



REGISTRATION OF FOREST SINK COVENANT TERMS AND CONDITIONS

December 2010



This covenant template is authorised for use as a Forest Sink Covenant pursuant to section 67Y of the Forests Act 1949.

Signed

.....

Clive Lilley
Director Sustainable Programmes
Ministry of Agriculture and Forestry

Dated: 20 December 2010

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Registration of Forest Sink Covenant

Section 67Y, Forests Act 1949

Land registration district:

Grantor:

Grantee: Her Majesty the Queen in right of New Zealand acting by and through the Minister of Forestry.

GRANT OF FOREST SINK COVENANT

The grantor, being the registered proprietor of the land set out in Schedule A, enters into a forest sink covenant with the grantee pursuant to section 67Y of the Forests Act 1949 over the land, subject to the terms and conditions set out in Schedule B.

This covenant has been entered into pursuant to an agreement:

Dated: _____

ATTESTATION

Signature (common seal) of grantor: _____

Signed in my presence by the grantor

Signature of witness: _____

Witness name:* _____

Witness occupation:* _____

Witness address:* _____

*Witness to complete in block letters unless legibly printed.

Signature of grantee: _____

Signed in my presence by the grantee

Signature of witness: _____

Witness name:* _____

Witness occupation:* _____

Witness address:* _____

*Witness to complete in block letters unless legibly printed

Schedule A

Description of the land of the grantor:

All that piece of land containing [] hectares more or less being [] and being all of the land contained in Computer Freehold Register with unique identifier [] ([[] Land Registration District):

FOREST SINK AREA

The attached diagram shows the area of the land to which the forest sink covenant applies in relation to the title boundaries.

Schedule B

The applicable terms and conditions are as follows:

Terms and conditions of the Forest Sink Covenant are attached.

CONSENT TO ENTER INTO FOREST SINK COVENANT

Consentor:

Consentor's capacity and interest:

For the purposes of section 67ZA of the Forests Act 1949, I, the consentor, as the holder of a registered interest in the land pursuant to the capacity and interest set out above, consent to the grantor entering into this forest sink covenant.

Dated: _____

ATTESTATION

Signature (common seal) of consentor: _____

Signed in my presence by the consentor

Signature of witness: _____

Witness name:* _____

Witness occupation:* _____

Witness address:* _____

*Witness to complete in block letters unless legibly printed.

FOREST SINK COVENANT TERMS AND CONDITIONS

1. DEFINITIONS AND INTERPRETATION

1.1 **Definitions:** In this Covenant the following terms have the following meanings, unless the context requires otherwise or unless the Regulations have a different definition of a term:

“Act”	means the Forests Act 1949;
“Approved Harvesting Practice”	has the meaning given in the Regulations;
“Business Day”	means a day other than a Saturday or Sunday on which banks are open for business in Wellington (or, for the purposes of clause 15 only, the place to which a notice is sent);
“Carbon Stock”	has the meaning given in the Regulations;
“Cleared”	has the meaning given in the Climate Change Response Act 2002;
“Covenant”	means this agreement, including the Schedules to it;
“Covenanted Forest Sink”	means the Forest Sink on the Forest Sink Area;
“Effective Date”	has the meaning given in clause 2.1(a);
“Eligible”	means that: <ul style="list-style-type: none">(a) the Forest Sink Area is “Kyoto compliant land” (as defined in the Regulations);(b) the forest on the Forest Sink Area is “eligible forest” (as defined in the Regulations); and(c) the Covenanted Forest Sink complies with any other requirements of the Regulations;
“Emissions Trading Scheme”	means an emissions trading scheme established under the Climate Change Response Act 2002;
“Forest Sink”	has the meaning given in the Regulations;
“Forest Sink Area”	means, subject to clause 3.3, the part or parts of the Land identified in Schedule 2;
“Forest Sink Mechanism”	means the mechanism relating to the establishment of Forest Sinks set out in the Act, the Regulations and “forest sink covenants” (as defined in the Act);
“Forest Sink Plan”	means the plan contained in Schedule 3, as amended: <ul style="list-style-type: none">(a) by the written agreement of the parties; or

	(b) in accordance with the Regulations;
“Forestry Right”	means a forestry right as defined in the Forestry Rights Registration Act 1983;
“Forestry Right Holder”	means a holder of a Forestry Right registered against the Forest Sink Area under the Land Transfer Act 1952 or section 5A of the Forestry Rights Registration Act 1983;
“Initial Landowner”	means the Landowner with whom the Crown first entered into this Covenant;
“Land”	means the land identified in Schedule 1;
“Landowner”	means the registered owner or owners from time to time of the freehold estate in the Land;
“Protocol”	has the meaning given in the Climate Change Response Act 2002 and includes any successor agreements;
“Registry”	has the meaning given in the Climate Change Response Act 2002;
“Regulations”	means the Forests (Permanent Forest Sink) Regulations 2007;
“Return”	means any return or report which the Landowner is required to provide under the Regulations or this Covenant;
“Restricted Period”	has the meaning given in the Regulations; and
“Units”	means, in each case, the relevant units prescribed by the Regulations, where “units” has the meaning given in the Climate Change Response Act 2002.

1.2 **Interpretation:** In this Covenant, unless the context requires otherwise:

- (a) **Clauses and Schedules:** a reference to a clause or a Schedule is to a clause or Schedule of this Covenant;
- (b) **Currency:** a reference to any monetary amount is to New Zealand currency;
- (c) **Documents:** a reference to any document, including this Covenant, includes a reference to that document as amended or replaced from time to time;
- (d) **Headings:** headings are included in this Covenant as a matter of convenience and do not affect the construction of this Covenant;
- (e) **Negative obligations:** a reference to a prohibition against doing anything includes a reference to not permitting, suffering or causing that thing to be done;
- (f) **Person:** a reference to a person includes a corporation sole and also a body of persons, whether corporate or unincorporated;

- (g) **Related terms:** where a word or expression is defined in this Covenant, other parts of speech and grammatical forms of that word or expression have corresponding meanings;
- (h) **Singular and plural:** the singular includes the plural and vice versa;
- (i) **Statutes and regulations:** a reference to a statute, any regulations or any 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;
- (j) **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
- (k) **No limitation:** "including" and similar words do not imply any limitation.

2. TERM

2.1 **Effective Date:** Subject to clause 2.2, this Covenant:

- (a) comes into effect on the date on which it is registered in accordance with section 67ZD of the Act (the "**Effective Date**"); and
- (b) shall remain in full force and effect unless and until terminated in accordance with clause 11.

2.2 **Automatic expiry if not registered:** This Covenant shall expire automatically without liability to either party if it has not been registered in accordance with section 67ZD of the Act within 180 days of the date on which this Covenant was entered into with the Initial Landowner.

3. FOREST SINK

3.1 **Forest Sink:** The Landowner shall establish and maintain, or maintain, (as applicable) a Forest Sink on the Forest Sink Area in accordance with the Forest Sink Plan.

3.2 **Harvesting and felling restrictions during Restricted Period**

The Landowner shall not destroy all or any part of the Covenanted Forest Sink during the Restricted Period except when:

- (a) harvesting in accordance with Approved Harvesting Practice; or
- (b) felling as permitted by the Forest Sink Plan.

3.3 **Variation of Forest Sink Area (Emissions Trading Scheme):** If, as permitted by clause 8.6(b), the Landowner or another person becomes a participant in an Emissions Trading Scheme (the "**Participant**") in relation to any part, but not the entirety, of the Existing Area, then:

- (a) subject to clause 3.3(b), the Forest Sink Area shall be deemed to be the Existing Area less the part of the Existing Area the Participant became a participant in the Emissions Trading Scheme in respect of; and
- (b) for the purposes of clause 8.1(a) the Forest Sink Area shall remain the Forest Sink Area as at the date this Covenant was signed.

In this clause 3.3 **Existing Area** means the Forest Sink Area immediately before the Participant became a participant in an Emissions Trading Scheme as permitted by clause 8.6(b).

3.4 Variation of Forest Sink Area (removal of part of Forest Sink Area after 50 years):

- (a) At any time after the 50th anniversary of the Effective Date, if the Landowner wishes to remove any part ("removed area") of the Forest Sink Area from this Covenant, then:
 - (i) the Landowner may give written notice to the Crown of the intention to vary this Covenant to remove part of the Forest Sink Area from this Covenant; and
 - (ii) the Crown must do all things necessary to give effect to the variation requested; and
 - (iii) for the purposes of clause 8.1(a) the Forest Sink Area shall remain the Forest Sink Area as at the date this Covenant was signed.
- (b) Subject to clause 3.4 (d), within 10 Business Days after the Landowner gives written notice under clause 3.4(a)(i) the Landowner shall transfer to the Crown, in the manner prescribed by the Regulations (or if the manner of transfer is not so prescribed, then in the manner that applies under clause 5.1A), the number of Units that is equivalent to the total number of Units the Crown has transferred to the Landowner under clause 4.1 in respect of the removed area since the Effective Date less the total number of Units the Landowner has transferred to the Crown under clause 5.1 in respect of the removed area since the Effective Date.
- (c) For the purposes of clause 3.4(b) the calculation of the number of Units that the Landowner has to transfer to the Crown shall be based on the proportion of the Forest Sink Area that is covered by the removed area.
- (d) The Landowner shall only be permitted to transfer to the Crown under clause 3.4(b) a type of Unit as specified in the Regulations.

4. TRANSFER OF UNITS TO LANDOWNER

4.1 Transfer of Units: Subject to clause 4.2, in respect of increases (if any) in Carbon Stock on the Forest Sink Area, the Crown shall transfer to the Landowner such type and number of Units, at such times, and in such manner as prescribed in each case by the Regulations.

4.1A Methodology: If the Regulations do not prescribe any methodology or mechanism for measuring Carbon Stock changes:

- (a) for calculation of the number of Units to which the Landowner is entitled for the purposes of clause 4.1 of this Covenant; or
- (b) for the purposes of regulation 9(b) (civil penalty for breach of harvesting requirements),

then until such time as such methodology or mechanism is prescribed in the Regulations, the parties agree that the methodology set out in Schedule 4 of this Covenant shall be used to measure Carbon Stock changes and to calculate the number of Units to which the Landowner is entitled.

4.2 Conditions: Clause 4.1 shall only apply if:

- (a) the Covenanted Forest Sink is Eligible at all relevant times prescribed in the Regulations; and

- (b) the Landowner has not committed a material breach of this Covenant (other than a material breach which has been remedied to the Crown's reasonable satisfaction).

4.3 **Accrual of obligation:** The Crown does not accrue any obligation or liability in respect of the transfer of Units until the time, prescribed in the Regulations, at which the Crown is obliged under this Covenant to transfer such Units.

5. TRANSFER OF UNITS TO CROWN

5.1 **Transfer of Units:** Subject to clause 5.2, in respect of decreases (if any) in Carbon Stock on the Forest Sink Area, the Landowner shall transfer to the Crown such type and number of Units, at such times, and in such manner as prescribed in each case by the Regulations.

5.1A **Methodology and manner:** If the Regulations do not prescribe any methodology or mechanism for measuring Carbon Stock changes and for calculation of the number of Units which the Landowner must transfer to the Crown, and the manner of such transfer, for the purposes of clause 5.1 of this Covenant, then until such time as such methodology or mechanism and manner of transfer is prescribed in the Regulations, the parties agree that the methodology set out in Schedule 4 of this Covenant shall be used to measure Carbon Stock changes and to calculate the number of Units which the Landowner must transfer to the Crown, and the manner of transfer set out in Schedule 4 shall apply.

5.1B **Timing:** If the Regulations do not prescribe the time within which the Landowner must transfer units to the Crown for decreases in Carbon Stock on the Forest Sink Area, then until such time is prescribed in the Regulations, the parties agree that the Landowner must transfer the units within 20 working days of 31 March 2013.

5.2 **Cap:** The Landowner shall not be obliged under clause 5.1 to transfer to the Crown any more Units than the total number of Units the Crown has transferred to the Landowner under clause 4.1 in respect of the Forest Sink Area less the total number of Units the Landowner has previously transferred to the Crown under clause 5.1 in respect of the Forest Sink Area, provided that this clause 5.2 shall not limit the Crown's rights or remedies in respect of a breach of this Covenant by the Landowner.

5A RECONCILIATION

5A.1 If the Regulations do not prescribe any requirements relating to reconciliation of the Landowner's liability to transfer units and entitlement to receive units (apart from the provisions in regulation 11(1) for a landowner to receive units for a net increase in carbon stock by the forest sink area), then until such time as such requirements are prescribed in the Regulations, the parties shall comply with the provisions of this clause and Schedule 5.

5A.2 The Landowner:

- (a) must submit to the Crown a return at the times and in the manner set out in Schedule 5 of this Covenant; and
- (b) must transfer units to the Crown, or is entitled to request transfer of units from the Crown, at the times specified in Schedule 5 of this Covenant, and as determined in the return in 5A.2(a), provided the details in the return have been correctly recorded according to the terms of this Covenant.

6. RESTORATION OF FOREST SINK

- 6.1 **Right of restoration:** If the Landowner commits any breach of clause 3, 5 or 11.6, the Crown may take any action necessary to re-establish, restore or maintain (in accordance with the Forest Sink Plan or otherwise) the Covenanted Forest Sink.
- 6.2 **Costs:** The Landowner shall reimburse the Crown on demand for all reasonable costs incurred by the Crown in exercising its rights under clause 6.1.

7. ACCESS TO THE LAND

- 7.1 **Access to Land:** The Landowner shall, subject to the conditions in clause 7.2 being met, provide the Crown and its employees, agents or contractors reasonable access to the Land to:

- (a) verify Returns, and otherwise verify and monitor the Carbon Stock changes on the Forest Sink Area;
- (b) monitor the Landowner's compliance with this Covenant;
- (c) investigate any non-compliance with this Covenant;
- (d) comply with its obligations under the Protocol or any other international obligations in respect of measurement or reporting of carbon sequestration;
- (e) exercise its rights under clause 6; and
- (f) undertake any other activities for which access to the Land is required under the Regulations.

- 7.2 **Conditions of access:** The conditions referred to in clause 7.1 are that:

- (a) the Landowner 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;
- (b) any person(s) accessing the Land carry and, at the Landowner's request, show evidence of their identity; and
- (c) any person(s) accessing the Land shall not unreasonably disrupt the Landowner's use of the Land and shall comply with the Landowner's reasonable health and safety requirements, having regard to proper forestry practice.

- 7.3 **Landowner's cooperation:** The Landowner shall provide, at its own cost, reasonable co-operation to enable the Crown to exercise its rights under clause 7.1.

8. LANDOWNER WARRANTIES AND OTHER OBLIGATIONS

- 8.1 **Initial Landowner's Warranties:** The Initial Landowner represents and warrants to the Crown that:
- (a) the Initial Landowner has obtained written consent to enter into this Covenant from each person with a registered interest in the Forest Sink Area;

- (b) all information provided by the Initial Landowner to the Crown in connection with this Covenant prior to the Effective Date was (at the time it was provided and at the Effective Date) accurate, complete and not misleading;
- (c) the Initial Landowner has full capacity, power and authority to enter into and perform this Covenant and has taken all necessary action to authorise the entry into, performance and registration of this Covenant (including obtaining any orders, confirmations, approvals or notations as required under Te Ture Whenua Maori Act 1993/Maori Land Act 1993);
- (d) once the Covenant is executed, the Initial Landowner's obligations under this Covenant shall constitute valid and binding obligations on the Initial Landowner in accordance with this Covenant; and
- (e) the Initial Landowner is the registered owner of the freehold estate in the Land.

8.2 **Landowner's Warranties:** The Landowner covenants with the Crown that:

- (a) the Landowner shall not agree to vary this Covenant without first obtaining the written consent of each person with a registered interest in the Forest Sink Area; and
- (b) all information contained in Returns or otherwise provided to the Crown in connection with this Covenant during the term of this Covenant shall be accurate, complete and not misleading.

8.3 **Obligations to notify:** The Landowner shall notify the Crown as soon as practicable upon becoming aware that:

- (a) any material decrease in Carbon Stock has occurred or is likely to occur in relation to the Forest Sink Area; or
- (b) the Landowner has breached or is likely to breach this Covenant.

8.4 **Compliance with the Regulations:** The Landowner shall comply with the Regulations, including the Landowner's obligations under the Regulations to:

- (a) measure and report on Carbon Stock changes in respect of the Covenanted Forest Sink; and
- (b) pay to the Crown (or any person stipulated by the Regulations) any costs, fee, levy or charge in relation to this Covenant or the Forest Sink Mechanism prescribed by the Regulations.

If there is any inconsistency between the Regulations and this Covenant, the Regulations shall prevail.

8.5 **Compliance with law:** In addition to the obligation under clause 8.4 to comply with the Regulations, the Landowner shall comply with all other applicable law, including the Act and the Resource Management Act 1991, and all other law relating to this Covenant, the Forest Sink Mechanism or the Land.

8.6 **Emissions Trading Scheme:**

- (a) Subject to clause 8.6(b), unless and until this Covenant is terminated, the Landowner shall not become, and shall ensure that no other person becomes, a participant in an Emissions Trading Scheme in relation to all or any part of the Forest Sink Area.
- (b) Clause 8.6(a) does not prohibit the Landowner or another person who is entitled to be a participant in an Emissions Trading Scheme in relation to all or any part of the Forest Sink Area becoming, before 1 April 2010, a participant in such Emissions Trading Scheme in relation to all or any part of the Forest Sink Area.

9. LANDOWNER ACKNOWLEDGEMENTS

9.1 **Tradability of Units:** The Landowner acknowledges and agrees that the Crown:

- (a) makes no representations and gives no warranties or guarantees of any nature to the Landowner or any third party with respect to the value or tradability of Units; and
- (b) has no liability whatsoever to the Landowner or any third party (whether in contract, tort (including negligence) or otherwise) for any inability to trade Units or any change in value of Units, including any such inability to trade Units or change in value of Units that is caused directly or indirectly or in whole or in part by any act or omission of the Crown (other than a breach of the express terms of this Covenant).

9.2 **Rights of Crown not affected:** The Landowner acknowledges and agrees that:

- (a) except as expressly provided for in this Covenant, nothing in this Covenant shall in any way affect, or be construed in such a way as to affect, the rights and powers of the Crown;
- (b) without limiting the generality of clause 9.2(a), nothing in this Covenant shall restrict, prevent or limit, or be construed in such a way as to restrict, prevent or limit, the Crown from promoting, enacting, implementing, repealing, replacing or amending any legislation (including the Act and the Regulations) or procuring or attempting to do the same, adopting any policy or position, making any election, or taking any decision, in respect of the Protocol, the Forest Sink Mechanism, New Zealand's international obligations relevant to Forest Sinks, or in respect of climate change issues generally, including in relation to:
 - (i) elections under the Protocol;
 - (ii) administrative, operational or technical decisions in relation to the Protocol;
 - (iii) any dispute resolution body or tribunal relating to the Protocol or New Zealand's international obligations, whether in relation to climate change or otherwise;
 - (iv) negotiations for a new commitment period (or equivalent) under the Protocol, or negotiations for any other international agreement relating to climate change;
 - (v) any decision whether or not New Zealand should remain a party to, or comply with, the Protocol, or to join any other international agreement relating to climate change; or
 - (vi) any other position New Zealand may adopt or any other action or decision New Zealand takes in any international forum; and
- (c) the Crown shall have no liability to the Landowner or any third party under or in connection with this Covenant as a result of any exercise by the Crown of any of the rights and powers or other matters referred to in this clause 9.2.

10. LIABILITY

10.1 **No indirect loss:** In no circumstances shall either party be liable to the other, whether in contract, tort (including negligence) or otherwise, for any loss of profits, or for any special, consequential or indirect loss or damage of any kind arising under or in connection with this Covenant.

- 10.2 **Joint and several liability:** Where at any time the Landowner consists of more than one owner of the freehold estate in the Land, each owner of the freehold estate in the Land shall be jointly and severally liable for the obligations and liabilities of the Landowner under this Covenant.
- 10.3 **Liability provisions of the Act:** The parties acknowledge that the provisions of section 67ZF of the Act shall apply to any person who has a landholding (as such term is defined in the Act) in the Land.
- 10.4 **No contrary intention:** For the purposes of sections 67ZF(1)(a) and 67ZF(2)(a) of the Act, nothing in this Covenant shall be construed as indicating a contrary intention to the full operation of those provisions.

11. TERMINATION

- 11.1 **Default:** Either party (the “**notifying party**”) may terminate this Covenant immediately on written notice to the other party if the other party commits a material breach of this Covenant and, where such breach is capable of being remedied, fails to remedy such breach within 30 Business Days of being required to do so by the notifying party in writing.
- 11.2 **Insolvency, ineligibility and regulatory grounds:** The Crown may terminate this Covenant immediately on written notice to the Landowner if:
- (a) the Landowner is placed into bankruptcy, liquidation, administration, receivership or statutory management or if an official assignee, liquidator, receiver, trustee, manager, administrator, statutory manager or similar is appointed in respect of the Landowner or all or any of the Landowner’s business or property;
 - (b) the Landowner is unable, or presumed to be unable, to pay its debts as they fall due;
 - (c) the Landowner enters into an assignment for the benefit of, or enters into or makes any arrangement or composition with, the Landowner’s creditors;
 - (d) the Landowner is subject to a resolution or any proceeding for winding up or liquidation (whether on a voluntary or involuntary basis) other than for a bona fide solvent reconstruction; or
 - (e) the Landowner is subject to any event which is analogous to those listed in sub-clauses (a) to (d); or
 - (f) the Covenanted Forest Sink ceases to be Eligible; or
 - (g) any event occurs that is prescribed by the Regulations which gives the Crown the right to terminate this Covenant.
- 11.3 **Landowner termination rights:**
- (a) The Landowner may terminate this Covenant immediately by notice in writing to the Crown at any time after the 50th anniversary of the Effective Date.
 - (b) The Landowner may terminate this Covenant immediately by notice in writing to the Crown at any time after the Crown has exercised its rights to terminate obligations pursuant to clause 11.4(b).
- 11.4 **Protocol and other termination rights:**
- (a) The Landowner may terminate this Covenant immediately on written notice to the Crown at any time within 180 days after any of the following events occur:

- (i) New Zealand withdraws from the Protocol;
 - (ii) the Protocol ceases to exist or be in force;
 - (iii) the Covenanted Forest Sink no longer qualifies to earn Units under the Protocol (including due to any election made by New Zealand under the Protocol);
 - (iv) the Covenanted Forest Sink ceases to be Eligible; or
 - (v) New Zealand is in material breach of its obligations under the Protocol for a period in excess of 120 days.
- (b) The Crown may terminate its obligations under clause 4 of this Covenant immediately on written notice to the Landowner at any time within 180 days after any of the following events occur:
- (i) New Zealand withdraws from the Protocol;
 - (ii) the Protocol ceases to exist or be in force;
 - (iii) the Covenanted Forest Sink no longer qualifies to earn Units under the Protocol (including due to any election made by New Zealand under the Protocol);
 - (iv) New Zealand is in material breach of its obligations under the Protocol for a period in excess of 120 days;
 - (v) the Crown gives the Landowner notice that performance of the Crown's obligations under this Covenant is or would be, in the Crown's opinion, in breach of New Zealand's international obligations, including its obligations in relation to the World Trade Organisation's rules on illegal subsidies;
 - (vi) any event prescribed by the Regulations that gives the Crown the right to terminate any obligations under this Covenant.
- (c) If the Crown terminates obligations under clause 11.4(b) the Landowner continues to be obliged to transfer units to the Crown under clause 5.
- (d) To avoid doubt (and without limitation), the termination rights in this clause 11.4 apply where such event occurs wholly or in part, or directly or indirectly, as a result of any act, omission or decision of the Crown (whether of a type described in clause 9.2 or otherwise).

11.5 Suspension of Crown's liability:

- (a) From the date on which a right to terminate arises under clause 11.4, the Crown's liability in respect of its obligations under clause 4 is automatically suspended, whether such liability is accrued at such date or arises subsequently.
- (b) Unless this Covenant is terminated earlier in accordance with this Covenant, the suspension of such liability shall end on the earlier of:
 - (i) the Crown giving notice to the Landowner ending the suspension; and
 - (ii) 180 days after the right to terminate arose under clause 11.4.

- (c) From the date the suspension of such liability ends all such liability shall resume in full force and effect, provided that the Crown shall have no liability to the Landowner as a result of any delay in the transfer of Units caused by the period of such suspension.

11.6 Consequences of termination:

- (a) Subject to clause 11.6(b), within:
 - (i) 10 Business Days after termination of this Covenant by the Landowner under clauses 11.1, 11.3 or 11.4(a); or
 - (ii) 60 Business Days after termination of this Covenant by the Crown under clause 11.1 or 11.2,the Landowner shall transfer to the Crown, in the manner prescribed by the Regulations (or if the manner of transfer is not so prescribed, then in the manner that applies under clause 5.1A), the number of Units that is equivalent to the total number of Units the Crown has transferred to the Landowner under clause 4.1 in respect of the Forest Sink Area since the Effective Date less the total number of Units the Landowner has transferred to the Crown under clause 5.1 in respect of the Forest Sink Area since the Effective Date.
- (b) The Landowner shall only be permitted to transfer to the Crown under clause 11.6(a) a type of Unit as specified in the Regulations.
- (c) Termination under clause 11.4 shall also terminate any accrued liabilities of the Crown (but not the Landowner) under this Covenant. In all other cases, termination shall not affect any accrued liabilities of the Crown or the Landowner under this Covenant.

11.7 Notice to Forestry Right Holders: The Crown or the Landowner (as applicable) shall give any Forestry Right Holder at least 10 Business Days notice of its intention to terminate under this clause 11 before such party exercises any such termination right. This clause confers a benefit on, and is intended to be enforceable by, any such Forestry Right Holder.

11.8 Survival: Clauses 6 and 11.6, and all other clauses which by their nature are intended to survive termination of this Covenant, or are necessary to give effect to the consequences of such termination, survive termination of this Covenant.

12. ASSIGNMENT

12.1 Covenant runs with Land: The benefits of the Landowner's rights under this Covenant and the responsibility to observe the Landowner's obligations under this Covenant shall run with the Land and bind the Landowner from time to time.

12.2 No other assignment: Except as contemplated in clause 12.1, the Landowner may not transfer or assign any of the Landowner's rights, interests and obligations under this Covenant. To avoid doubt, this clause 12.2 does not prevent the Landowner:

- (a) granting a Forestry Right or other registered interest over the Forest Sink Area; or
- (b) dealing with any Units it receives under this Covenant or entering into forward contracts to deal with Units once it receives them.

13. DISPUTE RESOLUTION

- 13.1 **Obligations continue:** The obligations of each party under this Covenant shall remain in full force and effect during the period of any dispute resolution procedure (whether prescribed by the Regulations or otherwise).
- 13.2 **Urgent relief:** Unless expressly stated otherwise, nothing contained in any dispute resolution procedure (whether prescribed by the Regulations or otherwise) shall preclude either party from taking immediate steps to seek urgent relief before a court.

14. FORCE MAJEURE

- 14.1 **Force majeure:** Subject to clause 14.2, neither party shall be liable to the other for any failure to perform its obligations under this Covenant by reason of any cause or circumstance beyond the party's reasonable control including acts of God, communication line failures, power failures, terrorism, riots, strikes, labour disputes, fires, war, flood, earthquake or other disaster ("**event of force majeure**"), provided that the party affected:
- (a) could not have prevented the failure by the exercise of reasonable care;
 - (b) notifies the other party in writing as soon as is practicable and provides full information concerning the event of force majeure, including an estimate of the time likely to be required to overcome that event;
 - (c) uses its best endeavours to overcome the event of force majeure and minimise the loss to the other party;
and
 - (d) continues to perform its obligations under this Covenant as far as practicable.
- 14.2 **Certain obligations excepted:** Clause 14.1 shall not apply to any of the obligations of the Landowner under clause 5 or 11.6.

15. NOTICES

- 15.1 **Notice shall be in writing and addressed correctly:** Subject to clause 15.4, any notice or other communication to be given under this Covenant shall be in writing addressed to the recipient at the address or facsimile number from time to time notified by that party in writing to the other party. Until a change is so notified, the address and facsimile number of each party are those set out in this clause:

The Crown

Address: Ministry of Agriculture and Forestry
Sustainable Programmes Directorate
25 The Terrace
PO Box 2526
Wellington 6140

Facsimile No: *[insert]*

Attention: *[insert relevant job title]*

The Landowner

Address: *[full name of the Landowner]*
[full postal address]

Facsimile No: [insert]

Attention: [insert]

15.2 **Delivery:** Subject to clause 15.4, delivery may be effected by hand, or by post with postage prepaid, or by facsimile. Subject to clauses 15.3 and 15.4, a notice or other communication shall 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 second Business Day after posting; or
- (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.

15.3 **Next Business Day:** If a notice or other communication is received or deemed to have been received after 5 p.m. on a Business Day in the place to which it is sent, or on a day which is not a Business Day in that place, it shall be deemed not to have been received until the next Business Day in that place.

15.4 **General notices:** Notwithstanding the other provisions of this clause 15, the Crown may give a notice or other communication to be given to the Landowner under this Covenant in any form permitted by the Regulations, and such notice or other communication shall be deemed to have been received at the time provided for in the Regulations.

16. GENERAL PROVISIONS

16.1 **Variation:** Subject to clause 16.2, this Covenant may only be amended or varied by agreement in writing signed by the parties.

16.2 **Variation by the Crown:** The Crown may vary this Covenant in any manner on 90 days' written notice to the Landowner provided that:

- (a) such variation is necessary, in the light of any change in New Zealand's international rights or obligations related to the Forest Sink Mechanism or climate change, to retain or restore the balance of benefits and burdens between the parties under this Covenant as at the date on which this Covenant was entered into with the Initial Landowner; and
- (b) before giving such notice to the Landowner:
 - (i) the Crown has consulted with the Landowner over the proposed variation for a reasonable period, having regard to the nature of the proposed variation, but in any event a period of not less than 20 Business Days; and
 - (ii) the Crown has had due regard to any submissions the Landowner has made regarding the proposed variation.

16.3 **Remedies:** The rights, powers and remedies provided in this Covenant are cumulative and not exclusive of any rights, powers or remedies provided by law.

16.4 **Set off:** Either party may set off any obligation it has under this Covenant or the Regulations to transfer Units against any right it has under this Covenant or the Regulations to receive Units.

- 16.5 **Privity:** Except for clause 11.7, the parties acknowledge for the purposes of the Contracts (Privity) Act 1982 that none of the provisions of this Covenant confer a benefit on, or are intended to be enforceable by, any third party.
- 16.6 **Further assurances:** Each party agrees to execute and deliver any documents and to do all things as may reasonably be required by the other party to obtain the full benefit of this Covenant.
- 16.7 **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.
- 16.8 **No waiver:** A waiver of any provision of this Covenant shall not be effective unless given in writing, and then it shall be effective only to the extent that it is expressly stated to be given. A failure, delay or indulgence by any party in exercising any power or right in relation to this Covenant shall not operate as a waiver of that power or right. A single exercise or partial exercise of any such power or right shall not preclude further exercises of that power or right or the exercise of any other power or right.
- 16.9 **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 shall either party constitute an agent of the other party.
- 16.10 **Entire agreement:** This Covenant constitutes the entire agreement of the parties relating to the matters dealt with in it, and supersedes all prior agreements and understandings between the parties, and all representations, relating to those matters.
- 16.11 **Governing law and jurisdiction:**
- (a) This Covenant shall be governed by and construed in accordance with New Zealand law.
 - (b) Subject to clause 16.11(c) below, 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 Covenant ("**Proceedings**").
 - (c) The Landowner agrees not to bring or attempt to bring any Proceedings against the Crown in any court outside New Zealand.

SCHEDULE 1: Description of the Land

[THIS SHOULD BE THE WHOLE TITLE OR TITLES]

SCHEDULE 2: Description of the forest sink area

SCHEDULE 3: Forest Sink Plan

SCHEDULE 4: METHODOLOGY FOR MEASURING CARBON STOCK CHANGES AND THE NUMBER OF UNITS TO WHICH LANDOWNER IS ENTITLED OR WHICH THE LANDOWNER MUST TRANSFER TO THE CROWN, AND MANNER OF TRANSFER OF UNITS TO CROWN

1. The Landowner is entitled to receive 1 Assigned Amount Unit (as defined in the Regulations) for each whole tonne of Carbon Stock increase in Eligible forest on the Forest Sink Area.
2. The Landowner must transfer to the Crown 1 Assigned Amount Unit (as defined in the Regulations) for each whole tonne of Carbon Stock decrease in Eligible forest on the Forest Sink Area.
3. For the purposes of clauses 1 and 2 of this Schedule, and Regulation 9(b) of the Regulations, the methodology for measuring Carbon Stock increases and decreases (“carbon stock changes”) in Eligible forest on the Forest Sink Area shall be the methodology set out in:
 - (1) (a) clause 4 below; and
(b) Tables 1 and 2 of Schedule 6 of the Climate Change (Forestry Sector) Regulations 2008 (“Tables 1 and 2”), as may be amended from time to time, or any equivalent provisions of regulations that replace those regulations; and
(c) if relevant, Tables 3 and 4 of Schedule 6 of the Climate Change (Forestry Sector) Regulations 2008 (“Tables 3 and 4”), as may be amended from time to time, or any equivalent provisions of regulations that replace those regulations; and/or
(d) (if required by the Crown to be applied), any other alternative or additional methodology set out in the Climate Change (Forestry Sector) Regulations 2008, as may be amended from time to time, or any equivalent provisions of regulations that replace those regulations.
 - (2) Any methodology for measuring carbon stock changes shall be applied with appropriate modifications and in the manner as required by the Crown and in accordance with the Climate Change (Forestry Sector) Regulations 2008.

4 Calculation of carbon stock changes

- (1) The carbon stock of Eligible forest on the Forest Sink Area must be calculated by:
 - (a) using -
 - (i) Tables 1 and 2 (as applicable) to calculate the carbon stock of the Eligible forest on the Forest Sink Area from growing trees (T1);
 - (ii) if relevant, Tables 3 and 4 to calculate the carbon stock of the Eligible forest on the Forest Sink Area from above ground residual wood and below ground roots from any Cleared trees that are to be treated as decaying on the land under clause 4(h) of the rules referred to in clause 4(5) of this clause (T2); and
 - (b) adding together each of the figures for carbon stock referred to in subclause 1(a) (T1 + T2).
- (2) Carbon stock changes must be calculated by determining the carbon stock of the Eligible forest on the Forest Sink Area at 1 January of the year to which the carbon stock calculation applies (or where the carbon stock calculation applies to more than one calendar year, 1 January of the first year) (**A**), and the carbon stock of the Eligible forest on the Forest Sink Area at 31 December of the year to which the carbon stock calculation applies (or where the carbon stock calculation applies to more than one calendar year, 31 December of the last year) (**B**) and subtracting A from B.

- (3) The following formula must be used to calculate the carbon stock of the Eligible forest on the Forest Sink Area under subclause (1)(a)(i):
- $$A \times C = T1$$
- where—
- A is the area, in hectares, of the Eligible forest.
- C is the figure for carbon stock per hectare from Table 1 or 2 that reflects—
- (a) the forest type; and
 - (b) the age of the trees; and
 - (c) if the forest type is *Pinus radiata*, the region in which the land is located being [**enter region**]
- T1 is the carbon stock of the Eligible forest on the Forest Sink Area, in tonnes of carbon dioxide.
- (4) The following formula must be used to calculate the carbon stock of the Eligible forest on the Forest Sink Area under subclause (1)(a)(ii):
- $$A \times C \times Y/10 = T2$$
- where—
- A is the area, in hectares, of the Eligible forest.
- C is the figure for carbon stock per hectare in the above ground residual wood and below ground roots from Cleared trees from Table 3 or 4 that reflects—
- (a) the forest type of the residual wood decaying on the Eligible forest; and
 - (b) the age of the trees when Cleared; and
 - (c) where the forest type Cleared was *Pinus radiata*, the region in which the land is located being [**enter region**]
- Y is 10 minus the number of years up to 10 since the trees were Cleared
- T2 is the carbon stock of the Eligible forest on the Forest Sink Area from above ground residual wood and below ground roots from any Cleared trees, in tonnes of carbon dioxide.
- (5) Application of Tables 1 and 2 and 3 and 4 is subject to the rules for application of tables in regulation 22 of the Climate Change (Forestry Sector) Regulations 2008 (applied with appropriate modifications) as may be amended from time to time, or any equivalent provisions of regulations that replace those regulations.
- (6) .The word “region” in this clause has the meaning given in Schedule 1 of the Climate Change (Forestry Sector) Regulations 2008, as may be amended from time to time, or any equivalent provisions of regulations that replace those regulations.

5 Manner of transferring units to Crown

The Landowner must complete the form prescribed by the Chief Executive of the Ministry of Agriculture & Forestry or the Chief Executive's nominee for the transfer of units, and must transfer units to the Crown in accordance with the relevant provisions of the Climate Change Response Act 2002.

SCHEDULE 5: RECONCILIATION

In this Schedule,—

first commitment period means the commitment period under the Protocol, from 1 January 2008 to 31 December 2012 (inclusive).

mandatory return period means any of the following periods:

- (a) the first commitment period:
- (b) any subsequent commitment period under the Protocol or, if there is no subsequent commitment period,—
 - (i) the 5-year period commencing on 1 January 2013:
 - (ii) each subsequent 5-year period after the period specified in subparagraph (i)

1. The Landowner must, within 3 months of the end of a mandatory return period, submit a Return that—

- (a) is in respect of the Forest Sink Area; and
- (b) is in respect of the period—
 - (i) commencing on the later of—
 - (A) the first day of the mandatory return period that has just ended; or
 - (B) the date the Forest Sink Area became eligible forest; and
 - (ii) ending on the last day of the mandatory return period that has just ended.

2. A Return submitted under clause 1 —

- (a) must, in respect of the Forest Sink Area covered by the Return,—
 - (i) record the increases and decreases in Carbon Stock on the Forest Sink Area during the return period as calculated under Schedule 4 of this Covenant; and
 - (ii) contain an assessment of the Landowner's gross liability to transfer Units to the Crown for decreases in Carbon Stock or entitlement to receive Units for increases in Carbon Stock that takes into account clause 5.2 of this Covenant, but does not take into account any previous transfer of Units from, or to, the Crown that cover part of the same period as the Return; and
 - (iii) contain the information required by clause 3 of this Schedule, if relevant; and
 - (iv) contain an assessment of the Landowner's net liability to transfer Units to the Crown in respect of decreases in Carbon Stock or entitlement to receive Units for increases in Carbon Stock during the return period, taking into account clause 5.2 of this Covenant and clauses 3 and 4 of this Schedule; and
- (b) may contain an assessment of the Landowner's net liability to transfer or repay Units or net entitlement to receive Units in respect of the Forest Sink Area covered by the Return, as referred to in clause 6 of this Schedule; and
- (c) must be—
 - (i) signed by the Landowner; and
 - (ii) submitted in the manner and format required by the Crown.

3. If the Landowner submits a Return that is in respect of a period for which the Landowner has previously requested Units or transferred Units to the Crown, the Return must—

- (a) record the number of Units transferred to the Landowner for increases in Carbon Stock or transferred to the Crown for decreases in Carbon Stock in respect of the Forest Sink Area; and

- (b) contain an assessment of the difference between—
 - (i) the net number of Units transferred to the Landowner for increases in Carbon Stock or transferred to the Crown for decreases in Carbon Stock for the Forest Sink Area (which must be determined by subtracting the number of Units transferred to the Crown for decreases in Carbon Stock from the number of Units transferred to the Landowner in respect of increases in Carbon Stock in the Forest Sink Area); and
 - (ii) the gross number of Units assessed as the Landowner's liability to transfer Units to the Crown or entitlement to receive Units in respect of the Forest Sink Area under the Return submitted as recorded under clause 2(a)(ii) of this Schedule.
4. If the assessment referred to in clause 3(b) of this Schedule shows that the Landowner would be—
- (a) entitled to fewer Units for increases of Carbon Stock in respect of the Return submitted than the net Units that have been previously transferred to the Landowner in respect of the Forest Sink Area, the Landowner is liable to repay the number of Units transferred in excess of Landowner's entitlement in the Return; or
 - (b) entitled to receive more Units for increases in Carbon Stock in respect of the Return submitted than the net number of Units that have previously been transferred to the Landowner in respect of the Forest Sink Area, the Landowner is entitled to receive the number of Units that is the difference between the entitlement in respect of the Return and the net number of Units already transferred to the Landowner in respect of the Forest Sink Area; or
 - (c) liable to transfer to the Crown more Units for decreases in Carbon Stock in respect of the Return submitted than the net number of Units previously transferred to the Crown in respect of the Forest Sink Area, the Landowner is liable to transfer to the Crown the number of Units that is the difference between the net number transferred to the Crown and the number assessed as being required to be transferred to the Crown under the Return; or
 - (d) liable to transfer to the Crown fewer Units for decreases in Carbon Stock in respect of the Return than the net number of Units previously transferred to the Crown in respect of the Forest Sink Area, the Crown must arrange for reimbursement to the Landowner of the number of Units that is the difference between the net number transferred to the Crown and the number assessed as being required to be transferred to the Crown under the Return.
5. Clauses 3 and 4 of this Schedule apply to a Return submitted under this Schedule.
6. The Landowner in submitting a Return—
- (a) may include in the Return an assessment of the Landowner's net liability to transfer or repay Units to the Crown, or the Landowner's net entitlement to receive Units, calculated by determining the difference between the total number of Units required to be transferred to the Crown for decreases of Carbon Stock covered by the Return (or, if relevant, required to be repaid in respect of the Forest Sink Area) and the total number of Units to which the Landowner is entitled in respect of increases in Carbon Stock covered by the Return (or, if relevant, is entitled to be reimbursed in respect of the Forest Sink Area); and
 - (b) may elect to transfer to the Crown or repay the net number of Units for which the Landowner is liable, or to receive the net number of Units to which the Landowner is entitled, as determined under paragraph (a); and
 - (c) must, if the Landowner makes an election under paragraph (b), indicate clearly in the Return that such an election has been made; and
 - (d) must, if an assessment in the Return shows a liability or a net liability to—
 - (i) transfer Units to the Crown, transfer those Units within 20 working days of submitting the Return; or
 - (ii) repay Units to the Crown, repay those Units, by transferring the number of Units required to be transferred, within 60 working days of submitting the Return, to a Crown holding account designated by the Crown.