

INTRODUCTION TO DEED OF GRANT OF PROFIT A PRENDRE

A *Deed of Grant of Profit a Prendre* is a legal document that allows CALM to secure an interest on a farm. It doesn't provide CALM with Ownership of Land that contains the Tree Crop Area, but simply states that CALM is sharing with the Owner an interest on that property. The Profit a Prendre is registered on the title deed and is placed over the whole of the location or locations concerned – even if we are only planting a portion of that location.

It is the CALM Act (Section 34B) that allows CALM to use Deeds of Grant of Profit a Prendre. No other treefarming organisation in Western Australia has this option.

“Profit a Prendre” comes from a French definition meaning something along the lines of “sharing profits”. Without a Profit a Prendre, CALM would not have the option of “crop share” and would instead have to “Lease” all its properties and pay full annuities as do other treefarming groups.

DRAFT

FORM P2

APPROVAL NO. B1629

WESTERN AUSTRALIA

TRANSFER OF LAND ACT 1893 AS AMENDED

PROFIT A PRENDRE

[Under s.34B Conservation and Land Management Act 1984 as amended]

DESCRIPTION OF LAND (Note 1)

EXTENT

VOLUME

FOLIO

	Whole		
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ESTATE AND INTEREST (Note 2)

FEE SIMPLE

ENCUMBRANCES (Note 3)

OWNER (Registered Proprietor) (Note 4)

GRANTEE (Note 5)

EXECUTIVE DIRECTOR OF THE DEPARTMENT OF CONSERVATION AND LAND MANAGEMENT a body corporate constituted by the Conservation and Land Management Act 1984 ("the Act") of Corner of Hackett Drive and Australia II Drive, Crawley Western Australia.

TERM OF PROFIT A PRENDRE (Note 6)

40 years, subject to earlier termination in accordance with clause 8, commencing on and including the First day of January 2000.

The Owner hereby Grants a Profit a Prendre to the Grantee for the term specified above over the land described above subject to the encumbrances shown hereon in accordance with the terms and conditions contained in this Deed.

Timber Sharefarming Agreement

Date:

Parties:

(“Owner”)

Executive Director of the Department of Conservation and Land Management a body corporate constituted by the Conservation and Land Management Act 1984 of corner of Hackett Drive and Australia II Drive, Crawley, Western Australia

(“Grantee”)

Recitals:

- A. Section 34B of the Act provides that the Grantee has power to enter into, or enter into and carry out, whether as a principal or an agent, a timber sharefarming agreement (being an agreement by which, among other things, a right which is a profit a prendre and an interest in land is acquired).
- B. The Owner is registered as the proprietor of the estate and interest specified on page one of this deed in the Land and wishes to establish trees on the Land for the purpose of timber production, land improvement and the sequestration of Greenhouse Gases.
- C. The Grantee and the Owner have agreed that the Grantee may establish, maintain and harvest Trees on the Tree Crop Area for the Term on and subject to the terms and conditions contained in this deed.
- D. The parties intend this deed to be a timber sharefarming agreement, as defined in the Act.

Operative provisions:

1 Interpretation

Definitions

- 1.1 In this deed unless the contrary intention appears:

Act means the Conservation and Land Management Act 1984.

Available Credit means a Credit on account of the Greenhouse Gases which are sequestered by or in the Greenhouse Property prior to the expiry or termination of this deed.

Commencement Date means the date of commencement of the Term which date is specified on page 1 of this deed.

Commercial Product means a part of the Forest Product which the Grantee determines is technically, logistically and economically possible for the Grantee to sell and which the Grantee is actually able to sell.

Credit means any emission reduction unit, credit, permit, licence, authority or other form of right (by whatever name called and whether proprietary or otherwise) in connection with the sequestration of Greenhouse Gases.

Debit means any debit or other form of obligation (by whatever name called) arising out of the emission or possible emission of Greenhouse Gases or on the harvesting or destruction of trees or Forest Product.

Encumbrance means a mortgage, charge, pledge, lien or other encumbrance.

Execution Date means the date upon which the last of the parties to do so executes this deed.

Fencing and Rabbit Control Plan means the management plan and program for the carrying out of certain Fencing and Rabbit Control Works under item 6.4 of schedule 1 as annexed to and forming part of this deed.

Final Harvest means:

- (a) if the Grantee nominates that it will carry out only one Harvest, that Harvest; and
- (b) in any other case the Harvest nominated as the last Harvest by the Grantee.

Forest Product includes trees, roots and other parts of trees, timber, sawdust, chips, firewood, charcoal, gum, kino, resin, sap and seed, and if any Forest Product is of more than one grade or class of use, each grade or class of use shall be a separate Forest Product for the purposes of this deed.

Greenhouse Expenses includes carbon accounting, measuring, verification, insurance, hedging, risk mitigation and administration costs including Debits as determined by the Grantee and as published and updated from time to time in the Schedule of Royalties and Other Charges.

Greenhouse Gases means carbon dioxide and any other substance which contributes to or is thought by a reasonable body of scientific opinion to contribute to the greenhouse effect and any combination of them.

Greenhouse Property means:

- (a) the Tree Crop (including roots) and any resultant Commercial Product;
- (b) all branches, twigs, nuts, bark, leaf litter, organic matter and other Forest Product on and in the Tree Crop Area.

Harvest means the taking of any Forest Product from the Tree Crop Area and includes:

- (a) any intentional felling and, at the discretion of the Grantee, removal of Trees by the Grantee; and
- (b) Thinning.

and "to Harvest" has a corresponding meaning.

Harvest Plan means the plan relating to each Harvest of the Tree Crop prepared by the Grantee pursuant to clause 9.2.

Harvest Revenue means an amount determined in accordance with schedule 2.

Land means the land described on page one of this deed.

Mining Tenement includes a permit to enter on private land, prospecting licence, special prospecting licence, exploration licence, mining lease, general purpose lease or miscellaneous licence or other tenement available for grant under the Mining Act 1978 and any other right or licence to prospect, explore or mine for minerals.

Petroleum Tenement includes a drilling reservation, exploration permit, production licence, pipeline licence, access authority or other tenement available for grant under the Petroleum Act 1967 or the Petroleum Pipelines Act 1969 and any other right or licence to prospect, explore for, recover, or convey petroleum.

Plan means the sketch plan annexed to and forming part of this deed.

Schedule of Royalties and Other Charges means the "Schedule of Hardwood and Softwood Royalties and other Charges", as published from time to time by the Executive Director of the Department of Conservation and Land Management.

Security Interest means any bill of sale (as defined in any statute), mortgage, charge, lien, pledge, hypothecation, title retention arrangement, trust or power, as or in effect as security for the payment of a monetary obligation or the observance of any other obligation.

Term means the term specified on page 1 of this deed.

Thinning means the felling and, at the option of the Grantee, removal of a portion of the Trees within the Tree Crop Area.

Trees means the trees established or to be established by the Grantee under this deed.

Tree Crop means the Trees in aggregate.

Tree Crop Area means that part of the Land described in item 1 of schedule 1. A reference to Tree Crop Area includes any part of it.

Interpretation

1.2 In this deed unless the contrary intention appears:

- (a) a reference to a statute, ordinance, code, or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments, or replacements of any of them;
- (b) a reference to this agreement or another instrument includes any variation or replacement of either of them;
- (c) an agreement, representation or warranty on the part of or in favour of two or more persons binds or is for the benefit of them jointly and severally;
- (d) an obligation of 2 or more parties binds them jointly and separately, and an obligation incurred in favour of 2 or more parties is enforceable by them jointly and separately;

- (e) if a word or phrase is defined, other parts of speech and grammatical forms of that word or phrase have corresponding meanings; and
- (f) references to this deed include its schedules and annexures (if any);
- (g) the singular includes the plural and vice versa;
- (h) the word person includes a firm, a body corporate, an unincorporated association or an authority;
- (i) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, but not limited to, persons taking by novation) and assigns;
- (j) a reference to any thing (including, without limitation, any amount) is a reference to the whole and each part of it and a reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually; and
- (k) where a word or phrase is given a particular meaning by the Kyoto Protocol or the Australian Greenhouse Office that word or meaning shall have a corresponding meaning in this deed.

Headings

- 1.3 Headings and the table of contents are inserted for convenience and do not affect the interpretation of this deed.

2 Grant of rights

- 2.1 Subject to clause 11 and the other terms and conditions of this deed, and on and from the Commencement Date, the Owner (in consideration of the sharing of Harvest Revenue in accordance with clause 10.1 and for the further consideration, if any, specified and payable in accordance with item 3 of schedule 1):
 - (a) transfers and grants to the Grantee for the Term the right:
 - (i) to enter and otherwise have access to the Land;
 - (ii) to the exclusion of the Owner and all other persons, to establish, grow and maintain Trees on the Tree Crop Area from time to time;
 - (iii) to the exclusion of the Owner and all other persons, to Harvest and sell those Trees and any other Commercial Product; and
 - (iv) to undertake work and provide facilities on the Land for the purposes specified in paragraphs (i), (ii) and (iii);

- (b) assigns and transfers to the Grantee all of the Owner's right, title and interest, present and future, to:
 - (i) any entitlement to apply for or claim any Credit in respect of Greenhouse Gases sequestered by or in the Greenhouse Property during the Term and any right of action against the Commonwealth of Australia or other person (whether in Australia or elsewhere) in connection with any application or claim for any Credit in respect of Greenhouse Gases sequestered by or in the Greenhouse Property during the Term;
 - (ii) each Available Credit; and
 - (iii) any claim, award, compensation, judgment or other money to which the Owner is entitled in connection with the sequestration of Greenhouse Gases by or in the Greenhouse Property during the Term, any right of action referred to in clause 2.1(b)(i) or any Available Credit,

and the Owner declares for valuable consideration that it will hold the above right, title and property (to the extent not already assigned or transferred) on trust for the Grantee.

Property

- 2.2 The Owner and the Grantee acknowledge and agree:

- (a) the Tree Crop (including roots);
- (b) all branches, twigs, nuts, bark, leaf litter, organic matter and other Forest Product on and in the Tree Crop Area at any time during the Term; and

are and remain the property of the Grantee notwithstanding that the trees are or may be affixed to the Land and, in the case of the trees, whether or not the trees have been felled.

Owners Assistance

- 2.3 The Owner agrees with the Grantee that the Owner will not except as directed by the Grantee, apply for any Credits in respect of Greenhouse Gases sequestered in or by the Greenhouse Property and whenever required it will do whatever may be reasonably required by the Grantee:

- (a) to vest in the Grantee (or any nominee of the Grantee) the Greenhouse Property and the Available Credits assigned and transferred by clause 2.1;
- (b) to enable the Grantee to apply for the Credits which may be applied for in connection with the Greenhouse Property;
- (c) to enable the Grantee either in the name of the Grantee or the names of the Grantee and the Owner to institute, conduct or defend legal

proceedings in connection with any entitlement of the Owner to claim Credits.

Power of Attorney

- 2.4 For the purposes set out in this clause 2, the Owner irrevocably appoints the Grantee and each officer of the Grantee with the word “director” or “manager” in her or his title severally its attorney to do the things contemplated by this clause 2 or which are ancillary to those things, and the Owner agrees to ratify anything done by its attorney under this clause 2.4.

3 General manner of operations

The Grantee agrees to:

- (a) **(Council approval)** obtain the approval of the local council to the planting of the Trees, subject to the Owner signing the application and the Grantee receiving the assistance of the Owner;
- (b) **(Planting)** use reasonable endeavours to plant the seedlings on the Tree Crop Area and in accordance with good silvicultural practice; and
- (c) **(General manner of operations)** establish, grow, maintain and Harvest the Trees in a manner that, in the opinion of the Grantee, causes minimal disruption to the Owner’s other farming activities on the Land and having regard to sound land conservation practice.

4 Seedlings

The Owner must provide the Grantee with an area to safely store seedlings prior to planting. The area must be reasonably close to the Tree Crop Area. The Owner must allow the Grantee access to the area used to store the seedlings to water the seedlings as required by the Grantee until planting is complete.

5 Growing the Trees

Grantee’s rights

- 5.1 Without limiting the generality of clause 2 and for the removal of doubt, the Grantee may, to the extent and in the manner the Grantee considers necessary, desirable or convenient, do any of the following on or in relation to the Tree Crop Area:
- (a) **(Drainage)** construct drainage works to combat waterlogging;
 - (b) **(Site preparation and associated works)** undertake ripping to relieve compaction, mounding, and ploughing and undertake any other associated works to prepare the Tree Crop Area for planting;
 - (c) **(Insects)** do any act or thing to control insects which may adversely affect the Tree Crop;

- (d) **(Weed control)** apply herbicides to kill weeds and to inhibit new weed germination and growth;
- (e) **(Fertiliser application)** apply fertiliser containing the nutrients determined by the Grantee and applied in a regime over the Term to be determined by the Grantee;
- (f) **(Pruning)** remove limbs from the Trees;
- (g) **(Thinning operations)** carry out Thinning from time to time;
- (h) **(Monitoring)** monitor the Tree Crop Area and the Tree Crop;
- (i) **(Soil samples)** take samples of the soil on the Tree Crop Area and the area surrounding the Tree Crop Area;
- (j) **(Tree samples)** take samples from Trees and in its discretion cut down or uproot and remove an entire Tree or Trees as a sample; and
- (k) **(Other acts)** do any other act that the Grantee considers necessary, desirable or convenient to establish, maintain and grow the Trees.

Owner as contractor

- 5.2 The Grantee may if requested to do so by the Owner, engage the Owner to perform any of the acts the Grantee may perform under clauses 3 (b), 5.1(b), (c), (d), (e), and (f) on such terms and conditions as the Grantee thinks fit including that of competency, having relevant licenses, insurances and appropriate equipment.

6 Owner's obligations

General Obligation

- 6.1 Without prejudice to any specific obligation, the Owner must facilitate the use by the Grantee of its rights under this deed, the performance by the Grantee of its rights and obligations under this deed and foster the success of the Tree Crop throughout the Term.

Specific Obligations

- 6.2 The Owner agrees to:
- (a) **(Livestock and Fences)** exclude livestock from the Tree Crop Area and:
 - (i) adapt existing fences and gates; and
 - (ii) erect new fences and gates,
 at least 6 metres from the perimeter of the Tree Crop Area, (unless otherwise directed by the Grantee) along all the boundaries of the Tree Crop Area in order to exclude stock from the Tree Crop Area and:

- (iii) maintain those fences and gates; and
 - (iv) at times specified by the Grantee, remove or alter fences and gates to allow access for any Harvesting operation;
- (b) **(Fire Prevention, Control and Suppression)** conduct all necessary or prudent practices for fire prevention, control and suppression on the Land including without limitation:
 - (i) to comply with the Bush Fires Act 1954 and the Bush Fires Regulations 1954;
 - (ii) to construct and maintain fire breaks on the Land as required by the local government pursuant to any power including, without limitation, its powers under section 33 the Bush Fires Act 1954 or as otherwise directed by the Grantee;
- (c) **(Site Clean-up)** in consultation with the Grantee, prepare the Tree Crop Area to a condition which will allow the Grantee to establish the Tree Crop in accordance with accepted silvicultural practices, which include, without limitation, the removal of any paddock trees.
- (d) **(Rabbits and vermin)** do any act or thing to control rabbits and other vermin in the Tree Crop Area.
- (e) **(Advise Grantee of fire on Land)** advise the Grantee at least 24 hours prior to the lighting of any fires on the Land during restricted burning seasons;
- (f) **(Monitoring)** monitor the Tree Crop Area unless otherwise directed by the Grantee for anything that has harmed or may harm the Tree Crop (including without limitation insects, pests and vermin) and to advise the Grantee without delay if the Tree Crop has been harmed or something may harm the Tree Crop;
- (g) **(Access)** at all times allow the Grantee and the Grantee's agents, employees and contractors full and free access to the Land and the Tree Crop Area with or without plant, machinery and equipment and not to do anything which would interfere with the Harvesting of the Tree Crop including without limitation:
 - (i) at the time of Harvest, provide the Grantee with unrestricted access to the Tree Crop Area through the areas identified as access areas on the Plan ("**Access Areas**");
 - (ii) provide the Grantee with alternative access (after consultation with the Grantee) if the Owner decides to utilise any of the Access Areas making them not accessible during any Harvest period; and
 - (iii) provide a minimum break of 10 metres away from the perimeter of the Tree Crop Area for any future perennial

land use, including without limitation, tree crops and grapes;

- (h) **(Cutting and Damage)** not cut, remove, or damage any of the Trees or knowingly allow any other person to do so; and
- (i) **(Rates, Taxes and Other Charges)** subject to the terms of this deed, comply with the provisions of all mortgages, leases, licences and charges relating to the Land and to punctually pay all rates, taxes and other charges levied by any competent authority in respect of the Land.

Performance of Owner's obligations on default

- 6.3 If the Owner fails to perform any obligation of the Owner under this deed then the Grantee may give the Owner notice requiring that the default be rectified within 30 days. If the default is not rectified within 30 days of receipt of the notice then the Grantee at its option may perform that obligation at the cost of the Owner. The Owner must pay the costs incurred by the Grantee within 30 days of receiving written notification of the costs. The written notification provided by the Grantee of the reasonable costs incurred will be sufficient evidence of that fact. All amounts due to the Grantee shall bear interest calculated on a day to day basis and accruing and being payable from the date of the Grantee's first request for repayment at the Unarranged Rate for overdraft accommodation charged by Trading Banks generally in Perth, Western Australia. The Owner authorises the Grantee to apply any sum which would otherwise be due to the Owner under this deed in or towards satisfaction of any sum from time to time due and payable by the Owner to the Grantee.

7 Grazing rights

Consent to grazing

- 7.1 The Owner may, with the prior written consent of the Grantee, graze livestock on the Tree Crop Area. The consent of the Grantee may be given subject to such terms and conditions as the Grantee thinks fit and may be revoked at any time by the Grantee.

Damage caused by grazing

- 7.2 If the Owner grazes livestock on the Tree Crop Area (whether or not pursuant to a consent granted under clause 7.1), the Owner must repair and rectify any damage to the Tree Crop or the Tree Crop Area caused by the grazing of livestock to the satisfaction of the Grantee. If the damage to the Tree Crop or the Tree Crop Area is in the reasonable opinion of the Grantee beyond repair or rectification, the Owner must pay to the Grantee damages in respect of damage to the Tree Crop or the Tree Crop Area.

Obligation to fence not affected

- 7.3 This clause 7 or a consent provided pursuant to it does not limit the obligations of the Owner under clause 6.2(a).

8 Access

Owner's Roads

- 8.1 The Grantee may use, upgrade and maintain existing roads, tracks, culverts and bridges on the Land as at the Commencement Date and any roads, tracks, culverts and bridges constructed by the Owner after that date (each an "**Owner's Road**") in order to carry out any of its rights under this deed including without limitation to carry out a Harvest. The Grantee will, at the end of the Final Harvest, repair any Owner's Road on the Land to a condition which is as good or better than the condition in which it was generally maintained by the Owner, although only to the extent necessary to repair any damage caused by the Grantee.

Grantee's Roads

- 8.2 The Grantee may construct and maintain new roads, tracks, culverts and bridges on the Land in order to carry out any of its rights under this deed including, without limitation, to carry out a Harvest. The Owner must not do anything to damage the new roads, tracks, culverts or bridges until completion of the Final Harvest. The Owner may, however, use those roads, tracks, culverts and bridges to the extent that use does not interfere with a Harvest or the exercise by the Grantee of any of its rights under this deed. At the end of the Final Harvest, the Grantee must, if requested by the Owner, rip and plough any Harvest access routes which prior to Harvest were pasture.

9 Harvest

General

- 9.1 The Grantee agrees to organise and supervise the Harvest (or if more than one, the Harvests) and to undertake the sale of the Commercial Product.

Harvest Plan

- 9.2 The Grantee must commence preparation of a Harvest Plan in consultation with the Owner a reasonable time (but not less than 12 months) before each Harvest is proposed to be commenced by the Grantee and complete the Harvest Plan prior to each Harvest. The Harvest Plan will specify in particular the access route across the Land and onto the Tree Crop Area and the use, upgrading, maintenance or construction of roads, tracks, culverts, and bridges pursuant to clause 8.

Harvest Date Variation

- 9.3 The Owner may propose during preparation of each Harvest Plan that the Harvest date be varied by up to 12 months and the Grantee must attempt to accommodate this proposal in the Harvest Plan, although the date of a Harvest is at the discretion of the Grantee.

Multiple Harvest Operations

- 9.4 The Grantee may conduct more than one Harvest.

Stacking

- 9.5 The Owner must provide the Grantee with an area acceptable to the Grantee to stack the Commercial Product obtained from any Harvest for a reasonable period after it is Harvested.

10 Harvest revenue

Sharing of Harvest Revenue

- 10.1 The Owner and the Grantee are entitled to and will share each of the Harvest Revenues from the sale of Commercial Product in the proportions specified in item 2 of schedule 1.

Harvest Payments

- 10.2 Subject to receipt by the Grantee of the sale proceeds of the relevant Commercial Product, the Grantee must within 45 days of the completion of each Harvest, pay the Owner's share of the Harvest Revenue relating to that Commercial Product to the Owner or the Owner's nominee after deducting all amounts due or owing to the Grantee by the Owner.

Supporting Information

- 10.3 When paying to the Owner the Owner's proportion of any Harvest Revenue, the Grantee must provide a supporting statement of account showing:
- (a) the Harvest Revenue and how it was calculated;
 - (b) the distribution of that Harvest Revenue; and
 - (c) a breakdown of all proper deductions from the Owner's proportion of any Harvest Revenue which identifies the amount of and reason for those deductions.

11 Credits

Acknowledgments

- 11.1 The Owner and the Grantee acknowledge and agree:
- (a) there may be no system established in Australia or internationally for the creation of Credits and that, even if any system is established, the terms and conditions of any system cannot yet be predicted;
 - (b) it may be that Credits will not be available in respect of Greenhouse Gases sequestered in plantation timber or the Greenhouse Property;
 - (c) the price, if any, which can be obtained from the sale of Available Credits generally is unknown and will be subject to fluctuation in accordance with market factors;
 - (d) it is not yet known whether it will be technically, logistically or economically feasible for the Grantee to undertake the work

required to make a claim for Credits for the whole or any part of the Greenhouse Gases sequestered in the Greenhouse Property; and

- (e) in making any determination of Credits, Debits, Greenhouse Expenses or any other calculation or matter for the purposes of this deed the Grantee may use such methods of measuring, estimating, modelling, averaging or attribution as the Grantee determines is reasonable.

12 Warranties

The Owner warrants to the Grantee as of the Execution Date and as of the Commencement Date that:

- (a) the Tree Crop Area is free from Encumbrances, other than the Encumbrances described on page 1 of this deed;
- (b) there are not within the knowledge of the Owner:
 - (i) any outstanding or impending demands, orders or requisitions of any competent authority relating to the Land;
 - (ii) any proposals for the re-alignment, widening or alteration of the level of any road adjoining the Tree Crop Area by any competent authority that would materially affect the Tree Crop Area or its use;
 - (iii) any sewers, drains, pipes, cables or other installations passing through the Tree Crop Area, other than as shown on the Plan;
 - (iv) any proposals by any competent authority to resume any part of the Land;
 - (v) any proposals by any competent authority to change the zoning or permitted use of the Land;
 - (vi) any use to which the Land has in the past been put which would materially affect the growth or use of the Trees; or
 - (vii) any native title claims over the Tree Crop Area.
- (c) the Owner has not received any notice of resumption or intended resumption of the Land or any part of it by any competent authority; and
- (d) all information given to the Grantee by the Owner relating to the Land is true and correct, and that the Owner has not failed to disclose to the Grantee any material information relating to the Land which the Owner ought reasonably to have provided to the Grantee.

13 Tree crop damaged or destroyed

Salvaged Commercial Product

- 13.1 If the Tree Crop or any part of it is damaged the Grantee may cut down and dispose of all Commercial Product salvageable from the damaged area and the parties will share any proceeds from the sale of the salvaged Commercial Product as if those proceeds were Harvest Revenue.

Destruction - Replanting

- 13.2 If the Tree Crop or any part of it is destroyed, the Grantee may in its absolute discretion replant the destroyed area within 2 years of that destruction. Any trees planted pursuant to this clause 13.2 will be Trees for the purposes of this deed.

Negligence and destruction by fire

- 13.3 If the Tree Crop is damaged or destroyed by fire as a result of the negligence of the Owner, the Owner will not be liable to the Grantee in negligence in respect of the damage or destruction if the Owner has not breached subclauses 6.2(b) and (c) of this deed and has not been reckless. The Owner in such a case must however, pay the Owner's Proportion specified in item 2 of schedule 1 of the costs incurred in replanting the destroyed area pursuant to clause 13.2. A certificate signed by the Grantee as to the costs of replanting shall be sufficient evidence of that fact.

14 Termination

Grantee's Right of Termination

- 14.1 If at any time during the Term all or substantially all of the Tree Crop is destroyed or rendered unsaleable, or the Grantee reasonably considers it to be uneconomical for the Grantee to establish or continue to maintain the Tree Crop or to Harvest, the Grantee may (without liability to compensate the Owner) terminate this deed by giving a written notice of termination to the Owner.

Early Termination by Agreement

- 14.2 The parties may agree in writing at any time prior to the expiration of the Term by effluxion of time to terminate this deed.

Termination after Final Harvest

- 14.3 Upon completion of the Final Harvest by the Grantee either party may (without liability to compensate the other) terminate this deed by written notice of termination to the other which will take effect from the date specified in that notice.

Default by the Grantee

- 14.4 The Owner may terminate this deed by giving the Grantee written notice of termination if:
- (a) the Grantee is in default of any obligation under this deed; and

- (b) that default continues for 2 months after receipt by the Grantee of written notice from the Owner specifying the default and requesting that the default be remedied.

Default by Owner

- 14.5 The Grantee may terminate this deed by giving the Owner written notice of termination if:
- (a) the Owner is in default of any obligation under this deed; and
 - (b) that default continues for 2 months after receipt by the Owner of written notice from the Grantee specifying the default and requesting that the default be remedied.

Antecedent Breaches

- 14.6 Termination of this deed under any clause of this deed, at law, in equity or pursuant to statute, does not prejudice any rights or remedies that may have arisen out of any breach of this deed prior to the date of termination.

Rights and Obligations on Expiration

- 14.7 The Owner and the Grantee agree that:
- (a) upon the termination of this deed (except if the Grantee terminates due to a default by the Owner and the notice of termination states that this clause 14.7(a) is not to apply) or its expiration the Trees and other property referred to in clause 2.2 and all Credits which relate to Greenhouse Gases sequestered in or by the Greenhouse Property prior to the termination or expiry after the date of termination will cease to be the property of the Grantee and belong to the Owner as the Owner's absolute property freed from any rights of the Grantee under this deed and that, at the cost of the Owner, the Grantee will, if requested, do all things necessary to vest in the Owner property in the Trees, the other property referred to in clause 2.2 and any Credits which relate to Greenhouse Gases sequestered in or by the Greenhouse Property prior to the termination or expiry;
 - (b) upon the termination or expiry of this deed for any reason:
 - (i) the Grantee must leave the Tree Crop Area in a tidy condition, and is not obliged to re-establish pastures or crops, or to remove mounds or any trees (including the Trees), stumps, bark, branches, access roads, rocks or fencing;
 - (ii) the parties agree that any residue from the Harvesting operations, excluding any Commercial Product, belongs to the Owner; and
 - (iii) the parties will execute a formal document of surrender of this deed, for registration under the Transfer of Land Act 1893 (the costs of which the parties must bear in equal shares),

and it is expressly agreed that this clause 14.7 is to survive such termination.

Essential Terms

- 14.8 Clauses 4, 5, 6, 7, and 8 are essential terms of this deed. This clause does not prevent any other clause being an essential term.

15 Force majeure

- 15.1 This deed is made subject to any delays in the performance of the obligations under this deed and to the temporary suspension of continuing obligations under this deed that are caused by or arise from any of the following circumstances beyond the power and control of the party responsible for the performance of those obligations, namely, act of God, force majeure, earthquakes, floods, storms, tempest, washaways, fire (unless caused by the actual fault or privity of the party responsible for such performance), act of war, act of public enemies, riots, civil commotions, strikes, lockouts, stoppages restraint of labour or other similar acts (whether partial or general), acts or omissions of the Commonwealth Government, shortages of labour or essential materials, reasonable failure to secure contractors or delays of contractors.
- 15.2 The party whose performance of obligations is affected by any of the causes referred to in clause 15.1 must promptly give notice to the other party of the event or events and must use reasonable endeavours to minimise the effects of such causes as soon as possible after their occurrence.

16 Special Terms

The special terms (if any) set out in item 6 of schedule 1 are deemed to be incorporated in this deed as if fully set out in this deed and if there is any inconsistency between the terms contained in this deed and the special terms in item 6 of schedule 1 then the special terms in item 6 of schedule 1 are to prevail.

17 Dealings with Land and Credits

Owner not to transfer etc. without consent

- 17.1 The Owner must not transfer, assign, surrender, lease, dispose of, mortgage, charge or encumber the Owner's interest in the Land or in this deed or part with possession of the Land (or agree to do any of those things) without the prior written consent of the Grantee which the Grantee must not refuse if the Owner procures:
- (a) in the case of a proposed transfer, assignment, surrender, lease, disposal or licence ("disposal") the execution by the proposed transferee, assignee, grantee, lessee, disponent or licensee (as the case may be) ("the acquirer") of a deed of covenant in the form of the Transferee's Deed of Covenant in schedule 3 (with appropriate modifications) in favour of the Grantee which binds the acquirer to perform and observe the terms of this deed to be performed by the Owner from the date of the proposed disposal; and

- (b) in the case of a mortgage, charge or encumbrance the execution by the proposed mortgagee, chargee or encumbrancer of a deed of covenant in a form approved by the Grantee, but, in the case of a security interest, substantially in the form of the deed of consent and covenant in schedule 4 in favour of the Grantee.

Notification

- 17.2 The Owner must promptly notify the Grantee in writing as soon as the Owner becomes aware of any application by any person for a Mining Tenement or Petroleum Tenement over any part of the Tree Crop Area, or of any notice of intention to mine or conduct petroleum operations on any part of the Tree Crop Area.

18 Assignment by the Grantee

- 18.1 The Grantee must not assign its interest or any part of its interest in this deed to any other person without the prior written consent of the Owner which the Owner must not refuse if:
 - (a) the proposed assignee is responsible, reputable and solvent;
 - (b) the proposed assignee is competent and experienced in the management of tree crops or at the time of assignment it has appointed as its agent to manage the Tree Crop either the Executive Director of the Department of Conservation and Land Management or someone who is a competent manager of tree crops; and
 - (c) the proposed assignee agrees to execute a deed of covenant between the proposed assignee, the Grantee, and the Owner which binds the proposed assignee to perform and observe the terms of this deed to be performed by the Grantee from the date of the proposed assignment, and which contains a release of the Grantee by the Owner from the date of the proposed assignment from any obligation to be performed by the Grantee following that date.
- 18.2 If requested by the Owner, the Grantee may, in its absolute discretion, assign its interest or any part of its interest in this deed to the Owner under terms and conditions outlined by the Grantee. However, nothing in this clause prejudices the Grantee from choosing to assign to any other person.
- 18.3 For the removal of doubt, clause 18.1 does not place any limitation on the Grantee assigning the Available Credits or any other right, title or interest referred to in clause 2.1(b).
- 18.4 If the proposed assignee satisfies the criteria in clause 18.1, then the Owner must execute the deed of covenant referred to in clause 18.1(c).

19 Binding effect of deed

Deed to continue

- 19.1 This deed is to be binding upon and be available for the benefit of each party and their respective executors, administrators, successors, substitutes (including, but not limited to, persons taking by novation) and assigns and,

for the removal of doubt, all benefits of the Owner under this deed run with the Land.

Section 34B of the Act

- 19.2 The parties acknowledge that under section 34B(4) of the Act the obligations in this deed which bind the Grantee cease to do so on the Grantee assigning its rights under this deed and under section 34B(5) of the Act the obligations and restrictions in this deed which bind the Owner are also binding on the heirs, executors, administrators and successors in the title of the Owner.

Release of Owner

- 19.3 Subject to clause 19.4, if the Owner's interest in the Land and this deed is transferred or assigned in any way (other than by way of security only) the Owner named in this deed (and in the case of any subsequent transfers or assignments other than by way of security only, then the transferor or assignor) will be automatically released and discharged from and after the date of such transfer or assignment of all personal liability for the performance of any obligation on the part of the Owner contained in this deed and under this deed to be performed after the date of such transfer or assignment.

Limitation on release of Owner

- 19.4 The release and discharge of an Owner or any transferor or assignee of an Owner in clause 19.3 is always subject to the condition of that person procuring the proposed transferee or assignee to execute the deed of covenant referred to in clause 17.1(a).

20 Registration of deed

Caveat pending registration

- 20.1 Pending registration of this deed under the Transfer of Land Act 1893 as a profit a prendre, the Grantee may lodge a subject to claim caveat against the Land protecting its estate and interest in the Land under this deed. The Grantee agrees to withdraw the caveat once this deed has been registered. The Grantee shall pay all the costs of and incidental to the preparation and lodging of the caveat and any withdrawal or replacement caveat and all registration fees.

Parties to register deed

- 20.2 Each party must do all things necessary or, in the reasonable opinion of the Grantee, desirable, to have this deed registered as a profit a prendre under the Transfer of Land Act 1893 as soon as practicable following the Execution Date.

Consent of encumbrancers

- 20.3 If the consent of an Encumbrancer (including those specified in item 4 of schedule 1) is required then the Owner must use its best endeavours to obtain the consent of that Encumbrancer to this deed and the interest in and rights over the Land and to Available Credits granted by this deed in the form reasonably required by the Grantee. In the case of a Security Interest, the consent shall be obtained in the form of the Existing Mortgagee's Deed

of Consent and Covenant annexed to this deed with such amendments as the Grantee may reasonably require.

Termination for non-registration

- 20.4 If this deed has not been registered within 90 days following the Execution Date then within 120 days following the Execution Date the Grantee may terminate this deed by giving the Owner written notice of termination, in which case clauses 14.6 and 14.7 will apply.

21 Notices

To Grantee

- 21.1 Any notice required to be given under this deed to the Grantee is to be in writing and delivered personally or sent by pre-paid post addressed to the Grantee at the Department of Conservation and Land Management, at the address specified in item 5 of schedule 1.

To Owner

- 21.2 Any notice required to be given under this deed to the Owner is to be in writing and delivered personally or sent by pre-paid post to the Owner at the Owner's address appearing on page 1.

Deemed Receipt

- 21.3 Any notice so delivered or mailed is deemed to have been duly given and, in the case of posting, received on the 7th day after posting.

Change of Address

- 21.4 Any party may change its address for receipt of notices at any time by giving notice of the change to the other party as provided in this clause.

Signature of Notices

- 21.5 Any notice may be signed by that party, or on behalf of the party giving it by any director of that party or employee of that party whose title includes the word "manager" or that party's solicitors.

22 Proper law and forum

This deed is to be interpreted and to take effect according to the law for the time being in force in Western Australia. The parties irrevocably submit to the exclusive jurisdiction of the courts of Western Australia and courts hearing appeals from those courts.

23 General

Relationship of parties

- 23.1 Nothing in this deed is to be construed as constituting the Owner and the Grantee as partners, or as creating between the Owner and the Grantee:
- (a) a fiduciary relationship of any kind whatsoever;
 - (b) the relationship of:

- (i) employer and employee;
- (ii) master and servant; or
- (iii) principal and agent,

and neither the Owner nor the Grantee has (and must not represent that it has) any power right or authority to bind the other.

Entire agreement

- 23.2 This deed embodies the entire agreement between the parties relating to the subject matter of this deed, and this deed supersedes and replaces prior and contemporaneous agreements and understandings between the parties relating to the subject matter of this deed.

Continuation of Indemnities

- 23.3 Each indemnity in this deed is a continuing obligation, separate and independent from the other obligations of the obligor under that indemnity and survives termination of this deed. It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity conferred by this deed.

Further assurance

- 23.4 Each party must do all things and execute all documents reasonably required by the other party to give effect to any of the matters contemplated by this deed.

Severability of provisions

- 23.5 If any part of this deed is or becomes unenforceable for any reason whatever then in an appropriate case a Court may sever that part from this deed and all those parts not so severed will remain in full force and effect and be unaffected by such severance.

Goods and Services Tax

- 23.6 In this and following clauses:
- (a) **GST** means goods and services tax or similar value added tax levied or imposed in Australia pursuant to the GST law or otherwise on a supply;
 - (b) **GST Act** means A New Tax System (Goods and Services Tax) Act 1999 (Cth);
 - (c) **GST law** has the same meaning as in the GST Act;
 - (d) **Tax Invoice** includes any document or record treated by the Commissioner of Taxation as a tax invoice or as a document entitling a recipient to an input tax credit; and
 - (e) Words which have a defined meaning in the GST law have the same meaning as in the GST law unless the context otherwise indicates.

- 23.7 The Owner and the Grantee agree that:
- (a) Unless expressly included, the consideration for any supply under or in connection with this deed does not include GST;
 - (b) To the extent that any supply made under or in connection with this deed is a taxable supply, the consideration for that supply is increased by an amount determined by the supplier, not exceeding the amount of that consideration (or its market value) multiplied by the rate at which GST is imposed in respect of the supply;
 - (c) If an adjustment event occurs following a determination under clause 23.7(b):
 - (i) the supplier must make a further determination under clause 23.7(b) of the amount of consideration payable; and
 - (ii) if the GST component of that consideration differs from the amount originally determined, the amount of the difference must be paid by, refunded to or credited to the recipient, as the case may be.
- 23.8 The supplier must issue a Tax Invoice to the recipient of a supply to which clause 23.7 applies no later than 14 days following payment of the GST inclusive of consideration determined under that clause.
- 23.9 If either party is entitled under this deed to be reimbursed or indemnified by the other party for a cost or expense incurred in connection with this deed, the reimbursement or indemnity payment must not include any GST component of the cost or expense for which an input tax credit may be claimed by the party entitled to be reimbursed or indemnified, or by its representative member.
- 23.10 If the recipient disputes the supplier's determination under clause 23.7(b), or considers that the amount of the increased consideration is unreasonably high:
- (a) it may refer the matter to expert determination;
 - (b) if the parties do not within 14 days agree on the person to be appointed as expert, or if the person agreed upon does not accept the appointment, either party may request the President for the time being of the Institute of Chartered Accountants in Australia (Perth branch)] to appoint a suitably qualified person;
 - (c) the expert must act as an expert and not as an arbitrator;
 - (d) The expert's decision is final and binding on the parties who must give effect to that decision; and
 - (e) The expert's fee (including expenses) must be borne by the parties as determined by the expert, but each party must bear its own costs.

EXECUTED as a deed

Schedule 1 Information

1. Description of Tree Crop Area (clause 1.1)

- (a) The Tree Crop Area is located as shown on the Plan. The area to be planted determined by aerial photographic interpretation or ground survey, or both, and after exclusion of major unplatable parts, is approximately [] ha.
- (b) At any time during the Term the area planted may be resurveyed and the Plan revised by and at the expense of the Grantee and the results of that resurvey including the revised Plan shall be notified in writing to the Owner;
- (c) If a resurvey is carried out and a revised Plan is produced in accordance with item 1(b) of this schedule, then the revised Plan will be deemed to be the Plan referred to in item 1(a) of this schedule as if it was the original Plan and the Tree Crop Area will be that which is shown on the revised Plan.

2. Harvest Revenue (clause 10)

Grantee's Proportion	[.....]
Owner's Proportion	[.....]

3. Further consideration (if any) (clause 2.1)

Choose from the carbon credit options listed below delete any that are not applicable.

Option 1 – (Harvest Revenue to be 70:30)

If the amount of net proceeds of sale of Available Credits hereunder after deduction of Greenhouse Expenses represents an amount greater than the Base Value , the Grantee shall pay to the Owner 50% of the amount which is calculated to be in excess of the Base Value .

For the purposes of this item, the expression "Base Value" means a sale price of \$20.00 per tonne of carbon dioxide in respect of Available Credits escalated annually on 1 July of each year during the Term (each such date being a "**Review Date**") in accordance with the following formula:

$$A = B \times \frac{C}{D}$$

- A = the new Base Value;
- B = the Base Value applicable immediately before the relevant Review Date;
- C = the Consumer Price Index (All Groups Index) published by the Australian Bureau of Statistics in respect of the quarter immediately before the relevant Review Date; and

D = the Consumer Price Index (All Groups Index) published by the Australian Bureau of Statistics in respect of the quarter immediately before the previous Review Date or the Execution Date, whichever applies.

The resultant amount shall be paid by the Grantee to the Owner within 30 days from the receipt by the Grantee of the net proceeds of sale of the relevant Available Credits. For example, if the Base Value is \$20.00 and if the net proceeds of sale of Available Credits after deduction of Greenhouse Expenses achieves a sales value based on a value of \$30.00 per tonne of carbon dioxide in respect of such Available Credits, the Owner will receive 50% of \$10.00, or \$5.00 per tonne.

Option 2 – (Harvest Revenue to be 80:20)

Whenever the Grantee sells an Available Credit, the Grantee will pay to the Owner, an amount equal to 20% of the net proceeds of sale received in respect of such Available Credits after deduction of Greenhouse Expenses. The resultant amount shall be paid by the Grantee to the Owner within 30 days from the receipt by the Grantee of the net proceeds of sale of the relevant Available Credits.

Option 3 – (Harvest Revenue to be 70:30)

Nil

4. Encumbrances for which Consent is necessary (clause 20.3)

Lot 1, 260 Kalamunda Road, South Guildford WA 6055

5. Address for service of Grantee (clause 21.1)

Lot 1, 260 Kalamunda Road, SOUTH GUILDFORD WA 6055

6. Special Terms (if any) (clause 16)

Choose from those below – delete any that are not applicable.

6.1 Biodiversity (Option 1)

The Grantee will contribute up to \$70 per hectare of the Tree Crop Area (“**Biodiversity Payment**”) towards the cost of approved activities designed to protect or enhance on-farm biodiversity on the Land or other land (approved by the Grantee) in close proximity thereto in respect of which the Owner has a direct or indirect beneficial interest (“**Biodiversity Works**”). Biodiversity Works will include activities such as fencing off natural vegetation, creeks and other water courses, rabbit netting and controls, tree establishment (including the establishment of oil-mallee) and biodiversity plantings and other land care

measures as approved by Grantee following consultation with the Owner.

The Owner, in consultation with the Grantee, will prepare a management plan and program ("**Biodiversity Plan**") for the carrying out of Biodiversity Works. The Biodiversity Plan must be completed by the Owner and submitted to the Grantee for approval no later than 31 July 2000.

The Biodiversity Payment is payable by 2 instalments as follows:

- (a) a first instalment equal to 50% of the Biodiversity Payment payable on 1 August 2000 or 30 days after the Execution Date or 30 days after approval by the Grantee of the Biodiversity Plan, whichever date is later; and
- (b) a second instalment for the balance of the Biodiversity Payment payable 30 days after full implementation of the Biodiversity Works in accordance with the approved Biodiversity Plan to the reasonable satisfaction of the Grantee.

The Owner must ensure that such Biodiversity Works are completed no later than 31 July 2001.

If the first instalment of the Biodiversity Payment is based on an estimate of the Tree Crop Area or if the Tree Crop Area is revised as a result of a resurvey under item 1 of this schedule, the second instalment will be subject to any adjustment that may be necessary to the amount due after taking into account any survey or resurvey of the Tree Crop Area under item 1 of this schedule.

6.2 **Biodiversity (Option 2)**

The Grantee agrees to plant native tree species on the Land or other land (approved by the Grantee) in close proximity thereto in respect of which the Owner has a direct or indirect beneficial interest to an area equivalent to 10% of the Tree Crop Area ("**the Biodiversity Area**") using sound silvicultural practices and in consultation with the Owner. The Owner will retain ownership and all other rights to and over the Biodiversity Area and will be responsible for all ongoing maintenance of the plantings.

6.3 **Incentive Payment**

As incentive to the Owner to enter into this deed, the Grantee will pay to the Owner an amount per hectare of the Tree Crop Area in accordance with the table set out below ("**Incentive Payment**"), namely:

20-50 ha	\$0/ha
51-100 ha	\$100/ha
101-200 ha	\$150/ha

more than 200 ha \$200/ha

The Incentive Payment is payable by 2 instalments as follows:

- (a) a first instalment equal to 65% of the Incentive Payment, payable within 30 days of the actual Tree Crop Area being determined by survey under item 1 of this schedule or the Execution Date whichever occurs last;
- (b) a second instalment equal to 35% of the Incentive Payment payable on 30 April 2001, subject to the Owner not then being in default under this deed.

The second instalment will be subject to any adjustment that may be necessary to the amount due after taking into account any resurvey of the Tree Crop Area under item 1 of this schedule.

Where the Owner and one or more other landowners ("**Participants**") have each entered into a timber sharefarming agreement under Section 34B of the Act ("**Timber Sharefarming Agreement**"), the Participants may agree to pool their Tree Crop Areas (as defined in each Timber Sharefarming Agreement) for the purpose of obtaining the benefit of the Incentive Payment ("**Pooling Arrangement**"). Each Participant in an approved Pooling Arrangement will, subject to the provisions below, be entitled to a pro rata share of the Incentive Payment in the proportion his Tree Crop Area bears to the aggregate of all Tree Crop Areas in the pool under the Pooling Arrangement.

A Pooling Arrangement is subject to the Grantee's approval in its absolute discretion and must comply with the following conditions:

- a) the Land (as defined in each Timber Sharefarming Agreement) of each Participant is located within a 5km radius of the Land of the other Participant/s or is within such other radius as shall be approved by the Grantee; and
- b) the Land of each Participant is approved by the Grantee in accordance with its site selection procedures.

And, the Participants must give written notice to the Grantee of the proposed Pooling Arrangement ("**Pooling Arrangement Notice**"). The Pooling Arrangement Notice must contain details of:

- a) each Participant;
- b) the Land and Tree Crop Area held by each Participant; and
- c) the aggregate Tree Crop Area of all Participants, and be signed by each Participant.

Under a Pooling Arrangement, the Incentive Payment is payable by 2 instalments as follows:

- a) a first instalment equal to 65% of the Incentive Payment, payable within 30 days of the actual aggregate Tree Crop Area being determined by survey under item 1 of this schedule or the Execution Date (as defined in a Timber Sharefarming Agreement) applicable to the last

- Participant to enter into a Timber Sharefarming Agreement, whichever occurs last;
- b) a second instalment equal to 35% of the Incentive Payment payable on 30 April 2001, subject to each Participant not then being in default under his Timber Sharefarming Agreement.

The second instalment will be subject to any adjustment that may be necessary to the amount due after taking into account any resurvey of the Tree Crop Area under item 1 of this schedule.

6.4 **Fencing and Rabbit Control Allowance**

The Grantee will contribute \$75 per hectare of the Tree Crop Area ("**Fencing and Rabbit Control Allowance**") towards the cost of the Owner in providing necessary light vehicle access to the Tree Crop Area for maintenance of the Tree Crop and the cost of the Owner in undertaking fencing obligations relating to the exclusion of stock and where necessary exclusion (including poisoning) of rabbits and other vermin from the Tree Crop Area and the other obligations of the Owner under clause 6 of this deed and the Fencing and Rabbit Control Plan ("**Fencing and Rabbit Control Works**").

The Fencing and Rabbit Control Allowance is payable as follows:

- (a) a first instalment equal to 50% of the Fencing and Rabbit Control Allowance payable 30 days after the Execution Date; and
- (b) a second instalment for the balance of the Fencing and Rabbit Control Allowance payable on 30 April 2001 subject to the Owner substantially carrying out the Fencing and Rabbit and Control Works including, in particular, those works specified in the Fencing and Rabbit Control Plan to the reasonable satisfaction of the Grantee.

If the first instalment of the Fencing and Rabbit Control Allowance is based on an estimate of the Tree Crop Area or if the Tree Crop Area is revised as a result of a resurvey under item 1 of this schedule, the second instalment will be subject to any adjustment that may be necessary to the amount due after taking into account any survey or resurvey of the Tree Crop Area under item 1 of this schedule.

Depending upon the scale of Fencing and Rabbit Control Works to be immediately carried out, the Grantee may in its sole discretion determine to pay the Fencing and Rabbit Control Allowance to the Owner by one lump sum payment or by such other instalments as agreed with the Owner (in each case subject to survey of the Tree Crop Area under item 1 of this schedule) to assist the Owner in meeting the costs and expenses of the Owner in performing any obligation on the part of the Owner under this deed.

Schedule 2**Harvest Revenue**

1. The Grantee must determine the Harvest Revenue for Commercial Product which is harvested and sold by applying the relevant stumpage component of the "Schedule of Royalties and Other Charges" to the Grantee's reasonable estimate of the weight, volume, number or other form of measurement (as the case may require) of Forest Product sold as at the date of sale of the Forest Product which is harvested and sold and making any adjustment for any matters which are contemplated by the Schedule of Royalties and Other Charges.
2. In making the determination in item 1 above:
 - (a) the Grantee may use such methods of measuring, estimating, modelling, averaging or attribution as the Grantee determines is reasonable; and
 - (b) the Grantee shall, where the Schedule of Base Softwood Stumpages (which forms part of the "Schedule of Royalties and Other Charges") contains alternative stumpage methods, use the method which the Grantee considers most appropriate.

- (a) the obligations of the Transferor under the Timber Sharefarming Agreement will bind the Transferee as if the Transferee:
 - (i) were the Owner named in the Timber Sharefarming Agreement; and
 - (ii) had executed and delivered the Timber Sharefarming Agreement,

and the Transferee will carry out and comply with those obligations;

- (b) the obligations of the Grantee under the Timber Sharefarming Agreement will bind the Grantee for the benefit of the Transferee;
- (c) the Transferor is released from any obligations it has under the Timber Sharefarming Agreement other than those obligations which were required to be met prior to the date the Transferee becomes the registered proprietor of the Land; and
- (d) The Transferee assigns and transfers to the Grantee all of its right, title and interest, present and future, to:
 - (i) any entitlement to apply for or claim any Credit in respect of Greenhouse Gases sequestered by or in the Greenhouse Property during the Term and any right of action against the Commonwealth of Australia or other person (whether in Australia or elsewhere) in connection with any application or claim for any Credit in respect of Greenhouse Gases sequestered by or in the Greenhouse Property during the Term;
 - (ii) each Available Credit; and
 - (iii) any claim, award, compensation, judgment or other money to which the Owner is entitled in connection with the sequestration of Greenhouse Gases by or in the Greenhouse Property during the Term, any right of action referred to in clause 3(d)(i) and any Available Credit.

and the Transferee declares for valuable consideration that it will hold the above rights and property (to the extent not already assigned or transferred) on trust for the Grantee.

4 Deed supplemental

This deed is supplemental to the Timber Sharefarming Agreement within the meaning of section 16 of the Property Law Act 1969.

5 Costs, charges and expenses

- 5.1 The Transferor and the Owner agree to pay or reimburse the Grantee and the Transferee on demand for the Grantee's costs, charges and

expenses in negotiating, executing and enforcing this deed including, without limitation, legal costs and expenses on a full indemnity basis.

- 5.2 The Transferor must pay all stamp duties, fees, taxes and charges which are payable in connection with this deed or a payment, receipt or other transaction contemplated by it.

EXECUTED as a deed

Schedule to Transferee's Deed of Covenant

1 Timber Sharefarming Agreement

2 Land

3 Registered profit a prendre number

- (b) while the Mortgagee is in receipt of the rents and profits derived from the Land; or
- (c) if the Mortgagee has appointed a person receiver or receiver and manager of the Land, while that person is the receiver or receiver and manager of the Land,

as though it were a party to and had executed the Timber Sharefarming Agreement.

- 3.2 For the avoidance of doubt the Mortgagee is not liable to the Grantee in respect of any breach or default by the Owner under the Timber Sharefarming Agreement other than during the periods referred to in clause 3.1.

Power of Sale

- 3.3 The Mortgagee agrees with the Grantee that the Mortgagee and any receiver or receiver and manager appointed by the Mortgagee will comply with the Owner's obligation not to transfer, dispose of, deal with or part with possession of any estate or interest in the Land, other than with the consent of the Grantee.

Transfer of Security Interest

- 3.4 The Mortgagee may not transfer the Specified Security Interest unless it causes the proposed transferee to enter into a deed of covenant in a form approved by the Grantee which binds the proposed transferee to the obligations of the Mortgagee under this deed.

4 Costs, charges and expenses

- 4.1 The Owner agrees to pay or reimburse the Grantee and the Mortgagee on demand for their costs, charges and expenses in negotiating and executing this deed including, without limitation, legal costs and expenses on a full indemnity basis.
- 4.2 The Owner must pay all stamp duties, fees, taxes and charges which are payable in connection with this deed or a payment, receipt or other transaction contemplated by it.

EXECUTED as a deed

Schedule to Deed of Consent and Covenant: Security Interest

1 Timber Sharefarming Agreement

2 Land

3 Registered profit a prendre number

4 Security Interest

Existing Mortgagee's Deed of Consent and Covenant

Date:

Parties:

The Grantee

The Owner

The person named in item 1 of the Schedule
 ("the **Mortgagee**")

Recitals:

- A. The Mortgagee is the mortgagee of the land under the mortgage described in item 2 of the Schedule ("**Mortgage**").
- B. The Owner has granted the Timber Sharefarming Agreement to which this deed is annexed ("**Timber Sharefarming Agreement**").
- C. The Owner has requested that the Mortgagee enter into this deed.

Operative part:

1 Interpretation

The rules of interpretation and the definitions contained in the Timber Sharefarming Agreement shall apply to this deed.

2 Consent

The Mortgagee consents to the Owner entering into the Timber Sharefarming Agreement with the Grantee.

3 Covenants

Possession by Mortgagee

- 3.1 The Mortgagee must observe the obligations of the Owner under the Timber Sharefarming Agreement:
 - (e) while the Mortgagee is in possession of the Land; or
 - (f) while the Mortgagee is in receipt of the rents and profits derived from the Land; or
 - (g) if the Mortgagee has appointed a person receiver or receiver and manager of the Land, while that person is the receiver or receiver and manager of the Land,

as though it were a party to and had executed the Timber Sharefarming Agreement.
- 3.2 For the avoidance of doubt the Mortgagee is not liable to the Grantee in respect of any breach or default by the Owner under the Timber

Sharefarming Agreement other than during the periods referred to in clause 3.1.

Power of Sale

- 3.3 The Mortgagee agrees with the Grantee that the Mortgagee and any receiver or receiver and manager appointed by the Mortgagee will comply with the Owner's obligation not to transfer, dispose of, deal with or part with possession of any estate or interest in the Land, other than with the consent of the Grantee.

Transfer of Security Interest

- 3.4 The Mortgagee may not transfer the Mortgage unless it causes the proposed transferee to enter into a deed of covenant in a form approved by the Grantee which binds the proposed transferee to the obligations of the Mortgagee under this deed.

4 Costs, charges and expenses

- 4.1 The Owner agrees to pay or reimburse the Grantee and the Mortgagee on demand for their costs, charges and expenses in negotiating and executing this deed including, without limitation, legal costs and expenses on a full indemnity basis.
- 4.2 The Owner must pay all stamp duties, fees, taxes and charges which are payable in connection with this deed or a payment, receipt or other transaction contemplated by it.

EXECUTED as a deed

Schedule: Existing Mortgagee's Deed of Consent and Covenant

1 Mortgagee

2 Mortgage Number

Execution

ENCUMBRANCER

Name: _____

Address: _____

Dated: This day of 2000

Execution pages

THE COMMON SEAL of the Executive)
 Director of **THE DEPARTMENT OF**)
CONSERVATION AND LAND)
MANAGEMENT was hereto affixed this)
 day of ,)
 in the presence of:)
)

Signature of witness

.....
 Name of witness (block letters)

.....
 Address of witness

.....
 Occupation of witness

.....
 Signature of Executive Director or his
 delegate

SIGNED by [] in)
 the presence of:)

.....
 Signature of witness

.....
 Name of witness (block letters)

.....
 Address of witness

.....
 Occupation of witness

.....
 Signature of []

SIGNED by [] in)
the presence of:)

Signature of witness

Name of witness (block letters)

.....
Address of witness

Occupation of witness

Signature of []

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Timber Sharefarming Agreement

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