comply with any other Conditions for the Specified Erosion Treatment;
- d) not clear or cause any loss, damage or destruction to any part of the Grant-aided Area, except in accordance with the Grantor’s written authority; and
- e) take all reasonable steps to protect the Grant-aided Area from loss, damage or destruction due to any cause, including feral and domestic animals, fire, wind and theft. The parties acknowledge that the Grantee’s financial circumstances are a relevant factor as to whether reasonable steps have been taken.

6. CLAIMS AND PAYMENT OF GRANT FUNDING

6.1 Subject to clause 6.4, the maximum Grant payable under this Agreement is shown in Schedule 1, and is payable in instalments in respect of the ordering of materials, completion of work, establishment inspection and maintenance inspection of one or more Specified Erosion Treatments in the Grant-aided Area.

Claims for payment

6.2 The Grantee may lodge a written claim for a Grant payment to the Grantor in the form set out from time to time on the Grantor’s website once the milestone to which the payment claim relates has been carried out in accordance with this Agreement.

6.3 A claim must be lodged with evidence of completion of the milestone’s deliverables and where available, quality control information.

6.4 A claim may be made:

- a) no later than three (3) months after the Milestone Due Date specified in Schedule 2; or
- b) in the event that the Grantor has agreed to and notified the Grantee in writing of an extension to the Milestone Due Date through a variation under clause 16.1, no later than three months after the adjusted Milestone Due Date, as set out in the Grantor’s notice.

Payment of claims by the Grantor

6.5 Subject to clauses 6.6 to 6.8, a claim will be paid within 30 Working Days of receipt by the Grantor if the Grantor is satisfied that the Milestone Deliverables have been completed to the required standard and any additional Conditions have been met in accordance with this Agreement.

- 6.6 Where the Actual Treated Area differs from the Grant-aided Area, the Grantor will determine what area is eligible for payment based on information collected from site inspection plus any information (e.g. shape files) supplied by the Grantee.

Where Specified Erosion Treatment does not meet requirements

- 6.7 If evidence provided or the Grantor's site inspection discloses that all or part of the Specified Erosion Treatment or Actual Treated Area does not match, or sufficiently meet the requirements (in terms of size, location, species, timing or stocking rate) of, the Specified Erosion Treatment or Grant-aided Area set out in Schedules 1, 2 and 3, the Grantor may in its sole discretion:
- a) pay only part of a Grant payment claim if it is satisfied that only part of the Milestone Deliverable/s listed in Schedule 1 (for which a claim is being lodged) has been completed in accordance with this Agreement; and/or
 - b) require remedial work by the Grantee (to a specified standard and at the Grantee's cost) to meet the conditions specified in this Agreement as notified in writing by the Grantor, before further payment is made; and
 - c) if remedial work is not completed to the required standard in the notified timeframe, require repayment of part or all of the Grant payments made previously for the Grant-aided Area in question.

Where Specified Erosion Treatment exceeds requirements

- 6.8 If the Grantor's site inspection discloses that the Specified Erosion Treatment or Actual Treated Area exceeds the requirements (in terms of size, location or stocking rate) of the Specified Erosion Treatment or Grant-aided Area set out in Schedules 1 and 2, the Grantor may make an additional payment (at the Grant rate specified in Schedule 1) only if, in the Grantor's sole discretion:
- a) the treatment in the Actual Treated Area meets all the Grant Eligibility Criteria; and
 - b) the Grantor determines that the treatment in Actual Treated Area provides sufficient erosion control benefits to warrant the additional Grant payment; and
 - c) funds are available in the ECFP multi-year budget;

In this case, the Grantor will vary the Agreement to ensure that subsequent milestones for the Grant-aided Area in question reflect the acceptance of the additional treatment.

How payments will be made

- 6.9 Grant payments will only be paid to the Grantee's nominated bank account held with a New Zealand registered bank.

Fraudulent or Misleading Conduct

- 6.10 Without affecting any other remedy of the Grantor if, following a Grant payment, information comes to the Grantor's attention that shows the Grantee was not eligible to receive the whole or part of the Grant due to wilfully misleading or fraudulent behaviour, then the Grantee must repay:
- a) the Grant; and
 - b) interest from the date the payment was made by the Grantor (to the Grantee) to the date of repayment to the Grantor 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.

7. GRANTEE'S WARRANTIES AND OTHER RESPONSIBILITIES

- 7.1 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 the Grantor by the Grantee is accurate, complete and true;
 - c) it is (at the Commencement Date) and continues during the term to be the holder of an Eligible Landholding in the Grant-aided Area;

- d) it has obtained all necessary licences, permits and consents for establishing and maintaining a Specified Erosion Treatment in the Grant-aided Area;
 - e) it has obtained independent legal advice or has waived its right to do so; and
 - f) it will use all reasonable endeavours to complete the Milestones except to the extent it is unable to do so due to an Extraordinary Event. If the completion of any Milestone is delayed other than as permitted by this Agreement, then (without prejudice to any other right of or remedy available) the Grantor may either withhold any payment due on completion of that Milestone until such time as the Milestone is complete, or terminate this Agreement with immediate effect.
- 7.2 If the Grantee proposes to transfer all or any part of the Landholding affecting the Grant-aided Area to another person (the “**Transferee**”), the Grantee will ensure that before making the transfer, it:
- a) notifies the Grantor in writing of its intention to transfer all or part of the Landholding; and
 - b) executes itself, and procures that the Transferee also executes, a Deed of Novation of this Agreement, in the form set out in Schedule 4 of this Agreement (or such other form as the Grantor may reasonably require from time to time), to be effective from the same time as the transfer of the Landholding being registered on the title or (where no registration of title is required, otherwise takes effect legally).
- To avoid doubt, where the Landholding is a lease or forestry right, transfer of that Landholding includes transfer of all or any part of the lease or forestry right affecting the Grant-aided Area to any person other than the Grantee.
- 7.3 If the Grantee has not procured a novation of this Agreement as required by this Agreement then:
- a) the Grantee remains fully liable for all obligations under the Agreement;
 - b) the Grantor may immediately terminate this Agreement by notice in writing; and
 - c) the Grantee will be liable to repay the Grant in full to the Grantor and pay interest at the Penalty Interest Rate.
- 7.4 The Grantee will notify the Grantor in writing as soon as reasonably practicable in the event of:
- d) loss, damage, or destruction of all or part of the Grant-aided Area; or
 - e) any event which results in the Grantee being divested of its Landholding.

8. GRANTOR’S RIGHT OF ACCESS AND GRANTEE’S OBLIGATIONS

- 8.1 Subject to clause 8.2, a duly authorised representative of the Grantor shall have access to the Grant-aided Area during reasonable working hours to conduct a site inspection for the purposes of verifying a claim for payment under clause 6, or auditing compliance with this Agreement under clauses 8.3 to 8.8.
- 8.2 The Grantor’s exercise of the right of access stipulated in clause 8.1 above is subject to the following conditions:
- a) The Grantee has been given at least 48 hours’ notice, specifying:
 - (i) the name(s) of the person(s) accessing the Grant-aided Area;
 - (ii) the time and date that person will be entering the Grant-aided Area;
 - (iii) approximately how long the person intends to remain on the Grant-aided Area; and
 - (iv) the nature and scope of any proposed audit(s).
 - b) Any person(s) accessing the Grant-aided Area must carry and, at the Grantee’s request, show, evidence of their identity; and
 - c) Any person(s) accessing the Grant-aided Area shall not unreasonably disrupt the Grantee’s use of the Grant-aided Area and shall comply with the Grantee’s reasonable health and safety requirements.
- 8.3 After having given notice according to clauses 8.2 to the Grantee:

- a) Before paying an instalment of the Grant to the Grantee, the Grantor or its authorised representative may conduct a site inspection under this Agreement to ascertain whether any relevant Milestone has been completed in accordance with this Agreement and to the Grantor's reasonable satisfaction; and
 - b) Without limiting subclause 8.3(a), from time to time during the Term, the Grantor's authorised representative may conduct a site or other (paper-based) audit to determine any matter connected with the Grantee's ongoing compliance with this Agreement.
- 8.4 The Grantee will, at its expense, allow access to appropriate staff and other personnel of the Grantee (including but not limited to any contractors or subcontractors carrying out Specified Erosion Treatment work) to assist the Grantor in conducting a site inspection under subclause 8.3(a) or a compliance audit under subclause 8.3(b). The Grantor will pay all other costs associated with a site inspection or an audit.
- 8.5 The Grantor will promptly notify the Grantee of the results of any site inspection conducted under subclause 8.3(a) or compliance audit conducted under subclause 8.3(b). The results of a site inspection for the establishment of a Specified Erosion Treatment will be a report in the form of an establishment or maintenance payment map, which includes the date of establishment of the Treatment, and which is notified to the Grantee in accordance with clause 15.

Outcome of Compliance Audit

- 8.6 Where a compliance audit conducted under clause 8.3(b) identifies any material non-compliance with the terms of the Agreement, the Grantor may require an additional audit or audits to be carried out and subclause 8.4 shall apply to any such further audits.
- 8.7 Where any deficiencies are identified in such a further audit, the Grantee will immediately take steps to remedy such deficiency within any timeframes specified by the Grantor. If the deficiency is not remedied, or cannot be remedied, within the timeframes specified by the Grantor, the Grantor may elect to require repayment by the Grantee of Grant money already paid under clause 6 and/or terminate this Agreement under clause 9 or 10.
- 8.8 This clause shall survive the expiry or termination of this Agreement by twelve (12) months.

9. GRANTOR'S OPTIONS IN EVENT OF BREACH

- 9.1 If the Grantee breaches any of its obligations under this Agreement, (a "**Breach**"), the Grantor may notify the Grantee in writing (the "**Notice**") to remedy the Breach.
- 9.2 Without limiting the rights of either Party under clause 10, if the Grantee breaches any of the terms of this Agreement, the following options apply:
- a) If the Breach has occurred before the Specified Erosion Treatment has been established in the Grant-aided Area, the Grantor may in its sole discretion and by notice in writing from the Grantor's Representative:
 - (i) elect to waive the Breach and continue the Agreement on the same terms;
 - (ii) propose a variation to be signed by both parties and allow the Agreement to continue on those varied terms; or
 - (iii) terminate the Agreement from a specified date and clause 10.2 applies.
 - b) If the Breach has occurred during or after establishment of the Specified Erosion Treatment, the Grantor may in its sole discretion and by notice in writing from the Grantor's Representative:
 - (i) subject to clause 9.5, require the Grantee to remedy the Breach at the Grantee's cost (e.g. by replanting a cleared area); or
 - (ii) require the Grantee to repay all or part of the Grant (and the parties agree that any such sum will reflect a genuine pre-estimate of the loss incurred by the Grantor), but allow the Agreement to continue on its terms (or as varied by further agreement of the parties); or
 - (iii) terminate the Agreement from a specified date, in which case 10.2 applies.
- 9.3 Any required repayment must be made by the Grantee within the timeframe specified by the Grantor.

- 9.4 If repayment to the Grantor has not been made by the Grantee within the specified timeframe, penalty interest will apply to the Grantee at the rate of 10% pa or at the rate of 2% above the Official Cash Rate, whichever is the higher. The Grantor will specify the date from which the Penalty Interest Rate will apply, and the new repayment timeframe.
- 9.5 If the Grantor's Representative requires the Grantee to remedy a Breach, the Grantor may or may not also elect to withhold all or part of future Grant payment/s until such time as the breach has been remedied.

10. TERMINATION ON GROUNDS OTHER THAN BREACH AND CONSEQUENCES

Termination for insolvency

- 10.1 The Grantor may immediately terminate this Agreement by notice in writing to the Grantee if the Grantor becomes aware that:
- a) the Grantee is insolvent or has been declared bankrupt or gone 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.

Consequences of termination

- 10.2 In the event of termination of this Agreement under clause 9 or 10 the Grantee shall repay to the Grantor any Grant monies paid to the Grantee, in addition to interest from the date payment of the Grant was made to the date of repayment to the Grantor at the Penalty Interest Rate.

11. PRIVACY AND CONFIDENTIALITY

Privacy

- 11.1 The Grantor agrees to hold any personal information of the Grantee supplied under or in connection with this Agreement (including any application process leading up to the execution of this Agreement) private, and to store, use and disclose that information strictly in accordance with the provisions of the Privacy Act 1993.
- 11.2 For the purposes of the Privacy Act 1993, the Parties agree that the Grantor may use and disclose the Grantee's personal information solely for the purpose of complying with, monitoring, auditing and enforcing the respective rights and obligations of the Parties under or in connection with this Agreement. If the Grantor wishes to use the Grantee's personal information for any other purpose, the Grantor must first consult with and obtain consent of the Grantee to such use or disclosure. However the Grantor may use personal information of the Grantee for statistical or regulatory purposes provided the information is used in an anonymised form which does not identify (and is not reasonably capable of identifying) the Grantee.
- 11.3 Despite subclauses 11.1 and 11.2, the Grantee acknowledges that the Grantor may be required to disclose personal information under the provisions of the Official Information Act 1982, or if required by law, court order, or parliamentary rules or convention. If such disclosure is required, the Grantor will use its best endeavours to consult with the Grantee about the proposed disclosure before that disclosure is made.

Confidentiality

- 11.4 The Parties will keep confidential and secure and not use or disclose to any third party any of the other Party's Confidential Information except:
- a) to their professional advisers or Personnel directly concerned with the implementation or operation of this Agreement and to the extent necessary for performing its obligations under this Agreement;
 - b) as required by law, court order, or parliamentary rules or convention;
 - c) under the Official Information Act 1982;
 - d) where the information subsequently becomes part of the public domain through no fault of the Party receiving the information;
 - e) in accordance with any mandatory procurement or grant funding rules applying to the government; or

- f) with the prior written consent of the other Party.
- 11.5 Except as expressly agreed by the Grantor in writing, the Grantee must retain all of the Grantor's Confidential Information in New Zealand.
- 11.6 Should a request be made to either Party for information that is Confidential Information, the Party to whom the request is made will notify the other Party as soon as practicable. Such notice will outline the information subject to the request, and allow the Party being notified a reasonable opportunity to provide comment on whether, in its opinion, there are good (or conclusive) reasons for withholding any or all of the information sought.
- 11.7 This entire clause 11 shall survive expiry or termination of this Agreement.

12. RECORDS

- 12.1 During the Term and for a period of 12 months after expiry or termination of this Agreement, the Grantee must keep, in readily accessible form, 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 to this Agreement.
- 12.2 All accounts and records required to be kept under this clause must be made available to the Grantor on request for review, copying and use.
- 12.3 This obligation survives expiry or termination of this Agreement.

13. LIABILITY

Liability of Grantor

- 13.1 Except to the extent of direct damage or loss to the Grantee caused by a breach of this Agreement by the Grantor or by the negligent or wrongful act or omissions of the Grantor, the Grantor has no liability for any loss, expense, damage, liability, or costs incurred by the Grantee or any other person.
- 13.2 The extent of the Grantor'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 the Grantor will be limited to the amount actually paid to the Grantee under this Agreement.

Liability of Grantee

- 13.3 Except in respect of a breach of confidentiality under clause 11.4, the liability of the Grantee to the Grantor for any matter arising from this Agreement is limited to the total amount of the Grant payable under this Agreement together with any penalty interest or other penalties payable.
- 13.4 If the Grantee is not a natural person, the Grantee will be liable to the Grantor for the acts, defaults and omissions of any of its Personnel, agents and subcontractors in relation to this Agreement as fully as if they were the acts, defaults or omissions of the Grantee.

General

- 13.5 Neither Party will be liable to the other Party for any loss of profit, loss of revenue or other indirect, consequential or incidental loss or damage arising under or in connection with this Agreement.
- 13.6 This entire clause 13 shall survive the termination, novation or expiration of this Agreement.

14. DISPUTES

- 14.1 Except where a Party seeks urgent interlocutory relief, injunction or specific performance, neither Party may commence court proceedings against the other without first having complied with this clause.
- 14.2 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 "**Recipient**") in writing of the Dispute (the "**Dispute Notice**").
- 14.3 The Dispute Notice must specify the Initiator's:

- a) view of the facts of the Dispute;
 - b) legal position on the Dispute;
 - c) suggestion for resolving the Dispute; and
 - d) representative authorised to resolve the Dispute.
- 14.4 The Recipient must respond to the Dispute Notice within five (5) Working Days of receiving it. The Recipient's response must specify its:
- a) view of the facts of the Dispute;
 - b) legal position on the Dispute;
 - c) its suggestion for resolving the Dispute; and
 - d) representative authorised to resolve the Dispute.
- 14.5 The Parties will enter into negotiations to resolve the Dispute within five (5) Working Days of the Initiator receiving the Recipient's response.
- 14.6 If a Dispute is not resolved within 20 Working Days of receipt of the Dispute Notice, the Parties will 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 his or her nominee.
- 14.7 The Parties will use their 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 the expiry of the timeframe referred to in clause 14.5, the mediator will be selected, and the mediator's fee determined, by the Chair for the time being of the organisation known as Resolution Institute (or his/her nominee). Mediation will be conducted in all respects in accordance with the Resolution Institute standard mediation agreement, and the Parties will use their best efforts to ensure that mediation is commenced and conducted expeditiously.
- 14.8 The Parties agree that any mediation which the Parties are required to attend shall be conducted in Wellington, New Zealand.
- 14.9 Pending settlement of the Dispute, the Parties will continue to perform their obligations under this Agreement as far as is practicable as if the Dispute had not arisen.

15. PARTIES' AUTHORISED REPRESENTATIVES AND NOTICE

- 15.1 The Grantor's Representative and Grantee's Representative and their contact details are as set out in Schedule 1.
- 15.2 Any notice or other communication to be given under this Agreement must be in writing addressed to that Party's Representative at the address or email address set out in subclause 15.1.
- 15.3 Delivery of a notice or other communication may be made 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 5th Working Day after posting;
 - c) in the case of delivery by email, the earlier of:
 - i) the sender's receipt of confirmation of successful delivery; or
 - ii) 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.
- 15.4 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.

16. MISCELLANEOUS

Variations

- 16.1 This Agreement may be varied from time to time by further agreement of the Parties in writing.

Waiver

- 16.2 No waiver of any rights or benefits arising under an Agreement is effective unless it is in writing and signed by the authorised Representative of 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 the Grantor to exercise (in whole or in part) any right, power or remedy under any Agreement shall operate as a waiver.

Health and Safety

- 16.3 The Grantee will:
- a) consult, cooperate and coordinate with the Grantor to ensure that the Parties comply with their respective obligations under HSW Legislation as they relate to this Agreement;
 - b) perform its, and ensure that its personnel perform their, obligations under this Agreement in compliance with the HSW Legislation, including but not limited to (x) obligations of a PCBU under ss36–43 of the HSW Act; and (y) obligations relating to the identification of hazards and implementation of control measures under the Health and Safety at Work (General Risk and Workplace Management) Regulations 2016;
 - c) comply with all reasonable directions of the Grantor relating to health and safety from time to time;
 - d) maintain a general health and safety policy and practices that are appropriate given the matters anticipated by this Agreement;
 - e) comply with its own health and safety policy and practices, and ensure its personnel and subcontractors so comply; and
 - f) notify all notifiable events related to this Agreement to Worksafe NZ (with a copy to MPI) within the timeframe and in accordance with the requirements of the HSW Act.

Privity

- 16.3 Except as expressly provided in this Agreement, this Agreement does not confer any benefit on or create any obligation enforceable at the suit of any person who is not a Party to this Agreement.

No partnership or joint venture

- 16.4 Nothing in this Agreement 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.

Assignment

- 16.5 A Party will not directly or indirectly assign or sub-contract any part of this Agreement to a third party without the prior written approval of the other Party. However nothing in this subclause prevents a Grantee from contracting a person or entity to carry out any treatment/s required under this Agreement, and/or to carry out activities in the Grant-aided Area designed to ensure compliance with any conditions of this Agreement.

Severability

- 16.6 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 shall not impair the enforceability of the remaining parts of this Agreement.

Joint and Several Liability

- 16.7 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.

Entire Agreement

- 16.8 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.

Governing Law and Jurisdiction

- 16.9 This Agreement shall be governed by and construed in accordance with New Zealand law.
- 16.10 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.

Extraordinary Events

- 16.11 Provided that it complies with subclauses 16.13 to 16.15, the Grantee will not be liable to the Grantor for any failure to perform its obligations under this Agreement by reason of an Extraordinary Event.
- 16.12 The Grantee must notify the Grantor, as soon as practicable after the Extraordinary Event occurs, of:
- a) the nature of the Extraordinary Event;
 - b) the extent of the Grantee's inability to perform its obligations;
 - c) the likely duration of that non-performance; and
 - d) the steps being taken to remedy, or reduce the impact of, the Extraordinary Event.
- 16.13 Despite subclause 16.12, the Grantee must use its best endeavours to minimise and mitigate its effects on that Party's obligations, and continue to perform its obligations under this Agreement as far as practicable. The Grantor's Representative may notify the Grantee in writing of mitigation actions the Grantee is required to take while the Grantee's obligations are suspended under subclause 16.12.
- 16.14 The Grantee must resume performance of its obligations as soon as reasonably practicable following the Extraordinary Event, and must consult with the Grantor in relation to its proposed timeline for resuming performance.

SCHEDULE 1: SPECIFIC TERMS

1. LAND TREATMENT DESCRIPTION

[MPI to insert project summary]

2. TERM

Commencement Date: When this Agreement has been signed by both parties.

3. REPRESENTATIVES

Grantor:

Ministry for Primary Industries
Erosion Control Funding Programme (East Coast)
25 The Terrace
PO Box 2526
Wellington 6140
Email: funding@mpi.govt.nz
Attention: Manager Sustainable Growth Programmes

Grantee's Representative:

Name: [Insert details]
Address: [Insert details]
Email: [Insert details]
Attention: [Insert details]

SCHEDULE 2: FUNDING

SECTION 2.1 REPORTING REQUIREMENTS, MILESTONE DESCRIPTIONS AND ECFP GRANT PAYABLE

Milestone Area	Milestone No.	Milestone Description	Treatment Type	Species	Establishment Year	Milestone Due Date	(A) Grant-aided Area ha	(B) Number of poles	(C) Treatment Rate \$/pole or \$/ha	(D) Milestone total
1	201xxx.1a (50%)	Contract and Order Placement								
1	201xxx.1b (30%)	Planting and/or fencing completed								
1	201xxx.1c (0%)	Establishment Inspection								
1	201xxx.1d (20%)	Maintenance Inspection								
Area 1 Subtotal										\$
2	201xxx.2a (50%)	Contract and Order Placement								
2	201xxx.2b (30%)	Planting and/or fencing completed								
2	201xxx.2c (0%)	Establishment Inspection								
2	201xxx.2d (20%)	Maintenance Inspection								
Area 2 Subtotal										\$
Total Approved Grant (excluding GST) Total approved grant in column (D) is based upon the inputs achieved under columns (A), (B) & (C). Poles grant rate is \$26.00 per 3 metre A cattle pole unless proven otherwise. If 2-2.5 metre B sheep poles are used, the grant rate is calculated using \$16.00 per pole and will lower the milestone values accordingly.										\$

#	Milestone name	Description of work	Payment
A	Contract signed and supplies ordered	The Grantee is required to (a) sign this Agreement (and return a copy to MPI) and (b) provide evidence that seedlings and/or fencing supplies (depending on treatment type) have been ordered and a deposit paid (if required by supplier). Evidence may include, but will not be limited to, a copy of an invoice or a letter from the supplier confirming the order has been received.	50%
B	Planting/Fencing completed	The Grantee is required to complete the planting and/or fencing (depending on treatment type) in the year specified in this Agreement and provide evidence that this has been completed. Evidence may include, but will not be limited to, an invoice from the contractor, a letter from the contractor confirming that the work has been completed, or photos of the completed work. If no new fencing is required for reversion blocks, evidence may include photos of existing fences or other stock proof barriers.	30%
C	Establishment Inspection	When Milestone B is complete, an MPI staff member or other authorised person will conduct an inspection to check that the work has been completed to the required standard and in accordance with the claims made in Milestones A and B. Once MPI is satisfied that obligations have been met the Grantee will be provided with a confirmation letter.	0%
D	Maintenance Inspection	After 5 years (for reversion or pole treatments) or 8 years (for forestry treatments) MPI may conduct (including if requested by the Grantee) a maintenance inspection. An MPI staff member or other authorised person will complete the inspection to check that the treatment has been maintained to the required standard and continues to meet the conditions of this Agreement. For forestry treatments, the average number of stems per hectare is counted/confirmed during this inspection, and MPI will require confirmation that thinning has occurred at [X Year – dependant on species and growth rate of trees]. Evidence (such as third party invoices) that this has been carried out must be submitted. Where thinning is not warranted at Year 5 or Year 8 then Milestone E must include evidence that thinning has been completed.	20%
E	Final report	In the event a final thin is not completed in Milestone D the Grantee must submit invoices, or other evidence to MPI's satisfaction, that a final thin has been completed. In instances where the required evidence (of thinning) has not been submitted, MPI may carry out a re-inspection.	0%

SECTION 2.2 GRANT-AIDED AREA

[Add map page/s]

SECTION 2.3 : GRANT CONDITIONS

[Delete tables that do not apply]

Pole Treatments

Conditions	Description
Area	<ul style="list-style-type: none">As per Schedule 2.2 of this Grant Agreement unless changed with the written approval of the Grantor.
Establishment Year	<ul style="list-style-type: none">As per Schedule 2 of this Grant Agreement unless changed with the written approval of the Grantor.
Stocking	<ul style="list-style-type: none">Stocking must be maintained at or above the figure indicated in Schedule 2.Thinning is allowed only with the approval of the Grantor.
Tree Protection	<ul style="list-style-type: none">All poles must be sleeved at establishment.
Livestock Exclusion	<ul style="list-style-type: none">Horse and cattle must be excluded from Grant-aided Area for a minimum of 4 years after planting.

Reversion Treatments

Conditions	Description
Area	<ul style="list-style-type: none">As per Schedule 2 unless changed with the written approval of the Grantor.
Establishment Year	<ul style="list-style-type: none">As per Schedule 2 unless changed with the written approval of the Grantor.
Additional Planting	<ul style="list-style-type: none">Additional indigenous planting is encouraged to increase seed source and enable faster growth of scrub/trees.
Livestock Exclusion	<ul style="list-style-type: none">All domestic and feral pastoral livestock must be excluded from Grant-aided Area.Pests including goats, possum and deer must be controlled within Grant-aided Area.
Vegetation clearance	<ul style="list-style-type: none">No activities are permitted within the Grant-aided Area that will damage or remove existing indigenous vegetation or inhibit reversion of indigenous vegetation.
Fencing	<ul style="list-style-type: none">Boundary fences of Grant-aided Areas must be maintained in good order and remain stock-proof.In cases where existing natural features or forestry will prevent access of stock to the Grant-aided Area, fences may not be required.

Forestry Treatments

Conditions	Description
Area	<ul style="list-style-type: none"> As per Schedule 2 unless changed with the written approval of the Grantor.
Establishment Year	<ul style="list-style-type: none"> As per Schedule 2 unless changed with the written approval of the Grantor.
Spacing	<ul style="list-style-type: none"> For minimum stocking at 1000 stems per hectare, trees should be planted approximately 2.5m apart in rows 4m apart. For minimum stocking at 1250 stems per hectare, trees should be planted approximately 2m apart in rows 4m apart. For minimum stocking at 1500 stems per hectare, trees should be planted approximately 2m apart in rows 3.5m apart.
Releasing	<ul style="list-style-type: none"> Required where competition from grass and weeds may negatively impact tree growth in Grant-aided Area.
Thinning	<ul style="list-style-type: none"> At least one thinning is required across the Grant-aided Area unless specified otherwise. Thinning should not be carried out before mean tree height reaches 5m or after mean tree height reaches 15m. Final stocking rate should be no less than 300 stems per hectare.
Tree Protection	<ul style="list-style-type: none"> None required.
Livestock Exclusion	<ul style="list-style-type: none"> Sheep must be excluded from Grant-aided Area for at least 2 years after planting. Horse and cattle must be excluded from Grant-aided Area for at least 4 years after planting.