#Insert Party Name#

(ABN #Insert Party’s ABN#)

and

#Insert Party Name#

(ABN #Insert Party’s ABN#)

Share Farming Agreement

[insert farm name]

**[Note: This document is a template share farming agreement only. It contains example clauses and must be amended to reflect the terms agreed by the parties and it is recommended that each party seeks its own legal advice prior to signing.]**



Level 2, 179 Murray Street

HOBART TAS 7000

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P: (03) 6235 5155

F: (03) 6231 0352

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Details

**Date The                         day of 20**

**Parties** **Owner and Share Farmer**

|  |
| --- |
| Owner |
| Name | #insert full name# |
| ABN | #insert ABN# |
| Address | #insert address# |
| Contact | #insert contact# |
| Email | #insert email# |

|  |
| --- |
| Share Farmer |
| Name | #insert full name# |
| ABN | #insert ABN# |
| Address | #insert address# |
| Contact | #insert contact# |
| Email | #insert email# |

Background

1. The Owner is the owner of the Land and the Owner’s Machinery.
2. The Share Farmer has expertise in operating a farm and will supply the Share Farmer’s Machinery.
3. The Owner and the Share Farmer have agreed that the Share Farmer will operate the Farm using the Farm Machinery on the Land as an independent contractor upon the terms set out below.

Agreed terms

# Definitions and interpretation

## Definitions

The capitalised terms used in this Agreement have the meanings given to them in Schedule 1.

## Interpretation

In this Agreement, unless the context otherwise requires, the singular includes the plural and vice versa, each gender includes each other gender, references to persons include corporations and other legal entitles and vice versa and an obligation or warranty on the part of 2 or more persons binds them jointly and severally and an obligation or warranty in favour of 2 or more persons benefits them jointly and severally.

## Trustee

If a party enters into this Agreement as a trustee of a trust, that party is bound in its personal capacity and in its capacity as trustee.

# Term

## Term

### This Agreement commences on the Commencement Date and shall, subject to clause 11, continue for the Term.

### Three months before the end of this Agreement the Owner will advise the Share Farmer in writing of any work required under this Agreement which must be completed by the Share Farmer before the end of the Term.

### If the Share Farmer does not agree with any work advised by the Owner in accordance with clause 2.1(b), the parties shall resolve the dispute in accordance with clause 18.

## Renewal

**<Choice>**The parties agree that neither party is bound to renew this Agreement. Any negotiations for a further agreement will commence at least 3 months before the end of this Agreement and conclude at least one month before the end of this Agreement. **<End Choice>**

### **<Choice>** Subject to clause 2.2(b), the Share Farmer may extend the Term of this Agreement for the Further Term commencing on the day after the last day of the Term by providing written notice to the Owner (**Extension Notice**) not less than [60 days] before the end of the Term.

### The Share Farm may only extend the Term of this Agreement in accordance with clause 2.2(a) if the Share Farmer is not in default under this Agreement at the time of providing notice to the Owner (provided that the Owner has previously notified the Share Farmer of that default).

### Any extension of the Term of this Agreement will be on the same terms and conditions as set out in this Agreement (unless otherwise agreed between the parties), except this clause 2.2 shall be deleted. **<End Choice>**

# Provision of Assets

## Farm

### The Owner agrees to make available to the Share Farmer the Farm for the Term and on the terms set out in this Agreement.

### The Share Farmer must operate the Farm in accordance with the terms of this Agreement and must only use the Farm for the Permitted Use.

### The Share Farmer will have the right to use the Owner’s Machinery and assets described in Schedule 3 and is permitted full access to the Farm during the operation of this Agreement.

### The Owner is entitled to access the Farm and the Land and use the Owner’s Machinery at any time provided it does not materially interfere with the Share Farmer’s operation of the Farm.

## Machinery

### The Share Farmer must provide at its cost the Share Farmer’s Machinery.

### The Owner must provide at its cost the Owner’s Machinery.

## Other assets

The Owner and the Share Farmer agree to provide the other assets as listed in Schedule 3. This Agreement specifically excludes assets not listed in Schedule 3.

## Condition of assets

### Each party must ensure that:

### any assets it provides in accordance with this clause 3 are in good working order and suitable condition as at the Commencement Date; and

### any livestock it provides in accordance with this clause 3 are in good health and their notifiable disease status is declared.

# Farm Income and Operating Costs

### The Owner and Share Farmer will each have a right to the share of farm income specified in Schedule 4.

### The Owner and Share Farmer will each have an obligation to pay that proportion of specific farm expenses indicated in Schedule 4.

### Where a party receives a payment for farm income it must promptly pay to the other party its share of that income.

### Monthly reconciliation of receipts and payments will be jointly undertaken by the parties on the [insert] day of each month and payment of shared expenses arranged. In the event of non-payment of shared expenses by the Share Farmer to the Owner, the Owner may offset and deduct from any payments due or to become due to the Share Farmer under this Agreement any monies or part of any monies which are then due to the Owner. In the event of non-payment of shared expenses by the Owner to the Share Farmer, the Share Farmer may offset and deduct from any future shared expenses of the Share Farmer under this Agreement.

# Farm Management

## Management control

### The parties agree to the joint formulation of farming goals and objectives, having regard to the productive capacity of the Farm.

### **<Choice 1>**Notwithstanding clause 5.1(a), the Share Farmer will be responsible for all day-to-day management decisions and farming operations on the Farm. It will be at the Share farmer’s sole discretion to decide all questions or policy relating to the carrying out of this Agreement and the efficient and profitable farming of the Farm.**<End Choice 1>**

### **<Choice 2>** Notwithstanding clause 5.1(a), the Owner will have the responsibility for overall management control of the Farm. The Share Farmer will have the right to share in the direct management, planning and control of operations on the Farm and will be responsible for the supervision and management of employed staff and the day-to-day management of all farming activities provided always that the Share Farmer must comply with any reasonable direction of the Owner in relation to the Farm. **<End Choice 2>**

### If the party who is in control of the management fails to give directions or instructions about a matter to the other party the non-controlling party must observe and follow accepted farming practices.

### The parties agree that farm management issues will be discussed at the regular meetings held in accordance with clause 5.2.

## Meetings

### The parties agree that they will meet on a [monthly] basis to discuss all aspects of management and operation of the Farm.

### Access to all Farm physical and financial records, performance data and budgets will be made available at the meetings as appropriate.

### Any grievances, problems or concerns which have arisen will be discussed at the regular meetings with the aim of avoiding disputes.

### The Owner agrees to keep accurate minutes of all meetings held and to provide a copy to the Share Farmer within a reasonable time following each meeting.

# Labour

## Provision of labour

### The Share Farmer shall supply all Personnel required to operate the Farm and to comply with the Share Farmer’s obligations under this Agreement.

### The Share Farmer is responsible for delegating duties and managing the performance of their Personnel.

### The Share Farmer must ensure that all Personnel engaged by the Share Farmer hold and maintain necessary licenses, possess the requisite skills, and are appropriately supervised.

### **<Choice>**The Share Farmer agrees to make available one member of the Share Farmer’s labour force for [x] day[s] per week to undertake work, at the direction of the Share Farmer, on those parts of the Land not forming part of the Farm. **<End Choice>**

### Under no circumstances will the Share Farmer’s Personnel be considered to be the employees, servants or agents of the Owner.

## Labour expenses

### The Share Farmer must arrange payment of all labour on-costs associated with the employment or engagement of Personnel, including (without limitation) workers’ compensation insurance, payroll, superannuation, PAYG taxation and any other payments related to employment (or termination).

### The Share Farmer undertakes to pay wages and entitlements in accordance with the correct industrial award or agreement to their Personnel and hereby indemnifies the Owner against any claims by or any liability to any of the Share Farmer’s Personnel, including in respect of any entitlement more commonly associated with employment relationships including annual leave, public holidays, personal leave, long service leave, superannuation or otherwise nor in respect of claims under any workers’ compensation legislation.

### The parties will comply with workers compensation laws regarding their employees.

## Work Health and Safety

### The Share Farmer must at all times undertake works in a safe manner, including by identifying and exercising all necessary precautions for the health, safety, and security of all persons on the Farm or who may otherwise be affected by the undertaking of works.

### **<Choice - insert this clause if clause 5.1(b) is included>**The Share Farmer will establish, maintain and enforce policies and procedures in relation to the occupational health, safety, and security of the Share Farmer, its Personnel, and any other person on the Farm or who may visit the Farm.**<End Choice>**

### **<Choice - insert these clauses if clause 5.1(c) is included>**The Owner will establish, maintain and enforce policies and procedures in relation to the occupational health, safety, and security of the Share Farmer, its Personnel, and any other person on the Farm or who may visit the Farm.

### The Share Farmer must comply with any and all reasonable directions provided to the Share Farmer by the Owner in relation to occupational health and safety, security and any other matters relevant to the performance of works at the Farm **<End Choice>**.

### The Share Farmer must immediately report to the Owner any health, safety or security issues relating to the Farm and/or relevant to the performance of works at the Farm.

### The Owner and the Share Farmer must comply with their respective obligations under the WHS Laws.

#### To the extent that both the Owner and Share Farmer have a duty under the WHS Laws in relation to the same matter, the Owner and the Share Farmer must in good faith and so far as reasonably practicable consult, co-operate and co-ordinate their respective activities.

#### Where a Party enters into a contract with any Person who has a duty under the WHS Laws in relation to a matter to which the Owner or Share Farmer also have a duty, that Party must in good faith and so far as reasonably practicable ensure that the Person consults, co-operates and co-ordinates their activities with the Owner and/or Share Farmer, as the case may be.

#### In complying with their respective obligations under the WHS Laws the Owner and the Share Farmer are to consider and comply with the relevant Code or Codes of Practice, to the extent the Code or Codes are applicable, and must ensure that any other Person who has a duty under the WHS Laws considers any relevant Code of Practice to the extent that code is applicable.

### The Share Farmer must not do anything which may place the Owner in breach of applicable WHS Laws.

# Housing

## Application

This clause 7 only applies where housing is described an asset to be provided by the Owner in Schedule 3.

## Share Farmer’s housing

Where this clause 7 applies, the Owner must make available the housing described in Schedule 3 for the Share Farmer to occupy at on the following terms:

### the housing is provided at [no cost];

### the Share Farmer is responsible for all costs of water usage, internet, electricity and other service supply expenses and repairs beyond fair wear and tear;

### the Share Farmer must at its cost maintain (and, upon the expiry or earlier termination of this Agreement, return) the house in the same condition as it was in at the Commencement Date (fair wear and tear excepted);

### the Owner has the right to enter the house and surrounds to carry out reasonable inspections at reasonable times provided the Owner has first sought permission form the Share Farmer who will not unreasonably refuse permission;

### the Owner shall bear and pay all expenses incurred for land tax and municipal rates; and

### the Share Farmer must ensure that the house is vacant within 14 days of the expiry of this Agreement (unless Owner agrees in writing otherwise).

# The Share Farmer’s obligations

**[Note: This clause contains example clauses and should be amended as appropriate]**

## Farm operations

The Share Farmer agrees to carry out their obligations under this Agreement including (without limitation), to conduct farm operations on the Farm, care for the Farm Machinery and the Farm in accordance with the reasonable directions from time to time from the Owner.

## Best agricultural practices

The Share Farmer must:

### carry out the Permitted Use in a skilful manner by managing, cultivating and working the Farm in accordance with the best agricultural practices and standards of the district in which the Farm are located;

### give notice of all infectious illnesses to humans and livestock to the Owner and all public authorities as required by statute;

### comply with all requirements of public authorities under statute regarding fumigation, disinfection, eradication, and prevention of diseases and all requirements regarding the quarantine of livestock;

### in cultivation and farming employ good and clean practices in accordance with the current standards of the district and shall keep and leave the Farm in a clean condition.

## Acknowledgement

The Share Farmer acknowledges that:

### the Owner may by notice in writing to the Share Farmer appoint an independent agent as the Owner’s agent in respect of the management of the Farm; and

### an agent appointed in accordance with clause 8.3(a) has full authority to represent the Owner in all respects under this Agreement.

## <Choice>Repair and maintenance of machinery

**[Note: delete this clause if clause 10.2 is included]**

The Share Farmer must undertake all repairs and maintenance required to keep the Farm Machinery in good working order and suitable condition having regard to the condition of the Farm Machinery at the Commencement Date, except where repairs or maintenance are necessary through damage to Farm Machinery, other than fair wear and tear, caused by the neglect of or misuse by the Owner.**<End Choice>**

## Safe operation of machinery

The Share Farmer must ensure that only suitably trained staff operate Farm Machinery on the Land and surrounding public roads and must ensure that the operators do so in a safe and responsible manner at all times.

## Compliance with Laws

The Share Farmer must observe and comply with all Laws in exercising the Share Farmer’s rights and performing its obligations under this Agreement.

## No alterations or improvements

The Share Farmer must not without the Owner’s written consent make or allow to be made any agricultural improvements (including any buildings, fences, dams, irrigation channels or drains, water troughs, water systems, pumps, pipes and stockyards) (**Agricultural Improvements**) on the Farm.

## Maintain and repair fencing

### The Share Farmer must, subject to fair wear and tear and damage by fire, storm or tempest:

#### maintain all fencing on the Farm at the Commencement Date in the same condition as at the Commencement Date;

#### maintain all fencing erected on the Farm by the Share Farmer during the Term or any further term with the Owner’s consent in good condition; and

#### repair all fencing on the Farm (whether on the Farm at the Commencement Date or erected on the Farm by the Share Farmer with the Owner’s consent):

##### as and when the need for repair arises; or

##### in accordance with any notice served on the Share Farmer by the Owner requiring any fencing to be repaired.

but repairs to existing fencing need not exceed the condition as at the Commencement Date.

### The Share Farmer may with the written consent of the Owner and at their own expense, arrange for the construction of additional fences and gateways necessary for the duration of the Agreement, and for the maintenance and repair of existing fences.

### On expiry or termination of this Agreement the Share Farmer must remove any fences and gateways constructed by the Share Farmer and make good the pre-existing infrastructure at the request of the Owner.

## Replace fencing

### The Share Farmer may with the Owner’s consent remove from the Farm any fencing that was on the Farm on the Commencement Date that the Share Farmer requires be removed from the Farm in order to operate the Share Farmer’s business.

### On the expiration of this Agreement or within 7 days of termination of this Agreement, the Share Farmer must replace to the Owner’s reasonable satisfaction all fencing removed from the Farm in accordance with clause 8.9(a).

## Maintain and repair agricultural improvements

Excluding major structural repair or improvement, the Share Farmer must, subject to fair wear and tear, and damage by fire, storm or tempest:

### maintain all Agricultural Improvements on the Farm at the Commencement Date in the same (or better) condition as at the Commencement Date;

### maintain all Agricultural Improvements installed on the Farm by the Share Farmer with the Owner’s consent in good condition; and

### repair all Agricultural Improvements on the Farm (whether on the Farm at the Commencement Date or installed on the Farm by the Share Farmer with the Owner’s consent):

#### as and when the need for repair arises; and

#### in accordance with any notice served on the Share Farmer by the Owner requiring any Agricultural Improvements to be repaired.

## Replace agricultural improvements

The Share Farmer must replace to the Owner’s reasonable satisfaction any Agricultural Improvements that are damaged or destroyed (and incapable of repair) by any act, omission or negligence of the Share Farmer, or of any person the Share Farmer is responsible for, with Agricultural Improvements of similar quality and value.

## No dangerous or explosive substances

Except in the ordinary course of the Share Farmer’s business, the Share Farmer must not bring onto or keep or permit to be brought onto or kept on the Farm any material of a dangerous or explosive nature which may contravene any law.

## Maintain soil condition

The Share Farmer must maintain all soil worked by the Share Farmer in at least as good agricultural condition as at the Commencement Date.

## Maintain pastures and grass

The Share Farmer must maintain all parts of the Farm under pasture or grass in good condition, properly fertilised and properly cut and take all necessary steps to prevent any erosion or other loss of soils by wind, water or other natural cause and must not over stock them.

## Irrigation

### The Share Farmer will be responsible for irrigating all pastures, operating any irrigation plant and ensuring that irrigation practices employed promote productive pasture and efficient water use.

### The Share Farmer will be responsible for water practices and control of water flow on the farm so as to prevent degradation of farming land through erosion or water-logging.

## Cropping

### If during the Term or any further Term the Share Farmer uses the Farm for cropping, the Share Farmer must:

#### during the Term or any further term rotate the crops grown on the Farm; and

#### on the expiration of this Agreement or within 7 days of termination of this Agreement, re-sow all parts of the Farm that at the date this Agreement ends (whether by effluxion of time or by termination) were used by the Share Farmer for cropping with grazing pasture.

### The Owner and the Share Farmer may agree in writing that clauses 8.16(a)(i) or 8.16(a)(ii) or both do not apply.

## Internal roads

The Share Farmer must maintain any vehicular access roads on the Farm in reasonable condition and repair.

## No nuisance

The Share Farmer shall not do or permit anything in or upon the Land which may reasonably be or become a nuisance or annoyance or cause damage to the Owner or their agents or to the owners or occupiers of other nearby property.

## Not Quarry

The Share Farmer must not without the Owner’s written consent mine, quarry or remove any minerals, sand, gravel, soil or clay except for mining that is necessary to maintain any vehicular access roads on the Farm under clause 8.17.

## Not Hunt

The Share Farmer must not poison or use any other method to hunt, fish, kill or injure any wildlife on the Farm without the Owner’s written consent (which is not to be unreasonably withheld).

## Fires

The Share Farmer must not without the Owner’s written consent light or allow to be lit any fire on the Farm and where the Owner consents under this, it will be given subject to the Share Farmer obtaining all permits from all relevant Authorities and complying with all legal requirements with regard to the lighting of the fire.

## Dams and Water Courses

The Share Farmer must keep open, clean and clear of weeds (including gorse), suckers, scrub and undergrowth all dams, creeks, drains, ditches and watercourses on the Farm.

## Pests

The Share Farmer must use all proper means for keeping down and exterminating on the Farm all rabbits and other vermin and noxious animals and all insects, thistles, weeds (including gorse) and other noxious plants. The Share Farmer must comply with all laws and regulations governing the maintenance of weeds and pests.

## Livestock Health

### The Share Farmer must not bring onto the Farm any livestock (including progeny) suffering from any disease.

### If required by the Owner, the Share Farmer must provide the Owner with a certificate from a Veterinary Surgeon confirming the health of the livestock on the Farm.

### If diseased livestock are discovered on the Farm, the Share Farmer must dispose of such livestock of within 2 days of discovery and must arrange for a Veterinary Surgeon to attend the Farm to determine if other livestock are affected by the disease and if further livestock are affected by the disease then the Share Farmer must dispose of the infected livestock under this paragraph 8.24(c).

## Slaughter of Livestock

The Share Farmer must not slaughter livestock on the Farm unless for the purposes of disposal in the event of disease or for slaughtering meat for the Share Farmer’s own use and any dead livestock must be buried, burned (subject to fire restrictions) or otherwise lawfully disposed of within a period of 2 days of death.

## No auction without the Owner’s consent

The Share Farmer must not without the Owner’s written consent hold or permit to be held any sale by auction on the Farm.

## Timbers

The Share Farmer must not without the Owner’s consent cut down or remove any growing timber on the Farm.

## Farm Biodiversity Certification Scheme

Where the Owner participates in the Australian Farm Biodiversity Certification Scheme the Share Farmer must:

### comply with any obligations in relation to the scheme notified to the Share Farmer by the Owner prior to the date of this Agreement; and

### use reasonable endeavours to comply with any obligations in relation to the scheme notified to the Share Farmer by the Owner after the date of this Agreement provided that no such obligations shall materially alter the obligations imposed on the Share Farmer under this Agreement.

# Owner’s obligations

**[Note: This clause should be amended as appropriate]**

## Compliance with Laws

The Owner must observe and comply with all Laws in exercising the Owner’s rights and performing its obligations under this Agreement.

## Capital Works

The Owner will be responsible for all Farm capital developments, including materials and labour costs.

# Mutual obligations

**[Note: This clause should be amended as appropriate]**

## General

### The parties agree that neither party has the right during the period of this Agreement to graze or depasture on the Farm any stock not subject to this Agreement.

### The parties agree that the Land comprising the Farm will not be reduced except by the mutual consent of both parties.

### The parties agree that nothing in this Agreement requires either party to do anything which is detrimental to the assets, livestock or plant.

## <Choice>Repair and maintenance of machinery

**[Note: delete this clause if clause 8.4 is included]**

The:

### Owner is responsible for all repairs and maintenance required to keep the Owner’s Machinery in good working order and suitable condition; and

### Share Farmer is responsible for all repairs and maintenance required to keep the Share Farmer’s Machinery in good working order and suitable condition,

### except where repairs or maintenance are necessary through damage to Farm Machinery, other than fair wear and tear, caused by the neglect of or misuse by the other party. **<End Choice>**

## Land Management Plan

### The Share Farmer must comply with the Land Management Plan as it relates to the Farm.

### The Owner must comply with the Land Management Plan, and must ensure that any third parties with a right to use or occupy the Land comply with the Land Management Plan, as it relates to any parts of the Land not forming part of the Farm.

### The Owner may amend the Land Management Plan from time to time acting reasonably provided that no amendment shall materially alter the obligations imposed on the Share Farmer.

### In this clause 8.7 “**Land Management Plan**” means a management plan prepared by the Owner outlining terms and conditions for the good management of the Land and provided to the Share Farmer prior to the date of this Agreement.

# Termination

## Breach and insolvency

Either party (**Non-Defaulting Party**) may terminate this agreement by giving the other party (**Defaulting Party**) notice if:

### the Defaulting Party repudiates its obligations under this agreement;

### the Defaulting Party does not comply with an obligation under this agreement and, in the Non-Defaulting Party’s reasonable opinion:

#### the non-compliance can be remedied, but the Defaulting Party does not remedy it within 14 days after the Non-Defaulting Party gives the Defaulting Party notice to remedy it; or

#### the non-compliance cannot be remedied; or

### an Insolvency Event occurs in respect of the Defaulting Party.

## Death of Share Farmer

### **<Choice if sole Share Farmer>** If the Share Farmer dies, this Agreement will be taken to be terminated from the day of the death. If this Agreement is terminated under this clause the Share Farmer’s personal representative is entitled to all payments due and owing as at the date of termination.

### If this Agreement is terminated under clause 11.2(a) the Owner will allow the Share Farmer’s personal representatives up to two months to remove the Share Farmer’s property from the Land. **<End Choice>**

### **<Choice if Share Farmer is a partnership>**If one of the partners dies, the remaining partner(s) will have the option of continuing this Agreement or terminating this Agreement and if this Agreement is terminated any amounts due and owing to the Share Farmer under this Agreement will be paid to the Share Farmer’s personal representative and the remaining partner(s).

### The Owner will have the option of terminating this Agreement on the expiration of one month following the death of the partner if the Owner is of the view that the remaining partner(s) cannot continue to the satisfaction of the Owner. **<End Choice>**

## Death of Owner

**[Note: This clause should be deleted if the Land is owned by a Company]**

### If the Owner dies this Agreement will terminate 1 month after the date of the Owner’s death.

### Upon termination any amounts due and owing to the Share Farmer under this Agreement will be paid to the Share Farmer.

## Incapacitation

### If the Owner or Share Farmer becomes incapable of performing their obligations under this Agreement for a period of at least three months either party may elect to terminate this Agreement by giving written notice to the other party.

### Upon termination any amounts due and owing to the Share Farmer under this Agreement will be paid to the Share Farmer.

## Sale

Where the Owner sells the Land, or any part of the Land comprising the Farm, the Owner **<Choice 1>** shall not be entitled to terminate this Agreement and must ensure that the sale is conditional upon the purchaser offering to enter into an agreement with the Share Farmer on the same terms as this Agreement. **<End Choice 1> <Choice 2>** must notify the Share Farmer as soon as the property is subject to an unconditional agreement for sale and may terminate this Agreement upon giving the Share Farmer at least two months’ notice.**<End Choice 2>**

## <Choice>Termination for convenience

Despite anything else in this agreement, the Share Farmer may terminate this agreement at any time by giving not less than [12 months’] notice in writing to the Owner. **<End Choice>**

## General obligations after termination

### Where this Agreement is terminated in accordance with clauses 11.1 to 11.5 (inclusive), the Owner or the Owner’s personal representative (as the case may be) will allow the Share Farmer or the Share Farmer’s personal representative (as the case may be) 4 weeks to remove the Share Farmer’s property from the Land and will allow any persons living in a house 4 weeks’ notice to vacate the house if the *Residential Tenancy Act 1997* (Tas) does not apply.

### **<Choice - include if clause 11.6 is included>**Where this Agreement is terminated in accordance with clause 11.6, the Share Farmer must remove the Share Farmer’s property from the Land and any persons living in a house must vacate the house on or before the date of termination of this agreement. **<End Choice>**

### Where the Share Farmer fails to remove any property, clauses 15(b)(i) and 15(b)(ii) shall apply.

## Rights not prejudiced

If this agreement is terminated for any reason:

### the parties are relieved from future performance of this agreement, without prejudice to any right of action that has accrued prior to the date of termination; and

### rights to recover damages are not affected by the termination.

# Liability and indemnity

## Each party indemnifies the other

### Each party (**Indemnifier**) indemnifies the other party (**Indemnified**) against all liability, loss, cost or expense (including reasonable legal costs on a solicitor/client basis) which the Indemnified may suffer or incur in connection with any:

#### loss of life or personal injury;

#### damage to property;

#### breach by the Indemnifier or the Indemnifier’s Personnel, of the Indemnifier’s obligations under this Agreement; or

#### negligence of the Indemnifier or any of the Indemnifier’s Personnel, in the course of performing obligations under this Agreement.

### The Indemnifier’s liability to indemnify the Indemnified under clause 12.1(a) shall be reduced proportionately to the extent that the act, omission, negligence or default of the Indemnified or its Personnel contributed to the liability, loss, cost or expense.

## Nature of indemnities

The indemnities in clause 12.1:

### are continuing obligations of each party, separate and independent from any other obligations; and

### survive the termination of this Agreement.

# Insurance

## Insurance

The Share Farmer must:

### effect and maintain throughout the Term with an insurer approved by the Owner in the name of the Share Farmer and with the interest of the Owner and, if required by the Owner, any mortgagee of the Owner, noted for their respective rights and interests:

#### public risk insurance of at least $20 million in respect of any single event or accident, including fire, flood and explosion with respect to the Land and the Farm. The policy of public risk insurance must cover death of or injury to any person and damage to the property of any person;

#### a comprehensive insurance policy covering all Farm Machineryand all of the Share Farmer’s fixtures and fittings in or upon the Land to the full replacement value for all risks usually covered under a comprehensive insurance including loss or damage; and

#### take out and maintain a policy of workers compensation insurance as required under any Law applicable to the Share Farmer. The Owner shall not be liable to the Share Farmer for any claim of loss of profits, salary, wages or other losses or damages arising from any injury to Share Farmer or the Share Farmer's employees.

### in respect of those insurances provide certificates of currency of insurance effected in accordance with this clause to the Owner prior to the Commencement Date and annually upon request;

### notify the Owner immediately of:

#### the Share Farmer’s intention to cancel, replace or alter any insurance effected by the Share Farmer in accordance with this clause 13.1;

#### any notice or correspondence received by the Share Farmer from an insurer indicating its intention to cancel or materially alter any of those insurances;

#### the occurrence of any fact or event which:

##### may give rise to a claim against the Owner or the Share Farmer, which may be covered by any one of those insurances; or

##### may prejudice the entitlement to claim under any of those insurances.

## Restrictions on Share Farmer’s activities

Unless the Owner consents, the Share Farmer must not:

### do or allow anything to be done which adversely affects any insurance taken out by the Owner in connection with the Farm or which may increase the cost of obtaining that insurance;

### store or use inflammable, volatile or explosive substances on the Farm except those normally used on the Farm if they are stored in proper containers and only used strictly in accordance with all relevant Laws; or

### settle or compromise any claim under any policy of insurance relating to the Farm.

## Owner’s obligations

The Owner will effect and maintain throughout the Term a comprehensive insurance policy for the full insurable and replacement value of buildings on the Land.

## Costs

The Owner and Share Farmer will each pay that proportion of insurance expenses indicated in Schedule 4.

# No estate of interest

This Agreement does not create in or confer upon the Share Farmer a tenancy or any estate or interest whatsoever in or over the Land or the Owner’s Machinery and the rights of the Share Farmer shall be those of a licensee only.

# Removal of Share Farmer’s property on expiration

### The Share Farmer must vacate any housing and remove from the Land all of the Share Farmer’s Machinery and other property owned by the Share Farmer on or before the expiration of this Agreement.

### If the Share Farmer fails to remove any of the Share Farmer’s Machinery and other property owned by the Share Farmer from the Land within the time permitted in this clause, the Owner may:

#### have that property removed from the Land and stored, always being exempted from any liability to the Share Farmer for loss or damage to any of the Share Farmer’s Machinery and other property owned by the Share Farmer through the negligence of the Owner or its Personnel;

#### sell or otherwise dispose of all or any of the Share Farmer’s Machinery and other property owned by the Share Farmer at the highest available price, with or without removing them from the Land, in the name of and as agent for the Share Farmer, but provided that the Owner has first afforded the Share Farmer 28 days to collect the Share Farmer’s Machinery and other property owned by the Share Farmer and pay to the Owner any removal and storage costs the Owner has incurred.

# Confidentiality

## Non-disclosure

Both parties agree, in respect of any Confidential Information:

### subject to clause 16.2, not to disclose such information to any person, without the prior written consent of the disclosing party, unless and until:

#### such information becomes generally available to the public in printed publications in general circulation in Australia, through no action, default or other breach by the recipient party; or

#### the recipient party is required by law to make disclosure, and then only to such extent; and

### to keep such documents and any other material containing or incorporating any Confidential Information, in safe custody.

## Representatives

Each party may, notwithstanding clause 16.1, disclose Confidential Information to such of its representatives who may need such information and only to the extent so needed, to enable such party to fulfil its obligations under this Agreement.

## Survival

This clause 16 survives the termination (for any reason) or expiry of this Agreement.

# Relationship

### The Share Farmer agrees that the relationship of the parties is that of principal and independent contractor, and nothing in this Agreement creates a partnership between the parties or a relationship of employer and employee.

### The parties acknowledge that no representations have been made that this Agreement is a contract of employment under which the Share Farmer is an employee of the Owner and the Share Farmer agrees that the Share Farmer is not an employee of the Owner.

# Dispute Resolution

### The Owner and the Share Farmer agree that the following steps will take place in the event of a dispute arising during the term of this Agreement:

#### the complainant will set out in writing the nature of the dispute, what outcome the complainant wants and what action the complainant thinks will settle the dispute;

#### if the dispute is not resolved within 7 days after the complainant gives written notice to the other party, then within a further 7 days a representative of each party must meet to discuss the dispute and must make every effort to resolve the dispute by mutual negotiation;

#### in the event that the parties are unable to reach a resolution of the dispute within twenty-one (21) days of the date of the written complaint being provided to the other party or parties, any party may by notice in writing advise the other parties that they seek to have the dispute resolved by an independent expert;

#### if clause 18(a)(iii) applies, the dispute will be referred to an independent expert with appropriate knowledge and experience in farming. The expert will be agreed by the parties or, if the parties cannot agree, the expert must be nominated by [the President for the time being of the Tasmanian Farmers & Graziers Association]; and

#### both parties must cooperate with the expert and provide them with access to the Land and all relevant documents and records. The expert’s decision will be binding on the parties. The parties must bear the expert’s costs equally unless the expert determines otherwise.

### The parties agree that they will continue to perform their obligations under this Agreement while the dispute is being resolved.

### Nothing in this clause prevents either party from exercising their legal rights to take action to enforce payment or seek urgent court relief to prevent detrimental action by either party.

# Notices

## Form

### Any notice, consent, approval, waiver and other communications to be given under or in connection with this Agreement must be in writing, signed by the sender and marked for the attention as set out or referred to in the Details or, if the recipient has notified otherwise, then marked for attention in the way last notified.

## Delivery

### They must be:

### sent by email to the email address set out or referred to in the Details; or

### left at the address set out or referred to in the Details; or

### sent by prepaid post to the address set out or referred to in the Details,

However, if the intended recipient has notified a changed email address or changed postal address, then the communication must be to that email address or postal address.

## When effective

### They take effect from the time they are received unless a later time is specified in them.

## Receipt - email

### If sent by email, they are taken to be received at the time the email message is sent, unless:

### the sender receives automated email notification that the email transmission has failed or has been delayed within 12 hours of sending the notice; or

### the sender receives automated email notification to the effect that the recipient is not likely to receive the notice until a later date, which will then become the deemed date of receipt.

## Receipt – postal

### If sent by post, they are taken to be received 6 days after posting (or 10 days after posting if sent to or from a place outside Australia).

## Receipt - general

Despite clauses 19.4 and 19.5 and, if they are received after 5pm in the place of receipt or on a non-Business Day, they are taken to be received at 9am on the next Business Day.

# GST

## Definitions

In this clause:

1. **GST** means any form of goods and services tax payable under the GST Legislation;
2. **GST Legislation** means the A New Tax System (Goods and Services Tax) Act 1999 (Cth); and words that are defined in the GST Legislation have the meaning given in that legislation.

## Consideration is GST-exclusive

Unless otherwise specified, all amounts payable under this Agreement are exclusive of GST and must be calculated without regard to GST.

## GST payable on taxable supply

### If a supply made under this Agreement is a taxable supply, the recipient of that taxable supply (**Recipient**) must, in addition to any other consideration pay to the party making the taxable supply (**Supplier**) the amount of GST in respect of the supply.

### The Recipient will only be required to pay an amount of GST to the Supplier if and when the Supplier provides a valid tax invoice to the Recipient in respect of the taxable supply.

### If there is an adjustment to a taxable supply made under this Agreement, then the Supplier must provide an adjustment note to the Recipient.

### The amount of a party’s entitlement under this Agreement to recovery or compensation for any of its costs, expenses or liabilities is reduced by the input tax credits to which that party is entitled in respect of those costs, expenses or liabilities.

# General

## Entire Agreement

This Agreement supersedes all prior arrangements, understandings and negotiations in respect of any matter covered by this Agreement.

## Severability

If anything in this Agreement is unenforceable, illegal or void then it is severed and the rest of this Agreement remains in force.

## Assignment

The Share Farmer will not assign any rights, privileges or benefits under this Agreement without the prior written consent of the Owner which may be withheld by the Owner at its absolute discretion.

## Variation

An amendment or variation to this Agreement is not effective unless it is in writing and signed by the parties.

## Survival

The provisions of this Agreement shall as applicable remain in full force and effect beyond the expiry of the Term or earlier termination of this Agreement.

## Governing law

The laws of Tasmania govern this Agreement.

## Jurisdiction

The parties submit to the non-exclusive jurisdiction of the courts of Tasmania.

Signing page

**Executed** as an Agreement:

**[Note: insert appropriate execution block(s) for each of Owner and Share Farmer. Examples below are for a company and individual.]**

|  |  |
| --- | --- |
| **Executed** by **(ACN      )** pursuant to section 127 of the Corporations Act 2001 by: | ) )  |
|  Director Signature Director Full Name (print) \*Director/\*Secretary Signature \*Director/\*Secretary Full Name (print)***(\* please strike out inapplicable \*if Sole Director/Secretary write ‘Sole’)*** |  |

|  |  |
| --- | --- |
| **Executed** by  in the presence of: | ) )) |
| Witness: Full Name: Address: Occupation:  |  |

1.

Definitions

|  |
| --- |
| **Agreement** means this agreement including the Schedules. |
| **Business Day** means any day which is not a Saturday, Sunday or public holiday in that part of Tasmania where the Farm is located. |
| **Code of Practice** means any code of practice published by Safe Work Australia and duly authorised by the relevant Minister in Tasmania or any other authority having jurisdiction in relation to the WHS Laws. |
| **Commencement Date** means **[insert commencement date]** |
| **Confidential Information** means this Agreement, and any information (regardless of form) disclosed or otherwise made available by a disclosing party to the party receiving the information, for, or in connection with this Agreement, including information which:* 1. is marked as being proprietary or confidential to the disclosing party; or
	2. in the circumstances surrounding disclosure, or because of the nature of the information, ought in good faith be treated as confidential;

whether the information was:* 1. disclosed or created before, or after the date of this Agreement; or
	2. disclosed as a result of discussions between the parties concerning or arising out of this Agreement.
 |
| **Details** mean the section of this Agreement headed ‘Details’. |
| **Farm** means **<Choice>**the farm known as **[insert farm name]**, located at **[insert address]** comprising the Land.**<End Choice>****<Choice>**that part of the Land described as **[insert description]** comprising approximately **[insert area]** and shown hatched on the plan attached at Annexure A.**<End Choice>** |
| **Insolvency Event** means the occurrence of any of the following events in relation to a party:* 1. a party commits any act which is defined as “an act of bankruptcy” under the *Bankruptcy Act* 1966 (Cth), regardless of whether or not the party is an individual;
	2. a garnishee notice, or a notice under section 120 of the *Personal Property Securities Act 2009* (Cth), is given to:
		1. a debtor of that party; or
		2. any other person that otherwise owes or may owe money at any time to that party,

in connection with any money that the party is said to owe;* 1. in the case of an individual, the party dies, is imprisoned or becomes incapable of managing his or her own affairs;
	2. an application is made to a court for a provisional or final order declaring a party provisionally or finally bankrupt or insolvent;
	3. a special resolution is passed to wind up or otherwise dissolve the party;
	4. a party is, or makes a statement from which it may be reasonably deducted by the other party that a ground or grounds on which the party may be wound up exists as specified in section 461 (or in the case of a part 5.7 body, section 585) of the *Corporations Act 2001* (Cth);
	5. a party has a controller (as defined in the *Corporations Act 2001* (Cth)) appointed, is in liquidation, in provisional liquidation, under administration or wound up or has had a receiver appointed to any part of its property;
	6. a mortgagee, charge or other holder of security, by itself or by or through an agent, enters into possession of all or any part of the assets of the party;
	7. the party applies for, consents to, or acquiesces in the appointment of a trustee or receiver in respect of the party or any of its property;
	8. the party is or states that it is unable to pay its debts when they fall due; or
	9. anything analogous or having a substantially similar effect to any of the events specified above happens in relation to the party.
 |
| **Further Term** means the period of **[insert]**. |
| **Farm Machinery** means, together, the Owner’s Machinery and the Share Farmer’s Machinery. |
| **Land** means the land comprised in Certificates of Title **[insert volume and folio details]** |
| **Law** means acts, laws, ordinances, regulations, by-laws, orders, awards and proclamations whether Commonwealth, State or local and any associated regulations. |
| **Owner** means the party described as such in the Details. |
| **Owner’s Machinery** means the machinery and equipment set out in Part A of Schedule 2 and any other machinery and equipment located at the Farm owned by the Owner. |
| **Permitted Use** means **[insert description of farming activities to be undertaken]** |
| **Person** conducting a business or undertaking has the same meaning as in sections 4 and 5 of the WHS Laws. |
| **Personnel** means, in relation to a party, all that party’s employees, subcontractors, consultants, volunteers and invitees and includes all of that party’s workers (as defined in the *Work Health and Safety Act 2012* (Tas). |
| **Share Farmer** means the party described as such in the Details. |
| **Share Farmer’s Machinery** means the machinery and equipment set out in Part B of Schedule 2 and any other machinery and equipment brought onto the Farm by the Share Farmer or its employees, servants or agents. |
| **Term** means the period of **[insert]** commencing on and from the Commencement Date. |
| **WHS Laws** means the *Work Health and Safety Act 2012* (Tas), the *Work Health and Safety Regulations 2022* (Tas) and all other WHS Laws operative in Tasmania. |

1.

Owner’s Machinery and Share Farmer’s Machinery

**[Note: insert/delete/amend as appropriate.]**

**PART A**

|  |  |
| --- | --- |
| **Owner’s Machinery** | **Description** |
| Fixed plant and equipment | **[insert details]** |
| Mobile plant and equipment  |  |
| Farm vehicle(s) |  |

**PART B**

|  |  |
| --- | --- |
| **Share Farmer’s Machinery** | **Description** |
| Mobile plant and equipment | **[insert details]** |
| Farm vehicle(s) |  |
| Motor bike(s) |  |
| Tools of trade including but not limiting to |  |
| Registered firearm(s) and/or captive bolt gun(s). |  |
| Safety equipment including personal protective equipment for the Share Farmer and its employees, servants and agents |  |
| **[insert further equipment as necessary]**  |  |

1.

Other Assets

**[Note: insert/delete/amend as appropriate.]**

**PART A**

The Owner agrees to provide the following assets:

1. Buildings and Structures

The Owner will make available the following farm buildings, structure and improvements on the Farm:

**[insert]**

1. Housing

The Owner will provide a house for the Share farmer as follows:

**[insert]**

1. Water Supply and/or Irrigation

The Owner will provide an adequate system of water supply and reticulation for household and stock use.

The Owner warrants that the Farm carries a water share of **[insert]** megalitres for irrigation purposes.

1. Livestock

The Owner will provide solely for the purpose of this Agreement the following livestock:

**[insert]**

1. Stored supplementary feed

The Owner will provide the following amounts of stored supplementary feed at the Commencement Date:

**[insert]**

**PART B**

The Share Farmer agrees to provide the following assets:

1. Livestock

The Share Farmer will provide solely for the purpose of this Agreement the following livestock:

**[insert]**

1.

Farm Income and Operating Costs

**[Note: insert/delete/amend as appropriate.]**

| **[Show percentage share or ‘each pays own’]** | **OWNER’S SHARE** | **SHARE FARMER’S SHARE** |
| --- | --- | --- |
| **SHARED INCOME** |  |  |
|  | **[insert appropriate income descriptions for type of farming arrangement]** |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
| **SHARED COSTS** |  |  |
| Livestock  | animal health and veterinary costs |  |  |
| semen |  |  |
| herd testing |  |  |
| mating  |  |  |
| identification |  |  |
| Veterinary costs |  |  |
| other costs |  |  |
| Agistment |  |  |
| supplementary feed |  |  |
| Buildings | light and power |  |  |
| repairs |  |  |
| other costs (specify) |  |  |
| Grown feed | fertiliser |  |  |
| irrigation water (fixed and variable costs) |  |  |
| irrigation fuel |  |  |
| seed (annual and permanent pasture) |  |  |
| contractor (fertiliser and fodder conservation, pasture renovation) |  |  |
| fodder conservation |  |  |
| cropping |  |  |
| weed and pest control |  |  |

|  |  |  |  |
| --- | --- | --- | --- |
|  | fuel, oil and grease (excludes costs for farm development or improvement and personal use) |  |  |
| Purchased feed | agistment |  |  |
| hay and silage purchases |  |  |
| grain and concentrates |  |  |
| by-product feeds |  |  |
| Labour (including on-costs) | casual  |  |  |
| permanent  |  |  |
| amenities and on-costs (taxation, workers compensation, superannuation) |  |  |
| Overheads | Accountancy |  |  |
| Administration |  |  |
| bank and borrowing fees |  |  |
| Cartage |  |  |
| Consultancy |  |  |
| farm improvements (excluding capital developments) |  |  |
| insurance (public risk) |  |  |
| insurance (Farm Machinery) |  |  |
| insurance (worker’s compensation) |  |  |
| Insurance (buildings) |  |  |
| plant and machinery |  |  |
| Rates |  |  |
| repairs and maintenance (Agricultural Improvements) |  |  |
| repairs and maintenance (Farm Machinery) |  |  |
| taxes and farm charges |  |  |
| registration (Farm Machinery) |  |  |
| licence fees |  |  |

1.

The Plan

**[Note: Only insert a plan if the Farm is for part (not all) of the Land and if the Farm will be described by reference to a plan (i.e. it will not otherwise be described in the definition of ‘Farm” in Schedule 1). If a plan is not to be inserted, this Annexure A should be deleted].**

[#Insert scanned plan#]