



Share Dairy Farming in Australia

Model Code of Practice

The Australian dairy industry has developed a Model Code of Practice with guidelines and tools for assessing and establishing share farming arrangements. The Code aims to promote share farming as an effective way to operate a dairy farm business and set an industry standard by describing acceptable share farming practices.

Organisations ratifying this code

Australian Dairy Industry Council, representing:

- > Australian Dairy Farmers
- > Australian Dairy Products Federation

Dairy Australia



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1. Introduction

The Australian dairy industry has developed this Model Code of Practice with guidelines and tools for assessing and establishing share farming arrangements.

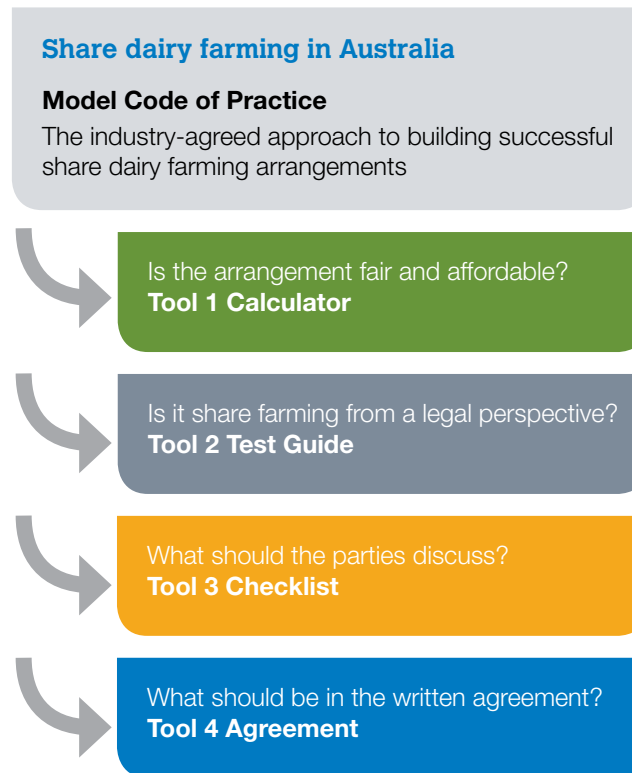
The aims of this Code are to:

- > Promote share farming as an effective way to operate a dairy farm business
- > Promote share farming as a viable progression path in the dairy industry
- > Inform all people involved in share farming about their responsibilities
- > Set an industry standard by describing acceptable share farming practices.

The Model Code of Practice includes 4 tools to guide you through assessing and establishing agreements, as shown in the diagram.

It is recommended that the parties work through these steps with a dairy adviser to develop their agreement and then get it checked by an accountant and solicitor.

For more background information and to download the latest version of the Model Code of Practice and the individual tools, visit thepeopleindairy.org.au/sharefarming



2. Background

Share dairy farming is the term used within the dairy industry to describe the arrangement where two parties, the farm owner and a 'share farmer', operate a dairy business together. In general, this involves a joint arrangement where each entity involved still retains their own business operation and structure. As such, a share farming arrangement is not a partnership arrangement.

Generally each party provides different, but complementary, resources to the share farming arrangement in the form of land, machinery, equipment, livestock, labour and management expertise.

As the name suggests, the arrangement involves sharing. Income is shared and there is a degree of cost sharing, with each party being recognised as an individual entity while working together on the one farm. Also shared are the risks, responsibilities, skills and control of the dairy business. Both parties may bring assets (land, water, livestock and machinery) to the arrangement and there should be the potential for the owner and the share farmer to grow their wealth.

Share farming plays an important part in the Australian dairy industry in that it:

- > provides a significant amount of external labour used on dairy farms
- > is an important training ground for learning dairy farm management
- > can be utilised in farm succession and transition
- > is used to build up capital, resources and credit-worthiness and is a 'stepping stone' to farm ownership.

In 2012, approximately 17% of Australian dairy farms were operated under a share farming arrangement. The basis of all good share dairy farming arrangements between a share farmer and owner is mutual trust, respect and an understanding of each other's responsibilities with incentive to develop the total enterprise. Good communication and a common 'farming philosophy' are very important.

A key consideration for both parties relates to control. It is important that both the farm owner and the share farmer really think through the ramifications of giving up control of the business (from the owner's perspective) or taking on control of the business (from the share farmer's perspective).

For both owners and share farmers, there is generally more business risk operating under a share farming arrangement compared to operating as a dairy business with employees. The increased business risk is particularly relevant to the share farmer compared to being an employee (see *Section 3: Overview of what Australian workplace laws say about share farming*). Share farming should be entered into with detailed consideration of all the aspects of the arrangements. This Code is designed to assist this process.

3. Overview of what Australian workplace laws say about share farming

Australian workplace laws are made up of statutes (e.g. the Fair Work Act), awards (e.g. the Pastoral Award 2010) and common law (cases decided by Commissioners and judges in the courts).

These workplace laws make a clear distinction between independent contracting and employment but there is no statute law nor any significant case law which provides a comprehensive definition of what constitutes a share farmer.

Because a true share farming agreement is not an employment contract but rather is a form of independent contracting, the law about independent contracting is relevant to any discussion about share farming. Certain elements which point to independent contracting are relevant to determine the existence of a true share farming arrangement.

Independent contracting has been found by the courts to centre around the fact that the person is running their own business and therefore has control over the work which is performed and when and how it is performed.

Employment laws centre around the worker doing the work required by the employer for the employer's business in the manner and at the time the employer requires the work to be performed.

Over time, the courts have developed a number of questions which can be used to help determine whether the relationship is one of employment or independent contracting at common law.

No single question determines whether the relationship is one of employment or independent contracting and some of these questions may not be relevant in some particular cases. The important thing is to weigh up as many of the questions as are relevant to decide whether on balance, the person is doing the work as part of their own business or for the business of the person who engages them.

Some of these tests are:

- > Is the person doing similar work for other people?
- > Does the person advertise their services to the public?
- > Can the person employ others to help out with the work or do they have to do it personally?
- > Does the person have invoicing systems, standard terms of trade, insurance, debt collecting systems, appropriate financial records etc. which businesses commonly use?
- > Does the work lead to an ability to make a profit or is the work the same as an employee would do for wages?
- > Was the contract price negotiated commercially?
- > Does payment depend on the person providing a satisfactory result?
- > Does the person bear the risk for poor performance?
- > Does the person use their own assets, tools and equipment to do the work?
- > Does the person have the right to decide how and when the work is done?
- > Does the person represent the work as part of their own business?
- > Is the person providing the work financially independent from the other business?
- > Does the person benefit from goodwill?
- > Has the person agreed to provide a particular outcome or result and when the result has been achieved will they leave?

Is the work the type of work that other people do as part of a business as opposed to employment? In other words, could a person working as a casual or part-time employee for a number of employers just as easily do the work?

It is important to remember that the law makes it clear that the nature of the relationship between the parties to a contract will always be determined by the law and not by the label which the parties choose to put on it.

For instance, if the share farmer is only receiving payment, even if they contribute to running costs, without more, it would be difficult to argue that the share farmer was not an employee and entitled to the benefits provided by employment laws.

Key elements of a true share farming agreement

The share farmer will:

- > be responsible for a fair proportion of the costs of the business
- > bring assets (or have the ability to accrue assets) such as machinery, mobile plant and stock to the arrangement
- > have the ability to increase wealth as a result of the work he or she performs under the share farming agreement. (It is important that this be recorded in the financial records of each party. See Case study: *Crouch v Crouch*)
- > have the ability to make relevant management decisions
- > be able to delegate or employ others to do some or all of the work even if they do not do so
- > be responsible for their mistakes and be required to rectify them at their own cost
- > decide how some or all of the work will be performed and when.

If the share farmer trades as a company then workplace laws do not apply as it is the company which is the legal entity not the individual. However, unfair contract laws may apply (see below).

Written agreements

It is important that the agreement be in writing. Over time, memories fade and if a dispute arises both parties will almost certainly have differing views as to what was agreed. Courts have great difficulty determining cases where there is no written record.

Case study

The Victorian case of *Crouch v Crouch* was a case which dealt with a dispute about a family inheritance. In this case, there was an informal unwritten share farming arrangement in place between the father who had died and his son. The court considered that an agreement about the transfer of ownership of six heifers per year to the share farmer was too uncertain to be enforceable.

A key element in the decision was the failure by the owner to record this in his tax returns (although the share farmer had done so) but also the absence of any formal written share farming agreement recording the agreement.

Share farming agreements must be fair

It is also important that the share farming agreement be fair. Apart from the fact that an unfair share farming arrangement is unlikely to be successful over the long term, federal independent contractors laws provide for contracts which are found to be unfair to be set aside.

Remuneration can be a key issue in such cases with the laws specifically providing for a comparison between what the person would have received as an employee performing the same work and the payment under the contract.

Sham contracting

The Fair Work Act also prevents employers from engaging employees as independent contractors to avoid paying employee entitlements. These are called 'sham contracts'. The following are prohibited and significant penalties apply:

- > dismissing an employee for the sole or main purpose of engaging them as an independent contractor
- > representing an employment relationship as independent contracting, or
- > making a false statement for the purpose of influencing or persuading an individual to enter into an independent contract.

4. Establishing an arrangement that is fair and affordable

In all share dairy farming arrangements the key outcome is to have an arrangement that is equitable for all parties, ensuring that each party receives a fair return which is not at the expense of the other. It is important that:

- > the owner receives a reasonable return for any labour and management that is contributed to the operation of the business
- > the share farmer receives a reasonable return for the labour and management that is contributed to the operation of the business
- > the owner receives a reasonable return on the capital that they have invested in the business
- > the share farmer receives a reasonable return on the capital that they have invested in the business.

Factors that should be considered

The following should be considered when establishing an arrangement that is fair and affordable:

- > the size and the level of production of the herd
- > the income and costs to be shared and the proportion of the sharing
- > the potential for growth in the business
- > the provision of assets by the owner and by the share farmer
- > the level of capital investment on the farm
- > the provision of labour and management
- > the level of experience of the share dairy farmer
- > the sharing of rewards for good management and productivity improvement.

The dairy industry has developed a **Fairness and Affordability Calculator** that will assist in determining if an arrangement that is already in place, or is being proposed is likely to be fair and affordable.

The **Calculator** is included with this Code as **Tool 1** and is available at thepeopleindairy.org.au/sharefarming

It is recommended that the parties work through this step with a **dairy adviser**.

5. Guide to assessing the legality of share farming arrangements

A true share farming agreement is not an employment contract but a form of independent contracting. As such, the laws relating to independent contracting are relevant to any share farming arrangement and certain elements which point to independent contracting are relevant to determining the existence of a true share farming arrangement.

Factors that should be considered

The following should be considered when determining if a proposed (or existing) share farming arrangement is in fact a true share farming arrangement. It is recommended that the parties work through this step with a **dairy adviser**.

- i) The share farmer brings significant assets to the business such as livestock, mobile plant and equipment and potentially land
- ii) In relation to the work undertaken on the farm, the share farmer has the ability to:
 - a) make relevant management decisions
 - b) decide how some or all of the work will be performed and when
 - c) be able to delegate or employ others to do some or all of the work
 - d) be responsible for their mistakes and be required to rectify them.
- iii) The share farmer will be responsible for a fair proportion of the costs associated with the operation of the business, relative to their income
- iv) The share farmer has the ability to increase wealth as a result of the work performed under the share farm arrangement.

The characteristics of a true share farming arrangement

While 17% of Australia's dairy farm businesses are operating under some form of share farming arrangement, there is a large degree of variation around how these arrangements are structured.

The dairy industry has developed a **Legal Test Guide** that will assist in determining if an arrangement that is already in place, or is being proposed, is a share farming arrangement or if, under Australian law it is actually some other form of engagement.

The **Legal Test Guide** provides an overall score of the arrangement derived from:

1. an assets test and score
2. a control test and score
3. a financial risk test and score
4. a wealth test and score.

The **Legal Test Guide** helps the user decide if the proposed (or existing) share farm arrangement:

- > is a true share farm arrangement, or
- > has some components of a share farm arrangement but is unlikely to be legally considered a share farming arrangement, or
- > is not a share farm arrangement.

The **Legal Test Guide** is included with this Code as **Tool 2** and is available at thepeopleindairy.org.au/sharefarming

It is recommended that the parties work through this step with a **dairy adviser**.

6. Share dairy farming checklist

Once it has been determined that what is being proposed will in fact be a share farming arrangement, it is critical to consider the details of the agreement.

The dairy industry has established a **Checklist** for setting up a share farming arrangement that helps to ensure it is a well thought out agreement.

The **Checklist** provides a process for structuring discussion around a future share dairy farming agreement and a record of information that can be used when putting together the actual share farming agreement.

A copy of the **Checklist** is included with this Code as **Tool 3** and is available at thepeopleindairy.org.au/sharefarming

It is recommended that the parties work through this step with a **dairy adviser**.

7. Model share dairy farming agreement

Good business management requires a written agreement that clearly states what is expected of both the owner and of the share farmer.

The advantages of having a written agreement are:

- > there is less likelihood of a misunderstanding or conflict to occur during the term of the agreement
- > it ensures that all aspects relating to the operation of the dairy business are discussed and reduces the possibility of overlooking items
- > each party knows their expected outlays in advance and can plan to meet them
- > it is easier to see if the agreement is equitable
- > in the event of a dispute, the procedures that are to be followed are outlined allowing for quick resolution.

The dairy industry has developed a **Model Share Dairy Farming Agreement** that can be used as a starting point in developing a workable written agreement.

A copy of an **Agreement** is included with this Code as **Tool 4** and is available at thepeopleindairy.org.au/sharefarming

It is recommended that the parties work through this step with a **dairy adviser**.

8. Acknowledgements

Thank you to the following people who contributed information about Share Dairy Farming to the research which underpins this Code:

- > Rowan Ault (Warrnambool Cheese & Butter)
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- > Penny Williams (Dairy Australia)
- > Andrew Wood (Redwood AgSolutions)
- > Bill Youl (Dairy Australia)

Information has also been drawn from:

- > Allen J & Waugh N (2012) Ensuring a viable progression path in the dairy industry [New Zealand]; commissioned by DairyNZ.
- > Dairy Development Centre (2011) Partnerships in Dairy Farming. Dairy Development Centre, Camarthen.
- > Department of Agriculture, Victoria (1984) Agnote 2383/84 Share dairy farming.
- > United Dairy Farmers of Victoria (1990), Share Dairy farming.
- > thepeopleindairy.org.au/sharefarming
- > murraydairy.com.au/Cluster-Farms-Equitable-Framework

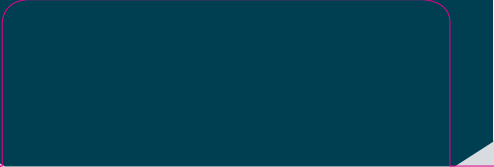
9. Appendices: The tools

Tool 1 – Fairness and Affordability Calculator

Tool 2 – Legal Test Guide to assess share dairy farming arrangements from a legal perspective

Tool 3 – Share dairy farming Checklist

Tool 4 – Model share dairy farming Agreement



Tool 1 Fairness and Affordability Calculator

This **Calculator** provides a relatively quick way of determining if a proposed (or existing) share farming arrangement is **Fair** and is **Affordable**.

In relation to **Fairness**, the **Calculator** generates an indicative Return on Asset for both the owner and the share farmer where it is assumed that a **Fair** arrangement is one which provides an adequate Return on Asset for both the owner and for the share farmer.

A share farming arrangement is at risk if it does not have the potential to generate adequate return on assets to meet the requirements of the owner and/or the share farmer in an average year.

In relation to **Affordability**, the **Calculator** generates an indicative cash position for both the owner and the share farmer where it is assumed that an **Affordable** arrangement is one which provides enough cash for both the owner and the share farmer to meet their requirements in an average year.

A share farming arrangement is at risk if it does not have the potential to generate adequate cash to meet the requirements of the owner and/or the share farmer in an average year.

The **Calculator** (which includes instructions and an example) can be downloaded from thepeopleindairy.org.au/sharefarming

Examples of the **Calculator** are shown in the next three pages. When you download the **Calculator**, you will be able to enter your figures (as shown in the example on page 16).

It is recommended that the parties work through this step with a **dairy adviser**.

Fairness and Affordability Calculator

This **Fairness and Affordability Calculator** can be used to assess a share farming arrangement that is currently under review or being proposed.

The Australian dairy industry has developed the Model Code of Practice on Share Dairy Farming with guidelines and tools for assessing and establishing share farming arrangements.

The best agreements are always the ones that are prepared to suit each farm situation.

- 1 Check if the arrangement is fair and affordable for all parties, using this Fairness and Affordability **Calculator**
- 2 Assess the arrangement from a legal perspective, using the **Legal Test Guide** tool
- 3 Use the **Checklist** to discuss the key factors in the arrangement
- 4 Then prepare a draft with the Model share dairy farming **Agreement**

It is recommended that the parties work with a **dairy adviser** for these steps to develop their Agreement and then get it checked by an accountant and solicitor.

For more background information and to check that you have the most up-to-date version of these tools and documents, visit thepeopleindairy.org.au/sharefarming

Instructions: Fairness and Affordability Calculator

The **Fairness and Affordability Calculator** is one of four tools developed as part of the Share Dairy Farming in Australia Model Code of Practice and resources.

To complete the Fairness and Affordability Calculator, read these instructions (you might like to print a copy) and fill in the mustard coloured input boxes. There are notes on the mustard coloured input boxes that provide guidance as to what should be entered.

The information used should be based on actual financial business performance that is adjusted to take account of agreed average terms of trade and average seasonal conditions. All entries should be exclusive of GST.

Fairness and Affordability Calculator instructions

Step 1: Basic details

Fill in the mustard coloured input boxes including a name for the Farm, the anticipated number of cows and the anticipated level of production.

Step 2: Fairness test

Fill in the mustard coloured input boxes for both the owner and the share farmer including a dollar figure for:

Operating Surplus	Is calculated as (Milk Income + Other Farm Income) less (Herd Costs + Shed Costs + Feed Costs + Overhead Costs).
Livestock	Is the increase in livestock inventory expected to occur under the arrangement.
Other	This might include a value for other benefits associated with the arrangement such as the provision of accommodation, a vehicle, meat, milk or other benefits. Include increases in fodder, water or other inventory here.
Depreciation	Is the amount by which the value of an asset is considered to diminish over the period of a year.
Imputed Labour	As a guide, consider a total labour cost for the business relating to both paid labour and imputed labour of between \$1 and \$1.10/kg MS. Thus a business producing 150,000 kg MS would be considered to incur approximately \$150,000 in labour costs. If \$50,000 was spent on paid labour then this would leave \$100,000 of imputed labour to be apportioned between the owner and the share farmer. Figures higher than this can be used if deemed appropriate.
Asset Provision	Is an agreed reasonable value for the assets provided by both parties.

Step 3: Affordability

Fill in the mustard coloured input boxes for both the owner and the share farmer including a dollar figure for:

Personal Costs	Include household expenses including groceries, clothes, education expenses, personal insurance, non-farm related insurance and personal tax.
Finance Costs	Include all interest (including overdraft interest), principal, hire purchase payments, chattel mortgage payments and lease payments.
Other Costs	Include any other costs that might be incurred by the parties such as tax for the trading entity.

Fairness and Affordability Calculator example

Farm	Example farm
Cows	330 milking cows
Production	165000 kilograms of milk solids

Fairness		Owner	Share farmer	Total
Cash	Operating Surplus	\$198,000	\$132,000	\$330,000
	<hr/>			
Non cash	+ Livestock	\$20,000	\$20,000	\$40,000
	+ Other	\$15,000	\$15,000	\$30,000
	- Depreciation	\$30,000	\$14,000	\$44,000
	- Imputed Labour	\$20,000	\$105,000	\$125,000
	EBIT	\$183,000	\$48,000	\$231,000
	Asset Provision	\$1,300,000	\$300,000	\$1,600,000
	Return on Asset (RoA)	14.08%	16.00%	14.44%

Affordability		Owner	Share farmer	Total
Operating Surplus		\$198,000	\$132,000	\$330,000
- Personal Costs		\$40,000	\$40,000	\$80,000
- Finance Costs		\$50,000	\$30,000	\$80,000
- Other Costs		\$8,000	\$8,000	\$16,000
Cash		\$100,000	\$54,000	\$154,000

Notes: In relation to **Fairness** the RoA will be different for each party. However the RoA needs to be acceptable for both the owner and for the share farmer. Arrangements that are unable to achieve this outcome are at risk of coming under pressure and ultimately being unsuccessful. In relation to **Affordability**, there needs to be some positive cash available for both the owner and the share farmer in an average year. Arrangements that are unable to achieve this outcome are at risk of coming under pressure and ultimately being unsuccessful.

TOOL 2 Legal test guide

Many different types of share farming arrangements exist in the dairy industry. This test guide can be used to assess an existing (or proposed) arrangement in terms of the key elements for success and the likelihood of business risk, especially in relation to legal status.

Once the details of the arrangement are noted, use the scoring system to assess:

- a. **Assets** contributed by the share farmer
- b. **Control** of operational decisions by the share farmer
- c. The **financial risk** undertaken by the share farmer especially in relation to his or her income
- d. Potential to **generate wealth** by the share farmer.

If the Overall Score is less than 25, there is likely to be a business risk in the arrangement. Check individual scores to identify particular areas for review.

The **Legal Test Guide** can be downloaded from thepeopleindairy.org.au/sharefarming

When you download this tool, you will be able to enter your figures and calculate your **Overall Score** (as shown on page 22). Examples of the **Legal Test Guide** are shown in the next four pages.

It is recommended that the parties work through this step with a **dairy adviser**.

Legal Test Guide

This **Legal Test Guide** can be used to assess a share farming arrangement that is currently under review or being proposed.

The Australian dairy industry has developed the **Share Dairy Farming–Model Code of Practice with guidelines and tools** for assessing and establishing share farming arrangements.

The best agreements are always the ones that are prepared to suit each farm situation.

1. Check if the arrangement is fair and affordable for all parties, using the Fairness and Affordability **Calculator**.
2. Assess the arrangement from a legal perspective, using this **Legal Test Guide** tool.
3. Use the **Checklist** to discuss the key factors in the arrangement.
4. Then prepare a draft with the Model share dairy farming **Agreement**.

For more background information and to access the latest version of these tools, visit thepeopleindairy.org.au/sharefarming

Instructions: Test guide to assess share farming arrangements from a legal perspective

The **Legal Test Guide** to assess share farming arrangements from a legal perspective is one of the four resources developed as part of the Share Dairy Farming in Australia–Model Code of Practice.

Read the instructions below which explain step by step each Score Sheet. On each sheet in the tool, you will need to fill in the mustard coloured input boxes only. The blue coloured input boxes will automatically calculate based on information you provide.

There are notes on the mustard coloured input boxes that provide guidance as to what should be entered. Blue coloured boxes cannot be edited.

The information used should be based on actual financial business performance that is adjusted to take account of agreed average terms of trade and average seasonal conditions.

All entries should be exclusive of GST.

Legal Test Guide–instructions

Step 1: Assets Score

On the Assets Score sheet, fill in the mustard coloured input boxes including a dollar figure for:

Land	The agreed value of any land contributed to the arrangement by the share farmer
Water	The agreed value of any water contributed to the arrangement by the share farmer
Livestock	The agreed value of any livestock contributed to the arrangement by the share farmer
Mobile Plant	The agreed value of any mobile plant contributed to the arrangement by the share farmer
Fixed Plant	The agreed value of any fixed plant contributed to the arrangement by the share farmer
Working Capital	The agreed value of any working capital contributed to the arrangement by the share farmer

The spreadsheet will calculate the **Assets Score** for the share farmer and automatically place this on the **Overall Score** sheet.

Step 2: Operational Control Score

On the Control Score sheet, fill in the mustard coloured input boxes including a percentage for:

Production System	The level of control that the share farmer has in determining the production system (eg. High, Medium or Low input)
Cow Numbers–Peak	The level of control that the share farmer has in determining the peak herd size
Cow Numbers–Daily	The level of control that the share farmer has in determining the herd size on a day to day basis
Culling	The level of control that the share farmer has in determining which animals to cull
Pasture Management	The level of control that the share farmer has in determining the management of pastures
Paddock Rotations	The level of control that the share farmer has in determining the paddock rotations
Fertiliser Choice	The level of control that the share farmer has in determining the type and quantity of fertiliser to apply
Irrigation–Seasonal*	The level of control that the share farmer has in determining the total amount of water to use on the farm
Irrigation–Frequency*	The level of control that the share farmer has in determining when to apply irrigation water
Supplementary Feed	The level of control that the share farmer has in determining the day to day level and types of supplement to be fed
Staff	The level of control that the share farmer has in assigning and directing employed staff
Contractors	The level of control that the share farmer has in assigning and directing contractors

The spreadsheet will calculate the **Operational Control Score** for the share farmer and automatically place this in the **Overall Score** sheet.

* Irrigation may not be relevant to all situations (tool scoring allows for this). Visit thepeopleindairy.org.au/sharefarming

Legal Test Guide–instructions

Step 3: Financial Risk Score

On the Financial Risk Score sheet, fill in the mustard coloured input boxes including a dollar figure for:

Milk Income	The value of any milk income earned by the share farmer
Livestock Income	The value of any livestock income earned by the share farmer
Other Farm Income	The value of any other farm income earned by the share farmer
Herd Costs	The value of any herd costs incurred by the share farmer
Shed Costs	The value of any shed costs incurred by the share farmer
Feed Costs	The value of any feed costs incurred by the share farmer
Overhead Costs	The value of any overhead costs incurred by the share farmer

The spreadsheet will calculate the **Financial Risk Score** for the share farmer and automatically place this in the **Overall Score** sheet.

Step 4: Wealth Score

On the Wealth Score sheet, fill in the mustard coloured input boxes including a figure for:

\$ Farm Income	This figure will be automatically placed from the amount you enter at \$ Farm Income on the Financial Risk Score sheet. The value of cash farm income earned by the share farmer (includes Milk Income, Livestock Income and Other Farm Income)
\$ Non Cash	The value of any non cash income earned by the share farmer (includes accommodation, vehicle, changes in livestock inventory etc.)
\$ Farm Working Expenses	The value of any farm working expenses incurred by the share farmer excluding any paid labour costs
Total Farm Production	The anticipated level of production for the farm measured in kilograms of milk solids
Share Farmer Labour	The proportion of the operational labour that is to be provided by the share farmer

The spreadsheet will calculate the **Wealth Score** for the share farmer and automatically place this in the **Overall Score** sheet.

Legal Test Guide–instructions

Step 5: Overall Score

The Overall Score sheet uses the information you have provided on the score sheets (steps 1–4) so you don't need to enter any numbers.

Farm Identity	Place a name that identifies the farm
Cows	Include the number of cows that are proposed to be milked
Assets Score	Automatically entered from the Assets Score Sheet
Operational Control Score	Automatically entered from the Control Score Sheet
Financial Risk Score	Automatically entered from the Financial Risk Score Sheet
Wealth Creation Score	Automatically entered from the Wealth Creation Score Sheet

The Legal Test Guide to Assess Share Farming Arrangements will calculate an Overall Score.

The Overall Score indicates the likelihood that an arrangement would be regarded as a “True” share farming arrangement

Score	Rating
Less than 15	Low
15–24	Medium
25 and above	High

Legal Test Guide–Overall Score example

FARM:	Example Farm
COWS:	400 milking cows

CHARACTERISTICS TO ASSESS

1. Assets Score											Score
Share Farmer Contribution Of Assets											
\$	<\$20,000	\$20,001– \$40,000	\$40,001– \$60,000	\$60,001– \$80,000	\$80,001– \$100,000	\$100,001– \$150,000	\$150,001– \$200,000	\$200,001– \$250,000	\$250,001– \$300,000	>\$300,000	
Score	1	2	3	4	5	6	7	8	9	10	9
2. Operational Control Score											
Decision Making On Operational Matters											
%	<10%	>10%– <20%	>20%– <30%	>30%– <40%	>40%– <50%	>50%– <60%	>60%– <70%	>70%– <80%	>80%– <90%	>90%	
Score	1	2	3	4	5	6	7	8	9	10	7
3. Financial Risk Score											
Farm Working Expenses / Farm Income											
%	<5%	>5%– <10%	>10%– <15%	>15%– <20%	>20%– <25%	>25%– <30%	>30%– <35%	>35%– <40%	>40%– <45%	>45%	
Score	1	2	3	4	5	6	7	8	9	10	3
4. Wealth Creation Potential Score											
Potential To Create Wealth Over Wages											
\$/kg MS	1.00	>1.00– <1.10	>1.10– <1.20	>1.20– <1.30	>1.30– <1.40	>1.40– <1.50	>1.50– <1.60	>1.60– <1.70	>1.70– <1.80	>1.80	
Score	1	2	3	4	5	6	7	8	9	10	4
Total Share Farm Guide Score:											23

The Total Share Farm Guide Score in the Legal Test Guide uses the information you provide on the score sheets in this tool. If your score is medium or low, seek professional advice to reassess the arrangement (as per the rating guide on p21). This Guide does **NOT** indicate the fairness or equity of a share farming arrangement, simply if in fact it is a share farming arrangement.

TOOL 3 Share Dairy Farming Checklist

The Australian dairy industry has developed the **Share Dairy Farming in Australia–Model Code of Practice** with guidelines and tools for assessing and establishing share farming arrangements.

The best agreements are always the ones that are prepared to suit each farm situation.

1. Check if the arrangement is fair and affordable for all parties, using the Fairness and Affordability **Calculator**
2. Assess the arrangement from a legal perspective, using the **Legal Test Guide** tool
3. Use this **Checklist** to discuss the key factors in the arrangement
4. Then prepare a draft with the Model Share Dairy Farming **Agreement**

This **Checklist** can be used as a starting point for discussion of the elements that should be considered in a share farming arrangement.

It can be used to review a current arrangement or to build a new one.

The basis of all good share dairy farming arrangements is mutual trust, respect and an understanding of each other's responsibilities with incentive to develop the total enterprise.

Good communication and a common 'farming philosophy' are very important.

It is recommended that the parties work with a **dairy adviser** for these steps to develop their Agreement, and then get it checked by an accountant and solicitor.

For more information and to download the latest version of the Code and this **Checklist**, visit thepeopleindairy.org.au/sharefarming

Parties to the agreement

Owner

ABN

ACN (if relevant)

Share farmer

ABN

ACN (if relevant)

ISSUE TO BE ADDRESSED**DETAILS / WHAT WE AGREE****1. Area to be farmed**

Description of Land. Is there clear identification of the land in the share farming agreement?

Have you agreed on the availability of farm buildings, structure and improvements on the property?

Property name is: _____

Location is: _____

Land Titles identification numbers and areas: _____

Dairy area (includes dairy, sheds and house) is hectares (or acres) _____

Non-milking area is _____ hectares (acres). Turnout area is _____ hectares (acres)

Excluded structures _____

ISSUE TO BE ADDRESSED**DETAILS / WHAT WE AGREE****2. Water assets**

Description of water assets. Is there clear identification of the water in the share farming agreement?

Note: various water products are available in different regions. Discuss the products relevant to your region/situation.

Delivery Shares attached to the property are _____ML

The Annual Use Limit for the property (as outlined in the Water Use Licence) is _____ML

The Annual Delivery Allowance (entitlement before incurring higher delivery charges) for the property is _____ML

High Reliability Water Shares included in this arrangement are _____ML

Low Reliability Water Shares included in this arrangement are _____ML

River Diversion Water included in this arrangement is _____ML

Deep Lead Bore Water included in this arrangement is _____ML

Shallow Bore Water included in this arrangement is _____ML

Drainage Diversion Water included in this arrangement is _____ML

3. Term of the agreement

Have you fixed the **term of the agreement**?

Starting date: _____

Have you set a time frame for removal of share farmer's stock, plant and equipment at expiration of the agreement?

Completion date: _____

Have you discussed a reasonable time period for the share farmer to relocate if the agreement terminates before the completion date?

Date for each party to indicate their intentions re a further period: _____

Removal date (if the agreement is not renewed): _____

Time to relocate (if the agreement terminates before completion date): _____

ISSUE TO BE ADDRESSED**DETAILS / WHAT WE AGREE****4. Property income & expenses**

Have you calculated anticipated returns jointly?

Historical farm profit & loss figures reviewed (date) _____

Have you jointly completed a table of projected income and expenses?

Table of projected income & expenses prepared (date) _____

Have you modelled the effect of extremes in price and seasonal variation?

% share of income agreed (date) _____

Have you agreed on cost sharing arrangements?

Owner share _____% Share farmer share _____%
Ensure returns on labour and capital are fair.

Have you agreed on accounting responsibilities, including accounts reconciliations, and payments to suppliers, including credit terms?

Modelling viewed and agreed (date) _____

Which businesses do you each usually deal with?

% share of costs table prepared (date) _____

Credit terms for creditors _____

List of business (and contractors) _____

Who decides which dairy company you will supply milk to?

Whose decision? _____

It is usual for the dairy company to pay the share farmer direct for their agreed percentage of the gross milk proceeds.

Dairy company / factory to be supplied _____

Milk factory deduction authority completed (date) _____

ISSUE TO BE ADDRESSED**DETAILS / WHAT WE AGREE****5. Joint inspection**

Have you conducted a **joint inspection** of the property and infrastructure?

What is the condition of the land assets, including roads, tracks, fences, water, irrigation channels, all infrastructure, weeds and general state of pastures?

Have you agreed on provision of **assets** by the two parties? Including vehicles, major plant items, age and condition?

Have you noted **any OH&S issues**?

Have you reached agreement on adequate (industry-agreed requirements) water supply and reticulation for household, stock and dairy use? This includes all necessary motors, pumps, piping and ball floats.

Has the **milking plant** been recently tested and approved by a competent technician?

Have you checked the hot water supply, effluent system, feeding system, computer system and capacity of refrigerated vat(s)?

Are any **capital works** required?

Note: Photographs can be a useful record.

Reference to the Food Safety Plan may assist as many of these issues are detailed there. A Work Health & Safety issues checklist is available at thepeopleindairy.org.au

Date first inspected _____

Final inspection date (prior to signing agreement) _____

List of major plant items, age and condition _____

Land assets & infrastructure condition report (date) _____

Infrastructure condition report completed (date) _____

Asset register completed–landowner (date) _____

Asset register completed–share farmer (date) _____

OH&S report completed (date) _____

Water sources report and allocation thereof completed (date) _____

Milking plant report sighted (date) _____

Hot water supply details _____

Refrigerated vat capacity _____

Capital works to be undertaken by owner prior to and during the agreement period _____

Capital works to be undertaken by share farmer during the agreement period _____

ISSUE TO BE ADDRESSED**DETAILS / WHAT WE AGREE****6. Livestock**

Have you looked at historical production data?

Farm productivity and milk production history reviewed (date) _____

Have you discussed **herd numbers**?

The share farmer acknowledges that the farm has been developed to milk _____ cows of _____ breed.

Have you agreed on the numbers and breed of livestock to be provided solely for this agreement?

Owner numbers: _____ OR _____(min) _____(max)

Share farmer numbers: _____ OR _____(min) _____(max)

Have you ensured the livestock to be provided by the parties are in good health and their notifiable disease status is declared?

Owner's livestock inspected (date) _____

Notification sighted (date) _____

Share farmer's livestock inspected (date) _____

Notification sighted (date) _____

Have you discussed your approach to **animal handling** and the industry animal welfare code?

Animal handling and dead stock management discussed (date) _____

How will dead stock be managed?

7. Termination provisions

Have you agreed on **termination provisions**?

Your adviser/s can provide standard clauses which protect both parties.

Termination in the event of death or permanent disability. If the share farmer is a partnership, can the remaining partner continue?

Sale of the farm.

Termination for breach.

8. House

Does the agreement provide a house for the share farmer?

In some States, residential tenancy laws will apply.

Date of residential tenancy agreement _____ OR _____

Date house inspected _____

Condition report agreed & completed _____

ISSUE TO BE ADDRESSED**DETAILS / WHAT WE AGREE****9. Fertiliser application**

Have you looked at historical soil test data?

Farm soil fertility test history reviewed (date) _____

Have you reached agreement on **fertiliser type and minimum spread**?

The share farmer will apply a minimum application of fertiliser annually as follows:

Milking area (___ ha): N ___P ___K ___S (or equivalent of approved super potash mix)

Non-milking area (___ ha): N___P ___K ___S (or equivalent of approved super potash mix)

What evidence does the owner require of fertiliser application?

Evidence to be provided _____

10. Repairs and maintenance

Have you agreed on responsibility for general repairs and maintenance?

Who will be responsible for general repairs and maintenance to infrastructure? _____

Who's responsible for repairs to major plant and equipment?

Milking equipment, plant, utensils, appliances, dairy and yards _____

Have you reached agreement for repair and/or replacement of major plant & equipment?

Channels, drains and irrigation structures (including all motors, pumps, piping, troughs and ball floats)

If an item is deemed beyond repair by an independent technician, and if there has been no negligence by the share farmer, it is generally the responsibility of the farm owner to replace this item to enable normal farm operations.

Roads, tracks, fences _____

Effluent storage and disposal system, particularly with regard to avoiding overflow of effluent into streams

Maintain buildings, structures and improvements _____

Major plant and equipment _____

ISSUE TO BE ADDRESSED**DETAILS / WHAT WE AGREE****11. Fodder reserves**

Have you agreed on a minimum amount of fodder that should be on hand at all times?

The minimum amount of fodder to be on hand will be _____ tonnes of dry matter of fodder.

Have you negotiated terms for stored supplementary feed?

At the commencement date, owner is providing _____ tonnes of dry matter of fodder. At the termination of the agreement, the share farmer will leave _____ tonnes of dry matter of fodder of equivalent quality.

What will you do with closing fodder stock at the end of the agreement?

OR

It is often advisable for the share farmer to purchase all fodder at commencement. Current market values provided by independent party.

At the commencement date, share farmer to pay \$_____ for _____ tonnes of dry matter of fodder.

Note: bunker stored silage can be difficult to measure.

At termination, the owner agrees to purchase the same quantity at current market value.

12. Cropping and sowing

Have you agreed the maximum areas that can be cultivated and cropped and the re-sowing requirements?

Maximum area to be cultivated: _____ ha.

Is there a requirement to re-sow perennial pasture to equivalent to start date? _____

13. Duties and obligations of share farmer

Has a schedule been prepared listing all the duties and obligations of the share farmer in regard to governance and observance of regulations?

The share farmer must (tick all applicable items):

- Be responsible for milk quality assurance
- Be responsible for maintaining milking plant in a clean and hygienic condition
- Observe laws & regulations pertaining to dairy farm operations
- Control water practices and flows so as to prevent erosion or water-logging
- Observe any general prohibitions

ISSUE TO BE ADDRESSED

DETAILS / WHAT WE AGREE

14. Management & control

Have you prepared a schedule of duties and obligations?

Schedule of duties & obligations completed (date) _____

Note: If a share farmer has minimal control, they may be deemed to be an employee.

Have you shared expectations about labour provision, especially if the share farmers are a 'couple'?

Agreed labour expectation—owner = _____

Agreed labour expectation—share farmer 1 = _____

Agreed labour expectation—share farmer 2 = _____

Have you agreed on responsibility for:	Owner	Share farmer	Shared <i>(provide details)</i>	Details / Comments
All day to day management decisions?				
Farm management structure—including setting farming goals & objectives?				
Provision of labour & husbandry for farming operations?				
Management of employed staff?				
Herd records				
Labour associated with farm developmental work?				
Employment of independent contractors (e.g. AI, harvesting)?				
Property maintenance—routine repairs and maintenance				
General farm presentation & standards				
Care of land—including trees, weed & pest control, maintenance of channels, drains & irrigation structures, effluent disposal, fodder, supplementary feeding, forage crops & pasture management?				

ISSUE TO BE ADDRESSED	DETAILS / WHAT WE AGREE			
Have you agreed on responsibility for:	Owner	Share farmer	Shared <i>(provide details)</i>	Details / Comments
Herd ownership & size—including herd replacement, removal of surplus stock				
Herd operations—including milking, mating and breeding, animal health.				

15. Regular meetings

Have you scheduled regular meetings (drop in or phone) between the parties to discuss problems?

These should be held at least monthly to discuss payment of shared expenses.

Have you agreed on records to be provided and minute taking?

- Daily Recur every week(s) on _____
- Weekly Minutes to be taken by _____
- Monthly Records to be provided _____

16. Insurance, dispute resolution

Have you agreed on each party's responsibility for insurance? Including asset insurance, public liability, workers' compensation and income protection

Owner's insurance *(provide certificate/s of currency)* _____

Share farmer's insurance *(provide certificate/s of currency)* _____

Have you included a **Dispute resolution procedure**?
See *Tool 4—Agreement*

Dispute resolution procedure drawn up (date) _____

17. Other issues

TOOL 4 Model Share Dairy Farming Agreement

The Australian dairy industry has developed the **Share Dairy Farming in Australia—Model Code of Practice** with guidelines and tools for assessing and establishing share farming arrangements.

The best agreements are always the ones that are prepared to suit each farm situation.

1. Check if the arrangement is fair and affordable for all parties, using the Fairness and Affordability **Calculator**
2. Assess the arrangement from a legal perspective, using the **Legal Test Guide** tool
3. Use this **Checklist** to discuss the key factors in the arrangement
4. Then prepare a draft with the Model Share Dairy Farming **Agreement**

This Agreement has been prepared as a template which can be modified to suit individual circumstances. It has been drafted so that it will stand up to legal analysis. It is made up of five distinct sections each of which builds on the previous sections to make up the complete document. There are Notes which provide clarifications at the end.

The Agreement standard clauses

This section contains standard clauses which are included in most similar legal documents and which will apply to every share farming agreement. These clauses lay the foundation for the agreement, for example, there is a requirement that the land which will be share farmed be accurately identified. There are also standard clauses which address issues such as renewal, termination and dispute resolution.

Schedule 1—Asset register

Because disputes can arise later about the level or quality of improvements it is vital that an accurate picture of the assets is obtained and recorded at the start of the agreement. This section describes in detail the assets which will be provided by both parties and their condition at the start of the agreement.

Schedule 2—Duties and obligations

This Schedule details the responsibilities of both the owner and the share farmer in the day to day operation of the agreement. It is expanded in Schedule 4 which provides for how each party will actually perform those duties and responsibilities.

Schedule 3—Property income and operating costs

This Schedule specifies how the income and costs of the business will be distributed between the owner and the share farmer.

Schedule 4—Farm operation and management

This Schedule details how the duties and obligations specified in Schedule 2 will actually be performed and who will perform them.

It is recommended that the parties work with a **dairy adviser** for these steps to develop their Agreement and then get it checked by an accountant and solicitor.

For more background information and to download the latest version of the Code and this Agreement template, visit thepeopleindairy.org.au/sharefarming

Note: Read and delete this page when you prepare your agreement

Model share dairy farming clauses – Standard clauses

1. Parties

This Agreement is BETWEEN

<insert name of owner and ABN and ACN if applicable> the Owner

<insert name of share farmer and ABN and ACN if applicable> the Share Farmer

2. Background (Note 1)

The owner is the owner / lawful occupier of the land.

The owner and the share farmer have agreed that the share farmer will be engaged as a share farmer to farm the land in accordance with this Agreement.

3. Description of the Land (Note 2)

The owner will set aside and allow the following land to be used solely for the purposes of this Agreement.

<insert description of the land–property name, location, total hectares>

4. The Term (Note 3)

4.1 This Agreement commences on <insert commencement date> and ends on <insert end date>

4.2 Three months before the end of this Agreement the owner will advise the share farmer in writing of any outstanding work which must be completed before termination.

4.3 If the share farmer does not agree the Dispute Resolution clause in clause <insert clause number> will apply.

Renewal of this Agreement

4.4 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.

5. Relationship between the Parties (Note 4)

Agreement not an Employment Contract

5.1 The relationship between the parties to this Agreement will be that of principal and independent contractor. 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 he/she/it is not an employee of the owner.

Agreement not a Partnership

5.2 The parties expressly intend that nothing in this Agreement will be deemed to constitute a partnership between them and neither party is authorised to pledge the credit of the other without written consent.

Work Health and Safety (Note 4)

5.3 Definitions

Code of Practice means any code of practice published by Safe Work Australia and duly authorised by the relevant State or Territory Minister or any other authority having jurisdiction in relation to the WHS Act.

Person conducting a business or undertaking has the same meaning as in sections 4 and 5 of the WHS Act.

WHS Act means the Work Health and Safety Act applicable in the place where the farm is situated.

WHS Regulation means the Work Health and Safety Regulations applicable in the place where the farm is situated.

- 5.3.1 The owner and the share farmer must comply with their respective obligations under the WHS Act and WHS Regulations.
- 5.3.2 To the extent that the owner has a duty under the WHS Act and the share farmer also has a duty in relation to the same matter under the WHS Act the owner and the share farmer must consult, co-operate and co-ordinate their respective activities.
- 5.3.3 If the owner or the share farmer enters into a contract with any person conducting a business or undertaking who also has a duty in relation to the same matter under the WHS Act the owner or the share farmer must ensure that the other person conducting a business or undertaking consults, co-operates and co-ordinates their respective activities.
- 5.3.4 In complying with their respective obligations under the WHS laws the owner and the share farmer must consider any relevant Code of Practice to the extent that code is applicable and must ensure that any other person conducting a business or undertaking, as referred to in sub paragraph 5.3.3, who also has a duty under the WHS Act considers any relevant Code of Practice to the extent that code is applicable.

6 Dispute Resolution (Note 5)

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:

- 6.1 The owner and the share farmer will meet at a mutually convenient time and make a genuine attempt to resolve the dispute informally and quickly. If the dispute cannot be resolved after this meeting the parties agree that they will submit to a mediation to be conducted by a mutually acceptable mediator.
- 6.2 If the parties cannot agree on the mediator the parties agree to submit to mediation by a mediator appointed by the chairperson of the Chapter of the Institute of Arbitrators and Mediators Australia in <insert relevant state name>.
- 6.3 If the dispute cannot be settled by agreement or mediation within 21 days of the dispute arising, the parties agree to submit to arbitration by an arbitrator appointed by the chairperson of the Chapter of the Institute of Arbitrators and Mediators Australia in <insert relevant state name>.
- 6.4 The parties agree to bear their own costs and that the cost of any mediation or arbitration will be shared equally between them.
- 6.5 The parties agree that they will continue to perform their obligations under this Agreement while the dispute is being resolved.
- 6.6 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.

If this Agreement is in New South Wales replace this clause with the following clause:

- 6.1 The Agricultural Tenancies Act applies to disputes under this Agreement.

7 Termination for breach (Note 6)

- 7.1 If either party commits a serious breach of this Agreement, the other party may provide a written notice which requires the party in default to remedy the breach within 14 days of the notice.
- 7.2 If the breach is not remedied within 14 days this Agreement will be taken to be terminated.
- 7.3 If either party disputes the right of the other party to terminate this Agreement the parties agree to submit to mediation under clause <insert clause number> of this Agreement regardless of whether this Agreement has been terminated at the time.
- 7.4 If mediation is unsuccessful in resolving the dispute, this Agreement will be taken to be terminated as at the end of the mediation process.
- 7.5 If this Agreement is terminated under this clause the owner or share farmer is entitled to all payments due and owing as at the date of termination.
- 7.6 If this Agreement is terminated under this clause the owner will allow the share farmer sufficient time to obtain adequate alternative accommodation for his/her stock and mobile plant and if the <insert state> residential tenancy laws do not apply, the owner will allow the share farmer 4 weeks' notice to vacate any house.
- 7.7 This clause does not prevent the owner or the share farmer exercising their legal right to damages for breach of this Agreement.

8 Termination in the event of death

Share farmer

Clause if Sole share farmer

- 8.1 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.
- 8.2 If this Agreement is terminated under this clause the owner will allow the share farmer's personal representatives up to three months to enable the share farmer's personal representatives to obtain adequate alternative accommodation for the stock and mobile plant and if the <insert state> residential tenancy laws do not apply the owner will allow any persons living in a house 4 weeks' notice to vacate the house.

Clause if share farmer is Partnership

- 8.3 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).
- 8.4 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.
- 8.5 In the event of a termination under this clause the owner will allow the share farmer's personal representatives up to three months to enable the share farmer's personal representatives to obtain adequate alternative accommodation for the stock and mobile plant and will allow any persons living in a house 4 weeks' notice to vacate the house if the <insert state> residential tenancy laws do not apply.

Owner

- 8.6 If the owner dies this Agreement will terminate three months after the date of the owner's death.
- 8.7 Upon termination any amounts due and owing to the share farmer under this Agreement will be paid to the share farmer.
- 8.8 In the event of a termination under this clause the owner's personal representatives will allow the share farmer up to three months to enable the share farmer to obtain adequate alternative accommodation for the stock and mobile plant and will allow any persons living in a house 4 weeks' notice to vacate the house if the <insert state> residential tenancy laws do not apply.

9 Termination in the event of serious disability

- 9.1 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.
- 9.2 Upon termination any amounts due and owing to the share farmer under this Agreement will be paid to the share farmer.
- 9.3 If this Agreement is terminated under this clause the owner will allow the share farmer up to three months to enable the share farmer to obtain adequate alternative accommodation for the stock and mobile plant and if the <insert state> residential tenancy laws do not apply, the owner will allow the share farmer 4 weeks' notice to vacate any house.

10 Termination upon sale of farm

Option 1

Where the owner sells the land or any part of the land the owner will:

Ensure that the sale is conditional upon the share farmer having the option as to whether this Agreement will continue with the purchaser.

OR

Option 2

Notify the share farmer as soon as the property is sold and provide a minimum of three months' notice to enable the share farmer to obtain adequate alternative accommodation for his/her stock and mobile plant and if the <insert state> residential tenancy laws do not apply, the owner will allow the share farmer 4 weeks' notice to vacate any house.

11 Labour (Note 7)

- 11.1 The share farmer must ensure that all employees engaged by the share farmer are appropriately supervised.
- 11.2 The share farmer agrees that he/she/it is responsible for arranging and paying superannuation contributions in respect of any employees who may be engaged by the share farmer and the share farmer undertakes to include the owner as a joint payee on whose behalf payments are made to the superannuation fund in respect of the share farmer's employees.
- 11.3 The share farmer undertakes that any employees have the right to work in Australia, that appropriate visa and Work Rights checks have been made and the share farmer undertakes to provide evidence of such Work Rights to the owner upon request.
- 11.4 The share farmer undertakes to pay wages and entitlements in accordance with the correct industrial award or agreement to any employees and hereby indemnifies the owner against any claims by or any liability to any of the share farmer's employees.
- 11.5 The share farmer will establish and maintain work procedures which ensure workplace health and safety for the share farmer and its employees and any other person on the farm or who may visit the farm.
- 11.6 The parties will comply with workers compensation laws regarding any employees.
- 11.7 The share farmer must comply with any reasonable direction provided to the share farmer by the owner in relation to occupational health and safety. Further the share farmer agrees to report any occupational health and safety issues which may arise to the owner immediately.
- 11.8 The share farmer will establish and maintain work procedures and policies which ensure that federal and state discrimination and harassment laws are adhered to by all employees.

12 Insurance (Note 8)

The share farmer will:

- 12.1 Insure against liability at common law and under the <insert state> workers compensation laws for all employees;
- 12.2 Insure against liability to third persons (both personal and property);
- 12.3 Insure for accident and income protection if state Workers Compensation laws do not apply;
- 12.4 Lodge, with the owner, evidence that all insurances specified in this Agreement have been effected; and
- 12.5 Provide evidence to the owner, from time to time, that the insurances required are current.
- 12.6 The owner will insure against liability to third persons (both personal and property);
- 12.7 The owner will insure the share farmer under state Workers Compensation laws if applicable.

13 Regular meetings (Note 9)

- 13.1 The parties agree that they will meet on a regular basis to discuss all aspects of farm physical and financial management and operation.
- 13.2 Access to all farm physical and financial records, performance data and budgets will be made available at the meetings as appropriate.
- 13.3 Any grievances, problems or concerns which have arisen will be discussed at the regular meetings with the aim of avoiding disputes.
- 13.4 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.

14 Residence (Note 10)

The owner will provide a house in a state of reasonable repair for the share farmer and will maintain the house during the term of this Agreement.

State residential tenancy laws apply to this Agreement.

OR

If the state residential tenancy laws do not apply to the tenancy.

The parties agree as follows:

- 14.1 The share farmer will keep the house and its surrounds in the same condition as they were at the date this Agreement was signed subject to fair wear and tear.
- 14.2 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 from the share farmer who will not unreasonably refuse permission.
- 14.3 Upon expiration or termination of this Agreement the share farmer or his/her/its personal representatives will leave the house and surrounds in a clean and tidy condition and if they fail to do so the owner may clean the premises and tidy the surrounds and deduct the cost of this work from the money due to the share farmer.
- 14.4 The owner and the share farmer will have the right to keep beef stock, horses, birds, other animals and machinery on the property, in specific numbers as agreed between the parties. <delete if not applicable>

15 Provision of assets (see Model Schedule 1 on page 41)

The owner and the share farmer agree to provide the assets as listed in the Assets Register in Schedule 1. This agreement specifically excludes assets not listed in Schedule 1.

16 Duties and obligations (see Model Schedule 2 on page 45)

The owner and the share farmer agree to abide by the duties and obligations and responsibilities listed in Schedule 2.

17 Property income and operating costs (see Model Schedule 3 on page 48)

17.1 The owner and share farmer will each have a right to the share of farm income specified in Schedule 3 of this Agreement.

17.2 The owner and share farmer will each have an obligation to pay that proportion of specific farm expenses indicated in Schedule 3 of this Agreement.

18 Farm operation and management (see Model Schedule 4 on page 53)

The owner and the share farmer agree that the farm will be managed in accordance with Schedule 4 of this Agreement.

19 General clauses (Note 11)

Entire agreement

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

Property use and access

19.2 The share farmer will have the right to use the owner's plant, buildings, and facilities as defined in this Agreement and is permitted full access to the land as described in Schedule 1 during the operation of this Agreement. The owner is entitled to access the land at any time.

Warranties

19.3 The owner warrants that he/she/it is entitled by law to enter into this Agreement.

19.4 The share farmer warrants that he/she/it has the qualifications, expertise and experience to perform the share farmer's obligations under this Agreement and that he/she/it will carry out any obligations in accordance with this Agreement and will without cost to the owner remedy any service which is agreed to be deficient or not of sound quality or pay the cost of an alternative person whose identity is agreed to by the owner to do the same.

19.5 If a dispute arises under this clause the Dispute Resolution procedure in clause <insert clause number> will apply to resolve the dispute.

Severability

19.6 If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part of the clause is to be treated as having been removed from this Agreement and the rest of this Agreement is not affected. This clause does not apply if the clause or part of the clause goes to the heart of this Agreement.

Assignment

19.7 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.

Compliance with legislation

19.8 The parties agree to comply with all federal, state and local government laws regarding the management of the dairy farm.

Variation

19.9 This Agreement will not be varied in any way once signed except in writing signed by both/all parties.

Confidentiality

19.10 Each party will keep confidential all confidential information of other parties during the term of this Agreement and after termination until the information is in the public domain or the party is legally required to disclose the information. This clause survives termination of this Agreement.

Notices

19.11 Any notice or other communication under this Agreement must be in writing, must be delivered personally, given by secure post or facsimile, to the other party at the address notified at the beginning of this Agreement or any other address as the parties may from time to time notify to the other in writing. Service cannot be affected by email.

19.12 A notice delivered in accordance with this clause is taken to have been served on the party receiving it.

Applicable law

19.13 This contract is governed by the laws of the state of <insert state>.

20 Signing clauses (Note 12)

EXECUTED as an Agreement

SIGNED for and on behalf of the owner

(full name)

in the presence of:

(Signature of Witness)

(Name of Witness)

Affix company seal if applicable

SIGNED for and on behalf of the share farmer

(full name)

in the presence of:

(Signature of Witness)

(Name of Witness)

Affix company seal if applicable

Model Schedules

Model schedule 1: asset register (Note 13)

Provision of assets

The owner

The owner agrees to provide the following assets:

S1.1 Land (Note 14)

The owner will set apart and allow to be used solely for the purpose of this Agreement.

1.1.1 approximately <insert number> hectares of grazing land comprising as follows:

<insert details>

1.1.2 Milking areas

<insert details>

1.1.3 Dry stock area

<insert details>

S1.2 Buildings and structures (Note 15)

The owner will make available the following farm buildings, structure and improvements on the share farming property:

<insert details>

S1.3 House (NOTE 16)

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

<insert details>

S1.4 Water Supply and/or Irrigation (NOTE 17)

The owner will provide an adequate system of water supply and reticulation for household, stock and dairy use, including all necessary motors, pumps, piping, troughs and ball floats

<insert details>

The owner warrants that the provided land carries a water share of <insert number> megalitres for irrigation purposes.

The water share consists of:

<insert number> ML of high security channel supply

<insert number> ML of river supply

<insert number> ML of bore water

<insert number> ML of drainage diversion

<insert number> ML capacity recycle dam

S1.5 Livestock (Note 18)

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

<insert details>

S1.6 Milking plant

The owner will provide an adequate and efficient milking plant, tested and if necessary adjusted, by a competent technician before the start of this Agreement.

The owner will provide refrigerated vat(s) of adequate capacity to ensure that twice daily pickups do not occur for more than six (6) months per season. The vats and associated cooling equipment provided will be capable of meeting at least the appropriate minimum standard for rate of milk temperature reduction on completion of milking.

The owner will provide a means of producing sufficient supply and storage of hot water to effectively clean the milking equipment after each milking.

S1.7 Vehicles, plant and machinery (Note 19)

The owner will supply the following vehicles, plant and equipment:

<insert details>

S1.8 Stored supplementary feed

The owner will provide the following amounts of stored supplementary feed (hay and/or silage and/or grains and/or concentrates and/or by-products and/or calf pellets) at the commencement of this Agreement:

<insert details>

The parties agree that the quantities of stored supplementary feed (hay, silage, grain and/or concentrates) on hand at the commencement of this contract will be mutually determined by an independent person to be appointed by both parties. Such quantities will be recorded.

Section S4.5 outlines how stored supplementary feed will be dealt with between the parties at the start and end of this Agreement.

The share farmer

The share farmer agrees to provide:

S1.9 Livestock (Note 18)

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

<insert details>

S1.10 Vehicles, plant and machinery (Note 19)

The share farmer will supply the following vehicles, plant and equipment:

<insert details>

S1.11 Land or improvements

The share farmer will provide the following land or improvements:

<insert details>

Condition of assets

The table below provides a detailed production history of the farming land to be provided under Schedule 1 of this Agreement and the owner guarantees that the information provided is accurate.

Year / season	Area utilised (ha)*	Cows milked	Replacement yearlings carried**	Milk production (factory figures)

* area used by milking herd plus replacements
** exclude agisted stock

Year /season	Pasture area renovated (ha)	Fertiliser applications	Purchased grain / concentrate fed (tonnes)	Purchased hay, silage, other fodder fed (tonnes)	Hay and silage made (tonnes)

The owner’s responsibilities as at commencement of this Agreement

The owner will ensure that as at the commencement of the share farming agreement:

- a) all gateways, drains, channels, fences, tanker roads, internal laneways, feeding pads, surrounds of water troughs and milking shed are in good working order and suitable condition, and boundary fences are stock proof and in good condition;
- b) any livestock provided by the owner under this Agreement are in good health and their notifiable disease status is declared;
- c) tractors and/or specified farm implements, including irrigation plant, are in good working order and suitable condition;
- d) the milking plant, including electric motors, milk cooling facilities, water heating equipment, high-pressure washdown equipment and water supply, is in good working order and suitable condition;
- e) the water supply and reticulation system for domestic and farm use is in good working order and suitable condition;
- f) the collection and disposal system for dairy effluent is in good working order and suitable condition, that current regulatory approvals are valid and that any applicable regulatory standards are met;
- g) any farm dwelling, and associated utilities (water, power, sewerage), provided to the share farmer is in good working order and suitable condition.

The share farmer’s responsibilities as at commencement of this Agreement

The share farmer will ensure that as at the commencement of the share farming agreement:

- a) any livestock provided by him/her under this Agreement are in good health and their notifiable disease status is declared;
- b) mobile plant and/or specified farm implements provided by him/her under this Agreement are in good working order and suitable condition.

Model Schedule 2: Duties and obligations (Note 20)

The details in this schedule are a guide only. You may need to draft your own options to reflect the people involved, their skills and what they bring to the arrangement. Consider discussing these issues with your adviser.

S2.1 Management

2.1.1 Management control:

Option 1

Unless otherwise stated in Schedule 4 the share farmer will be responsible for all day-to-day management decisions and farming operations on the property, including control of stock and land management and supervision and management of employed staff. 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.

Option 2

The owner will have the responsibility for overall management control. The share farmer will have the right to share in the direct management, planning and control of operations on the share farmed land and will be responsible for the supervision and management of employed staff and the day-to-day management of all farming activities, with the exception of:

<insert details>

- 2.1.2 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 will observe and follow accepted farming practices.
- 2.1.3 The party who owns the herd will provide, if requested, particulars of the anticipated calving dates of the cows, and at any other time during the term of this Agreement, provide if requested details of herd test, calving dates, cows culled and full details relating to the birth, rearing and disposal of calves to the other party.

S2.2 Provision of labour and husbandry

- 2.2.1 The share farmer will be responsible for the provision of labour for farming operations including milking, milk quality, calf rearing, animal health, mating, herd recording, livestock selling, agistment, supplementary feeding, maintenance of plant and equipment, irrigation, fertiliser application, fodder conservation and pasture grazing and renovation, including associated subsidiary activities.
- 2.2.2 The following activities may be performed by an independent contractor and the costs shared as per Schedule 3.2 (Table of Income and Expenses):
fertiliser spreading; nitrogen application; weed and pest control; silage and hay mowing, raking and harvesting; oversowing; cultivation; lime application; effluent spreading; dehorning and freeze branding; and artificial insemination.
- 2.2.3 The share farmer will be responsible for and have complete control of all labour engaged by the share farmer and comply with all relevant industrial relations, workers compensation, taxation and superannuation laws.
- 2.2.4 The owner will be responsible for any labour associated with farm developmental work such as the clearing, cultivation and sowing of undeveloped land, irrigation development, erection of new buildings, fences, laneways or yards and digging of new drains or clearing drains which have not been cleared within the last three (3) years.

S2.3 Observance of regulations

- 2.3.1 The owner and share farmer will take all appropriate action to observe laws and regulations pertaining to dairy farm operations including milking and dairy supervision Acts, pollution and effluent regulations, vermin and noxious weed laws, local government by-laws, industry codes of practice and standards of occupational health and safety.
- 2.3.2 The share farmer will be responsible for milk quality assurance and will at all times ensure that the dairy premises continues to meet the specific standards required for registration with appropriate authorities, and ensure that all conditions of the relevant dairy licencing authority required to offer dairy produce for sale are complied with.
- 2.3.3 The share farmer will be responsible for keeping the milking equipment, plant, utensils and appliances and dairy and yards in a clean, sanitary and hygienic condition.
- 2.3.4 The share farmer will compensate the owner for milk penalties imposed due to the presence of antibiotics, pesticides or chemicals in the milk.
The share farmer will not be responsible for milk penalties due to matters beyond his/her control, including non- performance by the owner.
- 2.3.5 The owner will indemnify the share farmer against any actions arising from the failure by the owner to immediately rectify any breach of any regulation provided the owner has been given reasonable notice by the share farmer that the breach has occurred or is occurring and provided the breach has not been caused by the share farmer's negligence.
- 2.3.6 The share farmer will indemnify the owner against any charges or actions arising out of the failure of the share farmer to operate mechanical farming systems in a manner consistent with regulations, instructions or accepted farming practices.
- 2.3.7 Where the owner is required to permit third parties to enter the farm for purposes connected with statutory obligations, the share farmer will permit and facilitate such entry and to the fullest reasonable extent possible will permit and facilitate any inspections which such third parties wish to carry out.

S2.4 Property maintenance

2.4.1 Buildings, structures and improvements

Option 1

The owner will be solely responsible for the routine repair and maintenance of farm buildings, drains, channels and dams, water supply systems, fences and gates, lanes, roads, troughs and driveways, milking plant, hot water service, milk storage vats and pumps.

Option 2

The owner will supply all materials and the share farmer will supply all labour for the routine repair and maintenance of farm buildings, drains, channels and dams, water supply systems, fences and gates, lanes, roads and driveways, milking plant, hot water service, milk storage vats and pumps, excluding major structural repair or improvement. If the maintenance task requires an outside specialist, the owner will be responsible for selection of that specialist.

Option 3

- 1 The share farmer will be solely responsible for the routine repair and maintenance of farm buildings, drains, channels and dams, water supply systems, fences and gates, lanes, roads and driveways, milking plant, hot water service, milk storage vats and pumps and will devote a 'reasonable' proportion of his/her time, and that of his/her labour force, to general farm maintenance.
- 2 The share farmer will not be liable to repair any damage or loss to buildings, permanent fences or other permanent improvements caused by fire, flood, tempest, wind, earthquake or inevitable accident.
- 3 The owner and share farmer will each be responsible for repairs to their own plant, machinery, and vehicles except where repairs are necessary through damage to their plant, machinery or vehicles, other than fair wear and tear, caused by the neglect of or misuse by the other party.

S2.5 Property improvement

- 2.5.1 The owner will be responsible for all farm improvement work and capital developments, including materials and labour costs.
- 2.5.2 The share farmer will not undertake farm improvements or incur associated costs without the written consent of the owner.

S2.6 General prohibitions

- 2.6.1 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.
- 2.6.2 The parties agree that the farming land provided for share farming purposes according to Schedule 1 will not be reduced except by the mutual consent of both parties in writing or if the farm or part thereof is sold.
- 2.6.3 The parties agree that nothing in this Agreement requires either party to do anything which is detrimental to the assets, livestock or plant.

S2.7 Other duties, rights, responsibilities and obligations

The parties agree that the following responsibilities will apply to the respective parties under this Agreement:

<insert details>

Model Schedule 3: Property income and operating costs (Note 21)

S3.1 General matters

- 3.1.1 The owner/share farmer <delete if not applicable> will determine which dairy company the parties will supply milk to.
Dairy company / factory to be supplied: <insert name of dairy company>
- 3.1.2 The owner will be responsible for advising the dairy company of the share farming arrangements and for completing a factory deduction authority for the direct payment of milk cheques to the share farmer, after deduction of statutory and factory costs (cartage and depot charges, dairy levies).
- 3.1.3 The owner and the share farmer will be entitled to receive from the dairy company their respective percentage of the gross milk proceeds. If ever the dairy company demands a refund in respect of monies overpaid, the owner will promptly make such refund and the share farmer will immediately contribute from the share farmer's specified share to such refund. The owner and share farmer will bear in proportion to the income payments in Schedule 3 any grade or premium price deductions.
- 3.1.4 Monthly reconciliation of receipts and payments will be jointly undertaken by the parties on the <insert day> 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 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 share farmer.
- 3.1.5 Where amounts are in dispute, the following monthly interest rate will apply to any outstanding amounts owed to one party by the other:
<insert details>
If the owner withholds more money from the share farmer than what the owner is claiming then the arbitrator can award interest on this money at a rate of <insert number> % per month or part month. If the owner withholds only the amount being claimed and the owner's claims are subsequently not awarded in full as a result of the dispute resolution process, then the arbitrator will have the power to award <insert number> % per month or part month on the excess monies withheld.
- 3.1.6 The following incentive payments will apply to the share farmer for agreed improvements in herd performance and productivity:
<insert details>
- 3.1.7 The owner will not seek to vary the percentage income or cost sharing arrangements during an agreement period unless there has been prior discussion and agreement reached with the share farmer.

S3.2 Table of income and expenses

Show share or 'each pays own'	Owner's share	Share farmer's share
Shared income		
	milk sales including step-ups and back pays	
	colostrum sales	
	stock sales–cull cows	
	stocks sales–calves	
	other farm income–rebates, fodder sales etc.	
Shared costs		
Herd (adult cattle)	animal health and veterinary costs	
	semen	
	herd testing	
	mating	
	Identification	
	veterinary costs	
	other herd costs	
	Replacement rearing	agistment
supplementary feed		
animal health and veterinary costs		
semen		
mating		
identification		

Show share or 'each pays own'	Owner's share	Share farmer's share
Shed	light and power dairy supplies e.g. rubberware, detergents, other (specify) dairy repairs other shed costs (specify)	
Grown feed	fertiliser–N, P, K and S (excludes capital applications of fertiliser or herbicides necessary to bring the farm to an acceptable operating standard. Such costs are the responsibility of the owner) lime, gypsum irrigation water (fixed and variable costs) irrigation fuel seed (annual and permanent pasture) contractor (fertiliser and fodder conservation, pasture renovation) fodder conservation cropping fuel, oil and grease (excludes costs for farm development or improvement and personal use) weed and pest control (excludes capital applications of fertiliser or herbicides necessary to bring the farm to an acceptable operating standard. Such costs are the responsibility of the owner)	

Show share or 'each pays own'**Owner's share****Share farmer's share**

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

capital developments

cartage

consultancy

farm improvements

insurance (disability)

insurance (farm and assets)

insurance (fodder)

lease payments – milking area

Show share or 'each pays own'

Owner's share

Share farmer's share

lease payments – dry stock area

licence fees

major equipment overhauls

plant and machinery

rates

registration and insurances (plant and vehicle)

repairs and maintenance (irrigation)

repairs and maintenance (improvements)

repairs and maintenance (vehicles and plant)

taxes and farm charges

registration and insurance (plant and machinery)

Model Schedule 4: Farm operation and management (Note 22)

S4.1 Farm management structure

- 4.1.1 The parties agree to the joint formulation of farming goals and objectives, having regard to the productive capacity of the farm and herd and the ruling economic environment in dairying.
- 4.1.2 The parties agree to provide access to records, management information, production and financial information as follows:
<insert details>
- 4.1.3 The parties agree that farm management issues will be discussed at the regular meetings.
- 4.1.4 The parties agree that absence from the farm by the share farmer will occur as follows:
<insert details>

S4.2 Herd ownership and size

Milking herd

- 4.2.1 The herd to be milked will consist of a minimum of <insert number> cows and a maximum of <insert number> cows to calve between the period <insert date> to <insert date>. Such cows will include first calf heifers between the range of <insert percentage> per cent. Bulls to a maximum of <insert number> head will be used.
- 4.2.2 The share farmer will undertake the care and custody of the bull or bulls and will arrange for the effective service of the cows, heifers, and replacements in the herd. The share farmer will provide to the owner a true and correct record in writing of all services and all calving dates for the ensuring year, unless the share farmer owns all of cows.

Herd replacement

- 4.2.3 The owner/share farmer <delete one> will provide any necessary herd replacements. The number of yearling and heifer calf replacements carried on the share farmed land will each not exceed <insert number> per cent of the actual cow numbers being milked in that season. The owner/share farmer <delete one> will be responsible for rearing replacement heifer calves to weaning. The replacement heifers will be fed on colostrum and purchased milk replacer/colostrum and whole milk <delete one> to a maximum of eight weeks of age.

Removal of surplus stock

- 4.2.4 Progeny will be the property of the owner/share farmer/the parties jointly <delete one>, in the following proportions:
<insert details>
- 4.2.5 The owner/ share farmer <delete one> will be responsible for selling cull cows. Cull cows will be sold within <insert number> days of their being removed from the milking herd and outside the withhold period for slaughter.
- 4.2.6 Where a party wishes to rear more than the number of calves required to replace the herd, this is permitted to a maximum of <insert number> head.

S4.3 Herd operations

Milking

4.3.1 The share farmer will ensure that the herd is competently milked such as to permit effective operation of the milking plant, regular milking times, mastitis detection and treatment, good milk quality control, appropriate attention to stock ailments and disease and prevention of milk contamination through non-withholding of milk from cows treated with antibiotics.

Mating and breeding

4.3.2 Option 1

The owner will be responsible for decisions on stock mating and breeding, including calving pattern, mating start date(s), mating method, use of fertility drugs, sire selection, herd recording, pregnancy testing, early induction and dry off. The share farmer will be responsible for implementing decisions made by the owner in relation to stock breeding and in maintaining appropriate breeding records.

4.3.3 Option 2

The share farmer will be responsible for decisions on and implementation of stock breeding, including calving pattern, mating start date(s), mating method, use of fertility drugs, sire selection, herd recording, pregnancy testing, early induction and dry off.

4.3.4 Where cows are artificially inseminated, it will be the responsibility of the owner /share farmer <delete one> to arrange for the supply of and payment for such semen and the services of a trained technician. Should it be agreed that the share farmer will inseminate the cows, there will be no additional payments to the share farmer for such inseminations.

Animal health

4.3.5 The share farmer will take all reasonable precautions to prevent or cure sickness or disease in any stock on the property. The share farmer will report to the owner all cases of stock sickness or disease. The owner and share farmer will come to an agreement on how the veterinary services will be engaged on the farm.

4.3.6 Where an animal is ordered by regulation to be slaughtered (such as a brucellosis reactor), the owner/share farmer <delete one> will replace it within 14 days at his/her own cost with a similar producing animal. The owner/share farmer <delete one> will be solely entitled to all sums paid by any organisation or governmental body by way of compensation for such slaughter but if any additional payment is made by such an organisation or government body for loss of production of that animal, the share farmer and the owner will be entitled to such further payment in proportional shares.

4.3.7 The share farmer and owner will ensure that all animals that they own are vaccinated against Leptospirosis annually or in any case in accordance with stated Leptospirosis vaccination policy of veterinary practice. The share farmer and owner will apply appropriate prevention and control measures to ensure a satisfactory herd health status.

S4.4 Care of land

Trees

4.4.1 The share farmer will not cut down or damage any trees or hedges on the property without prior written consent of the owner.

Weed and pest control

4.4.2 The owner/share farmer <delete one> will be responsible for decisions on the control of pasture and fodder crop weeds and pests. The share farmer will provide labour for weed and pest control. Chemical sprays, spraying equipment and/or contract spraying will be provided as follows:

<insert details>

4.4.3 The responsibility of the share farmer for the eradication or control of noxious weeds upon the farm will be confined as far as is practicable to the prevention of an increase of weeds as compared with the position at the commencement date of this Agreement or any subsequent improved position brought about by the owner's expense.

4.4.4 Where the control and eradication of noxious weeds is deemed by the owner to be a capital expense, the costs to bring the noxious weeds under control will be the owner's.

Irrigation

4.4.5 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.

4.4.6 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.

Maintenance of channels, drains and irrigation structures

4.4.7 Channels and drains will be maintained as follows:

<insert details>

Effluent disposal

4.4.8 The operation of the effluent disposal system will be as follows:

<insert details>

S4.5 Fodder conservation

- 4.5.1 On expiration or termination of this Agreement, the opening physical quantity of hay as at <insert date> will be compared to the closing physical quantity of hay as on a date agreed between share farmer and owner. In the event that closing stocks are less than the opening stocks, then the share farmer will pay to the owner their respective percentage of the current market value of the difference. In the event that closing stocks are greater than the opening stocks, then the Share farmer agrees, in lieu of selling his/her share of hay stocks to a third party, to be reimbursed by the owner for their respective percentage of the current market value of the difference. The current market value of any stock difference will be determined by negotiation between the share farmer and the owner.
- 4.5.2 The share farmer will be responsible for conservation and storage of all pasture and/or crop surplus to the herd's requirements.
- 4.5.3 The owner/share farmer <delete one> will be responsible for the selection and employment of any contractor required to assist in making hay or silage.
- 4.5.4 No hay or silage will be sold off the property by either party without the prior written consent of the other. The income from any sales will be shared by the owner and share farmer in the proportions shown in Schedule 3.
- 4.5.5 The parties will keep insured against loss or damage by fire all stored and stacked hay for the full replacement value thereof and in the event of loss or damage of hay by fire all monies received by virtue of such policy of insurance will be expended promptly in replacing the destroyed hay.
- 4.5.6 The owner and the share farmer agree that the specific areas to be conserved annually for hay and silage will be as follows:
<insert details>

S4.6 Forage crops and new pasture

The owner and share farmer will agree on a process to decide on the type and amount of seed sown, and the type and amount of fertiliser applied on forage crops or new pasture.

<insert details>

S4.7 Supplementary feeding

- 4.7.1 On expiration or termination of this Agreement, the opening physical quantity of grain and/or concentrates as at <insert date> will be compared to the closing physical quantity of grain or concentrates as on a date agreed between share farmer and owner. In the event that closing stocks are less than the opening stocks, then the share farmer will pay to the owner their respective percentage of the current market value of the difference. In the event that closing stocks are greater than the opening stocks, then the share farmer agrees, in lieu of selling his/her share of grain and/or concentrates stocks to a third party, to be reimbursed by the owner for their respective percentage of the current market value of the difference. The current market value of any stock difference will be determined by negotiation between the share farmer and the owner.
- 4.7.2 Within any limits imposed in this Agreement on the purchase of supplementary feeds or agistment, the share farmer will at all times ensure adequate nutrition levels of the milking herd and replacement stock. The share farmer will be responsible for the decision on drying off date bearing in mind his/her responsibilities in the area of herd nutrition.
- 4.7.3 The owner/share farmer <delete one> will be responsible for any decision to use supplementary purchased feed for the milking herd or dry stock or replacements after consultation with the other party. Supplementary feed sources include purchased grain, concentrates or byproducts, additional hay or silage, applied nitrogen fertiliser, agistment and irrigation.

Pasture management

4.7.4 The owner/share farmer <delete one> will be responsible for decisions on grazing management, including the frequency and duration of grazing, with the aim of maximising milk production while maintaining pasture productivity.

4.7.5 Unless carried out by a contractor, the share farmer will be responsible for spreading fertilisers on the farm.

Option 1

Fertiliser, including nitrogenous fertiliser and lime, used to boost seasonal pasture growth and/or any byproducts which are considered fertiliser, will be agreed between the owner and share farmer annually based on soil test recommendations. Sufficient fertiliser and lime will be used to top dress the farm with not less than the maintenance fertiliser required for the farm, having due regard for the stocking rate of the farm.

Option 2

Specification of fertilisers to be used, including nitrogenous fertiliser and lime, used to boost seasonal pasture growth and/or any byproducts which are considered fertiliser, timing of application, rate of application and equipment or contractors to be used will be as follows:

<insert details>

4.7.6 Stocking levels may be altered only after consultation and agreement between the share farmer and the owner.

Notes

Notes to the model clauses

Note 1 Background

This clause is sometimes called the Recitals. It provides background information about this Agreement.

Note 2 Description of the land

This clause must clearly identify all of the land upon which the share dairy farming operation will take place. It should include the property name, location, total hectares and preferably the Land Titles identification numbers.

Note 3 The term

This clause specifies the length of this Agreement. The dates should take into account practical operational issues, for instance busy times.

This clause also contains a provision which provides for the renegotiation of this Agreement 3 months before the termination date to allow adequate time for a new agreement to be discussed and put in place.

The clause also requires that these negotiations be completed a month before the termination date so that the share farmer will have time to relocate if this Agreement is not renewed.

Note that if this Agreement is in New South Wales, the Agricultural Tenancies Act will apply. If this Agreement is for a fixed term no notice is required. If this Agreement is not for a fixed term or if it is left to roll over from year to year the notice period for termination is 6 months unless this Agreement specifically states otherwise. It is recommended that all agreements be for a fixed term and be renewed appropriately at the end of the term.

(for more information, visit Renewal and Renegotiation of this Agreement at <http://thepeopleindairy.org.au/sharefarming>)

Note 4 Relationship between the parties

This clause confirms that the relationship between the parties is not one of employer and employee nor is it a partnership.

However, it is important to be aware that this clause alone will not have the effect of making an employment relationship into one of share farming if the other requirements for a share farming arrangement are not met (for more information, visit <http://thepeopleindairy.org.au/sharefarming>)

Work health and safety

The Work Health and Safety laws (WHS Laws) impose a duty of care on “persons conducting a business or undertaking” (PCBU) to ensure that, so far as is reasonably practicable, the health and safety of workers engaged by the PCBU, workers whose activities are influenced or directed by the PCBU and other persons is not put at risk.

This clause confirms the obligations on the owner and the share farmer to comply with the WHS laws.

The duty of care includes the provision and maintenance of a safe work environment, the provision and maintenance of safe plant, structures and systems of work; provision of adequate facilities and the provision of any information, training, instruction or supervision that is necessary to protect persons from risks to their health and safety arising from work carried out as part of the business or undertaking.

The WHS laws recognise that there may be more than one duty holder at a particular workplace who may have a duty in relation to the same matter. Each person has a responsibility to take reasonable steps which are within their influence and control to meet their duty of care.

Contractors and subcontractors, including the self employed are considered to be conducting a business or undertaking. This means that a contractor or subcontractor could be both a worker and a PCBU.

This clause recognises that the WHS laws require the owner and the share farmer to consult and cooperate with each other and any other duty holders and to coordinate their activities to enable all parties to fulfil their duties of care.

Safe Work Australia has produced a Code of Practice which provides guidance to duty holders who share responsibility for work health and safety matters on how to consult, cooperate and co-ordinate activities with each other. (see link below)

The objective of consultation is to make sure everyone associated with the work has a shared understanding of what the risks are, which workers are affected and how the risks will be controlled.

Cooperation may involve implementing arrangements in accordance with any agreements reached during consultation with the other duty holder as well as not acting in a way that may compromise health and safety.

Coordination of activities requires duty holders to work together so that each person can meet their duty of care effectively without leaving any gaps in health and safety protection.

Safe Work Australia has prepared and will prepare codes of practice which provide guidance as to how the standards of health safety and welfare required under the WHS laws can be achieved.

This clause also requires the owner and the share farmer to consider any relevant codes of practice which may apply to them and to do everything possible to enable other duty holders such as contractors and subcontractors to do the same.

Codes of Practice and other information about the Work Health and Safety laws area available at <http://safeworkaustralia.gov.au>

Note 5 Dispute resolution

This clause provides a detailed dispute resolution procedure. The main purpose of this clause is to encourage the parties to resolve disputes as they arise as quickly as possible.

Consideration should also be given to regular meetings (see model clause 13 Regular Meetings) where any problems which have arisen can be aired and resolved quickly.

If the dairy farm is in New South Wales, the Agricultural Tenancies Act provides a specific dispute resolution procedure.

For further information and relevant documents, visit <http://dpi.nsw.gov.au/aboutus/about/legislation-acts/agricultural-tenancies/help>

Note 6 Termination

It is very important to include comprehensive provisions about termination. The model clauses provide for termination before the termination date in four circumstances as follows:

- Termination for breach;
- Termination in the event of death;
- Termination in the event of serious disability;
- Sale of the farm.

If this Agreement is terminated for any of these reasons sufficient time must be allowed for a valuation of stock, if relevant, and for the share farmer to relocate any stock and machinery. The model clause recommends up to three months. If sufficient time is not allowed and the share farmer is disadvantaged this Agreement could be determined to be unfair and damages payable for losses suffered by the share farmer.

The Model Clause provides for the dispute resolution process to apply to any disputes which arise as a result of termination.

The model clause which provides for termination for breach requires that the breach must be 'serious'. This prevents either party from terminating this Agreement for minor breaches which do not go to the heart of this Agreement or have a serious impact on the business.

There is a 14 day period during which the other party can remedy the breach and if the breach is not remedied a further notice should be sent which confirms that this Agreement has been breached and is to be terminated.

Note 7 Labour

This clause details the share farmer's responsibilities for any employees they may engage. It covers payment of wages and entitlements, insurance under workers compensation laws and occupational health and safety responsibilities.

Sub clause 2 is important as it protects the owner from any superannuation claims by employees of the share farmer (for more information, visit <http://thepeopleindairy.org.au/sharefarming>)

Subclause 3 requires the share farmer to ensure that all employees have the right to work in Australia.

Subclauses 5–7 recognise the joint responsibilities the owner and the share farmer have for occupational health and safety.

Note 8 Insurance

This clause specifies each party's responsibility for insurance and requires that each party gives the other proof that the insurances are in place.

Workers compensation is the responsibility of state and territory governments. Every state and territory has its own legislation which has different rules as to who is responsible to take out insurance cover for workers compensation.

The responsibility for workers compensation depends upon how the term 'worker' is defined by the relevant state or territory legislation.

In some cases this will mean that a contractor (or share farmer) which meets the common law 'control test' will nevertheless be regarded as a 'worker' (or employee) and the contract principal (the owner) as an employer and therefore responsible and liable under workers compensation laws.

While some states (Victoria and Queensland) have special laws about share farmers this does not mean that other state laws about independent contractors do not apply to share farmers.

Note that these laws may change and farmers intending to enter into a share farming arrangement should check with their state or territory workers compensation authority before work begins.

For more information, see Engaging a share farmer—legal obligations at thepeopleindairy.org.au/sharefarming

Note 9 Regular meetings

Regular meetings between the parties should ensure that any problems which have arisen can be aired and resolved quickly.

Note 10 Residence

State residential tenancy laws may apply to any property used by the share farmer as a residence. If this is the case then this clause is not needed but a proper Tenancy Agreement should be entered into and attached to the share farming agreement.

It is important that both parties are protected if the share farming agreement is terminated. The share farmer must be given time to find alternative accommodation and the owner must be protected in the event that the residence is not left in a proper condition (for more information, visit <http://thepeopleindairy.org.au/sharefarming>)

Note 11 General clauses

The following clauses are general clauses which are included on most legal contracts.

a) Entire agreement

This clause means that the share farming agreement contains everything that the parties have agreed about. Previous negotiations or correspondence is not a part of this Agreement. For this reason all documents which have been created such as the assets register and position reports should be included as Schedules to this Agreement and signed by the parties at the bottom of each page.

b) Property use and access

This clause makes it clear that the share farmer is able to use the whole of the property as specified in the Description of the Land clause. The clause makes it clear that both parties are able to use the land so that they can fulfil their obligations under this Agreement.

c) Warranties

A warranty is an undertaking by a party which the other party is entitled to rely upon. Because the parties may not know each other well when they enter into this Agreement the owner, for instance, will have to rely on what the share farmer has said about their ability to perform the duties under the share farming agreement.

It is important that each party makes certain that they can give the warranties contained in this clause because if the warranty is not correct or the person making it does not have authority to give it, the other party can terminate this Agreement and make a legal claim for damages if they suffer any loss or damage.

d) Severability

This clause means that if a clause in this Agreement is found not to be valid or enforceable it can be taken out of this Agreement leaving the remainder of this Agreement intact and enforceable providing it is not essential for the performance of this Agreement.

e) Assignment

Assignment is when a party signs over their rights and responsibilities under a contract to another party. This Agreement does not allow assignment unless the owner agrees.

f) Compliance with legislation

This clause confirms that the parties will comply with all relevant laws. This includes commonwealth, state, territory and local government laws.

g) Variation

This clause confirms that this Agreement cannot be changed unless both parties agree and put this Agreement in writing.

h) Confidentiality

This clause confirms the obligation on both parties to keep commercial confidences. Note that this clause continues to bind the parties even when this Agreement has been terminated.

i) Notices

The purpose of this clause is to avoid disputes about whether a notice has in fact been given to the other party. If a notice such as a notice about a breach of this Agreement has to be given to the other party it must be in writing and be delivered in hard copy not by email. Each party has an obligation to make sure the other party has their current address.

j) Applicable law

This clause ensures that if legal proceedings have to be issued they are issued in the courts of the state or territory where the share farming business is operating.

Note 12 Signing clauses

It is important that both parties sign this Agreement and if applicable that any company seals are included. In addition each party should sign at the bottom of each page including the Schedules so that it is clear that these are included in this Agreement.

Notes to the model schedules

Note 13

This Schedule is important because it lists and describes in detail the provision of assets to the share farming venture by the two parties.

It should not contain information on how the assets are to be used, maintained or disposed of, nor who has the responsibility for the assets. These matters are addressed in other Schedules.

Note 14 The land

It is important to describe the land, including how it will be used (e.g. the pasture base—permanent, annual, irrigated, dryland). This is especially important if the owner wishes to graze stock or use some of the land for purposes not associated with the share farming arrangement.

Note 15 The buildings

The specifications and capacity of the dairy shed should be listed in this Schedule. Considerable flexibility exists in respect of the specific equipment associated with the milking shed.

The owner usually provides the milking plant, engine, electric motors or other power plant, separator, adequate facilities for heating water and cooling milk and a high pressure wash-down plant. It is also usually the responsibility of the owner to obtain the necessary consent from the relevant municipal governmental or statutory authority to dispose of effluent, and to provide the systems for the disposal of such effluent.

Depending upon the proposed shed throughput and the health status of the herd, the parties may agree to nominate a set replacement program for claw tubes, inflations, milk rubbers, rubber hoses, milk pump diaphragms, rubber bends or joiners and pulsator diaphragms at the commencement of this Agreement.

Note 16 The house

Where a house is provided, the owner should provide a statement in this Schedule defining the state of repair and condition of habitation of such dwelling and its surrounds, including, where applicable the status of septic tanks associated with the dwelling. This assists resolution of any dispute regarding the ultimate condition and state of repair of the dwelling and its lawns and gardens at the end of the share farming agreement period. Note that state residential tenancy laws may apply to any arrangement for a house to be provided.

Note 17 Water supply and irrigation

Where appropriate, the water right/allocation available under the share farming agreement should be specified. Likewise, details of the irrigation system (if any) should be given.

The farm owner is usually responsible for providing an adequate supply and system for water reticulation for stock and dairy and for household purposes. Details of the reticulation system at the commencement of this Agreement should be noted in the schedule.

Note 18 Livestock

Details of the herd to be provided and maintained on the farm, whether by the share farmer, the owner or both should be listed.

The parties may agree a specific herd figure or may specify a minimum and maximum herd number. If this Agreement will extend over several seasons, and if herd expansion is likely, it is better to state the minimum number of cows to be milked in the first season, and for the parties to agree in writing by the end of each season as to the number to be milked during the subsequent season.

If an expansion is not likely, realistic figures should be quoted, with the lower being the absolute minimum to be milked and the upper about 10% higher. The source of ownership and annual rate of planned herd replacements should also be defined.

Note 19 Vehicles, plant and machinery

A complete inventory of plant, equipment and tools including tractors and/or trucks and/or hay and silage equipment and/or irrigation equipment and/or spray equipment and/or cultivation equipment and/or fencing equipment and/or tools supplied by the owner and the share farmer should be recorded in this schedule.

Note 20

This schedule should detail the precise duties, rights and responsibilities of the parties.

The Model Schedule should be treated as a guide only and the specific wording of each item in this Schedule should be varied depending on the respective shares of owner and share farmer as agreed to between them.

Note that it may be advisable to specify duties and/or obligations in the negative sense, that is, to state what the owner or share farmer may not do under the terms of this Agreement.

The duties and obligations can be varied or added to by mutual agreement during the term of this Agreement.

owners should be aware that as the share farmer is an independent contractor and not an employee the duties imposed under Schedule 2 cannot dictate how, when, where, etc. the duties of the share farmer are to be carried out.

Note that Schedule 4–Farming Operations and Management provides the detailed methodology of how the parties have agreed to achieve the set farming outcomes.

Note 21

This schedule defines how the income and costs are to be distributed under the terms of this Agreement. In addition, this schedule addresses the issues of how such distribution will work from month to month.

The Model Schedule should be treated as a guide only and the specific wording of each item in this Schedule should be varied depending on the respective shares of owner and share farmer as agreed to between them.

Note 22

This schedule sets out the way in which the parties agree to carry out the share farming agreement. It details how they propose to undertake the duties, rights and responsibilities itemised in Schedule 2.

Its purpose is to provide the detailed methodology of how the parties have agreed to achieve the outcomes in the context of their formal duties and obligations.

The Model Schedule should be treated as a guide only and the specific wording of each item in this Schedule should be varied depending on the respective shares of owner and share farmer as agreed to between them.

There may be items in the list which are not applicable and if so they can be removed.



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