

# SPECIMEN

## SHARE FARMING AGREEMENT

### Tillage & Drystock Version

*Having a written share farming agreement alone is not sufficient evidence of a proper share farming arrangement being in place. An arrangement that is found to operate as something other than share farming may give rise to loss of EU/Government support payments or to serious legal or tax implications for the participants.*

#### NOTE

*(This does not form part of the specimen agreement. This specimen document has been compiled to assist farmers to make inquiries and to discuss proposals and alternatives with their Solicitors, Financial Advisors, Accountants, and other advisors. It is not intended for any other purpose. It is essential that each prospective party prior to entering any agreement retain a Solicitor and Accountant. No responsibility or liability whatsoever can be accepted by those who compiled this document, by the sponsoring bodies for any loss suffered by any person as a consequence of relying on any matter contained in it or for any matter whatsoever. The draft legal document is intended as a specimen only. It should not be adopted even in part without taking specific legal advice from Solicitors and advice in relation to all relevant matters from Accountants and/or appropriate experts. Persons proposing to enter into a share farming arrangement should request their own Advisors to draft a document adapted to the needs and circumstances of the persons involved, and which complies also with the terms of all relevant legislation. A version of this document with extensive notes is available and may prove helpful in clarifying many issues arising in Share Farming arrangements.)*

February 2013

## AGREEMENT

This share farming agreement dated .....is made between .....of ..... (hereinafter called the “Landowner” and .....of .....(hereinafter called the Share Farmer)

- (a) The Landowner and Share Farmer have agreed to co-operate for the benefit of their separate businesses by entering into a share farming agreement.
- (b) The Landowner is entitled to possession and exclusive use of the land and buildings, plant, machinery, equipment, implements and other assets described in TABLE A PART 1 and PART 2 in this Agreement.
- (c) The Share Farmer is entitled to possession and exclusive use of the plant, machinery, equipment, implements and other assets described in TABLE B in this Agreement.
- (d) The Landowner is entitled to receive and holds the entitlements and other EU/Government Supports, REPS, Compensatory Allowance Scheme Payments and quotas set out in TABLE C in this Agreement.
- (e) The Share Farmer is entitled to receive and holds the entitlements and other EU/Government Supports, REPS, Compensatory Allowance Scheme Payments and quotas set out in TABLE D in this Agreement.
- (f) The Livestock specified in TABLE E in this Agreement is owned as set out therein.
- (g) In the context of carrying on their respective businesses of farming the parties have agreed that the Included Lands and the Assets, the subject matter of this Agreement shall be farmed and utilized by the Landowner and Share Farmer for their separate benefits and they will otherwise perform and observe the Terms and Conditions of this Agreement.
- (h) The Share Farmer is entitled, otherwise than as a servant under a contract of service, to a share of the Produce derived from the farming operations that are the subject matter of this Agreement.
- (i) The relationship between the parties is that of independent contractors and not that of employer and employee, landlord and tenant or partners.

### 1. DEFINITIONS AND INTERPRETATION

In this Agreement the following terms shall have the following meanings

Included Lands	The lands, including buildings standing thereon described in TABLE A PART 1 herein being the lands on which it is intended that the share farming agreed in this document is to be carried out.
Commencement Date	The date specified at Clause 4.1 at which the agreement shall commence.
Compensatory Allowance Scheme Payments	Payments made under the Area Based Compensatory Allowance Scheme.
Cropping Operations & Harvesting	The work of preparing the ground for planting, cultivating, tending and harvesting the crop agreed to be grown and other work reasonably required for that purpose according to good farming practice.

EU/Government Supports	Single Farm Payments and other financial supports or subsidies for farming provided by the EU, national or local government or other bodies.
Included Equipment	The plant, machinery, equipment and implements specified in TABLE A PART 2 and in TABLE B herein which it is intended will be made available for use in carrying out the share farming agreed in this document.
Livestock	Any bovine, ovine or other animals set out in TABLE E hereto
Livestock Keeping	Includes the feeding, breeding, tending, herding and management of Livestock and its the acquisition and disposal
Produce	Any crops grown on the included lands for food, energy, fibre or for any other purpose but excludes Livestock
REPS	Rural Environment Protection Scheme (REPS) and Natura 2000 Scheme.
Single Farm Payment	Payment entitlements based on area under the Single Payment Scheme of the EU Common Agricultural Policy.

**2. TABLES**

**TABLE A PART 1**

TABLE setting out the lands the property of the Landowner (Outlined in \_\_\_\_\_ and marked \_\_\_\_\_ on the attached map) on which it is intended that the share farming agreed in this document will be carried out

<b>Details of land:</b>				
<b>Freehold/Leasehold</b>				
<b>Folio No. etc</b>				
<b>Registered Owner(s)</b>				
<b>Area (ha)</b>				
<b>Parcel Number(s)</b>				
<b>LPIS</b>				
<b>Name of person claiming SFP</b>				

**TABLE A PART 2**

TABLE setting out the plant, machinery, equipment and implements provided by the Landowner, if any, which it is intended will be made available for use in carrying out the share farming agreed in this document.

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**TABLE A PART 3**

TABLE setting out full details of the crops that have been grown on, the fertility status of and the lime applied in recent years to the Included Lands.

<b>Field (LPIS)</b>	<b>Cropping history</b>			<b>Fertility status</b> (for previous soil samples) (Optional)			<b>pH, Lime (t) applied &amp; Year of application</b>
	<b>Year (2009)</b>	<b>Year (2008)</b>	<b>Year (2007)</b>	<b>Year sampled</b>	<b>P Index</b>	<b>K index</b>	

**TABLE B**

TABLE setting out the items of the plant, machinery, equipment and implements and other assets which it is intended will be made available for use by the Share Farmer in carrying out the share farming agreed in this document.

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**TABLE C**

TABLE setting out EU/Government supports, REPS, Compensatory Allowance Scheme Payments and quotas available to the Landowner in relation to the Included Lands and to be allocated as set out in this Agreement.

<b>Type of Entitlements</b>				
<b>Number of Entitlements</b>				
<b>Value of each entitlement</b>				
<b>Total Value of Entitlements</b>				

Other

<b>Type of Subsidy/Payment</b>				
<b>Value</b>				

**TABLE D**

TABLE setting out EU/Government supports, REPS, Compensatory Allowance Scheme Payments and quotas available to the Share Farmer in relation to the Included Lands and to be allocated as set out in this Agreement.

<b>Type of Entitlements</b>				
<b>Number of Entitlements</b>				
<b>Value of each Entitlements</b>				
<b>Total Value of Entitlements</b>				

**TABLE E PART 1**

TABLE setting out Livestock owned by the parties before commencement of the agreement and their agreed market value.

	<b>Landowner</b>		<b>Share Farmer</b>	
<b>Type of animal</b>	<b>No. of animals</b>	<b>Average Value</b>	<b>No. of animals</b>	<b>Average Value</b>

**TABLE E PART 2**

TABLE setting out shares in which Livestock described in PART 1 of this TABLE are owned on commencement of this Agreement.

	<b>Landowner percentage of ownership</b>	<b>Share Farmer percentage of ownership</b>
Beef animals		
Sheep		

**TABLE F**

Table setting out agreed basis on which EU/Government supports, REPS, Compensatory Allowance Scheme Payments, other subsidies and payments itemised in this table are to be allocated.

**TABLE F PART 1****Items claimed and provided by the Landowner**

<b>Item</b>	<b>Farm owner %</b>	<b>Share farmer %</b>

**TABLE F PART 2****Items claimed and provided by the Share Farmer**

<b>Item</b>	<b>Farm Owner %</b>	<b>Share farmer %</b>



**TABLE G PART 2**

Proportion in which it is agreed that Livestock costs are to be discharged.

<b>LIVESTOCK COSTS:</b>		
<b>Item</b>	<b>Landowner %</b>	<b>Share Farmer %</b>

**TABLE H PART 1**

Proportion in which it is agreed that Produce after harvesting shall belong to the parties.

<b>Item</b>	<b>Landowner %</b>	<b>Share farmer %</b>

**TABLE H PART 2**

Details of how it is agreed that produce is to be stored and marketed or otherwise disposed of by the Share Farmer in accordance with Clause 7.3:

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**TABLE I**

Name of Facilitator	
Address of Facilitator	
Phone No. of Facilitator	

### **3. WARRANTIES**

- 3.1 Each of the parties to this Agreement warrants that he/she has full power and authority to enter into and perform this Agreement.
- 3.2 The Landowner hereby unreservedly warrants the following information:
  - 3.2.1 The Landowner is entitled to exclusive possession of the Included Lands as set out in TABLE A herein.
  - 3.2.2 The Landowner has supplied to the Share Farmer prior to the execution of this Agreement full copies of all soil tests carried out on the Included Lands in the last five years.
  - 3.2.3 The crops that have been grown on, the fertility status of and the lime applied in recent years to the Included Lands are as stated in TABLE A PART 3 above
  - 3.2.4 The Landowner is entitled to claim in relation to the Included Lands the EU/Government Supports, REPS, Compensatory Allowance Scheme Payments and quotas that are set out in the TABLE C herein.
- 3.3 The Share Farmer hereby unreservedly warrants that all EU/Government Supports REPS, Compensatory Allowance Scheme Payments and quotas that the Share Farmer is entitled to claim in relation to the Included Lands are set out in TABLE D herein.
- 3.4 Each party warrants in respect of any animals provided by that party as set out in TABLE E herein that full details of the current disease status according to Department of Agriculture, Fisheries and Food regulations and/or records of those animals and any herd/flock of which they have been part has been furnished to the other party.

### **4. COMMENCEMENT AND DURATION**

- 4.1 The Share farming agreement shall commence on ..... and shall continue until ..... when it shall terminate unless renewed.
- 4.2 Either party may request the other to confirm in writing, not later than three calendar months prior to expiration of the agreement, or decline a willingness to renew or renegotiate the agreement for a further term. In the event that the parties confirm this to one another, then the agreement may be renewed or renegotiated accordingly, but unless both so confirm and execute a fresh agreement in writing prior to the expiry date, the agreement shall not be extended beyond the termination date agreed.

### **5. FORMATION, ASSETS & RESOURCES USED**

- 5.1 The Landowner shall set apart and allow to be used solely for the purpose of this Agreement the Included Land and neither the Landowner nor the Share Farmer shall during the continuance of this Agreement deal with it in any way adverse to this Agreement or the rights or obligations of the parties under this Agreement.
- 5.2 The Landowner hereby undertakes with the Share Farmer not to sell, alienate, or deal with the Included Lands during the course of this Agreement in any way that would adversely affect the rights of the Share Farmer hereunder and or the performance of this Agreement without the prior consent in writing of the Share Farmer.
- 5.3 The Landowner shall use his best endeavours to ensure that the Included Land has the benefit of an adequate water supply an electricity supply and that they are maintained to a good and sufficient standard. The day to day management of such supplies shall be the responsibility of

the Share Farmer. The costs of such supplies shall be borne in accordance with the provisions of TABLE G herein.

- 5.4 The parties agree to use and make available for use in accordance with the terms hereof the Included Equipment and other assets, of the Landowner and the Share Farmer described in TABLES A, B, C, D & E herein in order to establish a share farming arrangement for the separate benefit of each of the parties on the terms and conditions set out in this Agreement and otherwise perform and observe their respective obligations under it including and in particular the obligations to make payments and contributions to each other pursuant to the provisions of Clauses 13.2 and 13.4 dealing with Supports and Contributions.
- 5.5 Nothing in this Agreement nor anything done in pursuance of this Agreement shall create or be deemed to create a tenancy, partnership, relationship of principal and agent, or contract of employment between the parties.
- 5.6 The Share Farmer shall provide the items of the Included Equipment listed in TABLE B to complete to a good standard in a timely manner the Cropping Operations and Harvesting required under this Agreement.
- 5.7 The Landowner shall provide the items of the Included Equipment listed in the TABLE A PART 2 herein to facilitate the completion to a good standard in a timely manner the Cropping Operations and Harvesting required under this Agreement.
- 5.8 The Landowner and the Share Farmer respectively shall ensure that at the commencement of this Agreement all items of the Included Equipment provided by each of them respectively shall be in sound working order and free from any defect that would make it unsuitable for the use for which it is intended under this Agreement or render it a danger to the person working with or operating it or to any third party.
- 5.9 Unless otherwise expressly provided under Clause 9.1 herein the maintenance and running costs of each item of Included Equipment including fair wear and tear shall be borne directly by the party who provides that item.
- 5.10 The Landowner shall ensure that at the commencement of this Agreement all boundary fences, and other necessary internal fences, hedges, drainage, buildings, erections, and other required facilities on the Included Land are in such order as will enable the Share Farmer to safely and efficiently carry out his obligations on foot of this Agreement

## **6. PROVISION OF LABOUR**

- 6.1 The Share Farmer shall supply all labour necessary at all times for the full and adequate implementation of this Agreement
- 6.2 Prior to taking a holiday or time off (or if the Share Farmer is unable, through sickness, to perform the Share Farmer's duties), the Share Farmer shall arrange, at the Share Farmer's expense, for a competent replacement, to be agreed by the Landowner (and that agreement shall not be unreasonably withheld) or delayed, to perform the Share Farmer's duties during the Share Farmer's absence

## **7. CROP PRODUCTION**

- 7.1 Such crops as may be agreed between the parties shall be grown on the Included Land and all Cropping Operations and Harvesting necessary or appropriate for their profitable cultivation shall be carried out in a timely manner in accordance with good farming practice.

- 7.2 The Produce of the land which is the subject of this Agreement shall after harvesting belong to the Landowner and the Share Farmer in the proportions stated in TABLE H PART 1 to this Agreement. If and when that Produce is divided that division shall be made so that each party's portion shall be equal in quality in all respects and so that there shall be equality in the value of each portion pro rata with the said proportions.
- 7.3 Where the parties have agreed and specified in TABLE H PART 2 how Produce will be stored, marketed or otherwise disposed of the Share Farmer shall take all necessary steps to comply with the terms agreed as set out in that table and pending its disposal to ensure that harvested but unsold produce is stored appropriately to prevent deterioration.
- 7.4 If the parties have not agreed and specified terms for the purposes of TABLE H PART 2 and fail to do so within one week from the completion of the harvest of the Produce the provisions of the FIRST SCHEDULE shall apply.
- 8. LIVESTOCK**
- 8.1 Where it is intended that the parties will engage in Livestock Keeping it is a pre-condition to this Agreement coming into effect that the parties agree a policy for the overall management and direction of the Livestock Keeping and the animal husbandry system to be followed and that they nominate one of them as Herd Keeper for Herd Registration purposes in writing with the Department of Agriculture. The highest standards shall be observed in the conduct of all aspects of Livestock Keeping carried out under this Agreement
- 8.2 The agreed policy on Livestock Keeping and animal husbandry shall be reviewed at the three-monthly meetings referred to in Clause 21.2
- 8.3 The nominated Herd Keeper shall keep all records required by statute in relation to animals.
- 8.4 For avoidance of doubt it is expressly agreed that registration by one of the parties as keeper of an animal for the purposes of this Agreement shall not imply ownership other than as expressly stated elsewhere in this Agreement.
- 8.5 The animals listed in TABLE E PART 1 under the names of each of the parties have been provided by each of them for the purposes of the share farming arrangement established by this Agreement. The parties agree and acknowledge that immediately prior to the Commencement Date these animals are valued as therein set out. With effect from the Commencement Date each of these animals shall be owned by the parties in the undivided shares expressed in percentages in TABLE E PART 2. Any balancing payment necessary on the basis of these valuations to give effect to ownership in these shares shall be made on the signing of this Agreement.
- 8.6 Stock purchased or otherwise acquired during the course of this Agreement shall belong to the parties in the undivided shares specified in TABLE E PART 2
- 8.7 If livestock are sold during the course of this agreement the proceeds will be divided between the parties proportionately with the undivided shares specified in TABLE E PART 2
- 8.8 On the termination of this Agreement (except in the event of death of either party) any remaining Livestock shall be divided between the parties proportionately in value according to the undivided shares specified in TABLE E PART 2. If the parties cannot agree on the values of the animals to be divided or on a method for fixing those values within one week from the date of termination all animals subject to this Agreement shall be sold as soon as possible to *bona fide*

buyers acting at arms length and the proceeds divided proportionately with the undivided shares specified in TABLE E PART 2

- 8.9 If either party becomes aware of the occurrence of or has a reasonable suspicion of occurrence of a notifiable disease in any of the livestock the subject matter of this agreement, or in any herd belonging to either party, then that party shall notify the other party forthwith and each party shall immediately take all steps to comply with all relevant and operative Department of Agriculture regulations or Statutory provisions.

## **9. COSTS AND EXPENSES**

- 9.1 The cost items specified in the TABLE G will be paid for by the parties in the proportions set out in that Table.
- 9.2 If one party makes any such payment in its entirety except as agreed herein he shall be reimbursed by the other party in accordance with the proportion as set out in TABLE G on foot of an invoice for that amount addressed to him by the party paying the reimbursement.
- 9.3 Any costs or expenses to be discharged by either the Landowner or the Share Farmer under this Agreement shall be discharged by the party responsible promptly and in accordance with the terms of credit of the supplier and that party shall obtain and retain appropriate invoices and receipts and produce them to the other party hereto if and when requested.

## **10. SALES OF PRODUCE AND LIVESTOCK**

- 10.1 Unless otherwise expressly agreed in writing between the parties each party's portion of the Produce and Livestock shall be dealt with as that party may determine.
- 10.2 Provided they have agreed to do so and agreed in writing in advance on the price, the payment terms and other conditions of sale, whether in TABLE H or otherwise the Share Farmer's portion of the Produce or share of Livestock may be offered for sale by the Landowner in conjunction with the sale by him of his own portion of the Produce or share of the Livestock and it may be sold by the Landowner as agent for and on behalf of the Share Farmer. In any such case the gross receipts received for the Produce shall belong to the parties in the same proportions as the Produce or shares in the Livestock belong to them.
- 10.3 Provided they have agreed to do so and agreed in writing in advance on the price, the payment terms and other conditions of sale, whether in TABLE H or otherwise the Landowner's portion of the Produce or share of Livestock may be offered for sale by the Share Farmer in conjunction with the sale by him of his own portion of the Produce or share of the Livestock and it may be sold by the Share Farmer as agent for and on behalf of the Landowner. In any such case the gross receipts received for the Produce shall belong to the parties in the same proportions as the Produce or shares in the Livestock belong to them.
- 10.4 In any case where the Share Farmer receives the proceeds of sale of the Landowner's portion of the Produce or share of Livestock he shall do so as trustee for and on behalf of the Landowner and shall ensure that the Landowner receives the same promptly and in any event within 14 days and shall not retain any part thereof save as permitted by the provisions of the SECOND SCHEDULE PART D where the Landowner has failed or refused to pay monies due and owing to the Share Farmer under this Agreement and then only that amount.
- 10.5 In any case where the Landowner receives the proceeds of sale of the Share Farmer's portion of the Produce or share of Livestock he shall do so as trustee for and on behalf of the Share Farmer and shall ensure that the Share Farmer receives the same promptly and in any event within 14 days and shall not retain any part thereof save as permitted by the provisions of the SECOND

SCHEDULE PART D where the Share Farmer has failed or refused to pay monies due and owing to the Landowner under this Agreement and then only that amount.

10.6 Save where the provisions of this Agreement otherwise expressly provide or where in accordance with this document other arrangements have been agreed between them the parties shall account to each other and otherwise comply with the provisions of the SECOND SCHEDULE hereto.

## **11. LICENCE**

11.1 The Landowner hereby grants a non-exclusive licence on the terms set out in the THIRD SCHEDULE hereto to the Share Farmer to farm the Included Lands with the Landowner and not to his exclusion by the carrying out of Cropping Operations & Harvesting and Livestock Keeping on the Included Lands.

11.2 The licence hereby granted shall be limited to activities necessitated by and ancillary to the proper implementation and management of the share farming arrangement agreed by the provisions of this Agreement.

11.3 Upon termination of this Agreement the licence hereby granted shall cease and the Share Farmer shall thereupon vacate and leave the Included Lands in a clean and tidy condition. If the Share Farmer fails to do so, the Landowner is entitled to have them cleaned and tidied and recover the cost from the Share Farmer.

## **12. OWNERSHIP OF GROWING CROPS**

12.1 Growing crops on the land shall belong to the Landowner until severed but shall be held by him subject to the rights and interests of the Share Farmer therein pursuant to the provisions of this Agreement and in particular may not be sold or disposed of by the Landowner without the written consent of the Share Farmer.

## **13. SUPPORTS AND CONTRIBUTIONS**

13.1 If the Landowner has entitlements to any EU/Government Supports, REPS, Compensatory Allowance Scheme Payments, Other Subsidies and payments referred to in Clause 13.2 below then the Landowner shall apply for such payments in good time and shall keep the Share Farmer fully informed of all communications received concerning the same and shall immediately notify the Share Farmer when payment is received in any case where Clause 13.2 applies.

13.2 The Landowner covenants and undertakes with and to the Share Farmer in consideration of the Share Farmer entering into this Agreement to pay to the Share Farmer a sum equal to such percentage as may be specified in TABLE F PART 1 herein of the amount that the Landowner receives during the term of this Agreement pursuant to his entitlement to the EU/Government Supports described in TABLE F PART 1, same to be paid within the period specified for payment in TABLE F PART 3.

13.3 If the Share Farmer has entitlements to any EU/Government Supports, REPS, Compensatory Allowance Scheme Payments, Other Subsidies and payments referred to in Clause 13.4 below then the Share Farmer shall apply for such payments in good time and shall keep the Landowner fully informed of all communications received concerning the same and shall immediately notify the Landowner when payment is received in any case where Clause 13.4 applies.

13.4 The Share Farmer covenants and undertakes with and to the Landowner in consideration of the Landowner entering into this Agreement, to pay to the Landowner a sum equal to such percentage as may be specified in TABLE F PART 2 hereto of the amount that the Share Farmer receives during the term of this Agreement pursuant to his entitlement to the EU/Government

Supports, REPS, Compensatory Allowance Scheme Payments, Other Subsidies and payments described in TABLE F PART 2 same to be paid within the period specified for payment in TABLE F PART 3.

13.5 For avoidance of doubt it is expressly agreed that notwithstanding the provisions of clause 13.2 and 13.4 above this Agreement shall not confer any, right or interest on one party in the EU/Government supports, REPS, Compensatory Allowance Scheme Payments, other subsidies and payments of the other party during, after, or at the termination of this Agreement.

13.6 Save where the statutory or regulatory provisions governing the same otherwise provide the parties agree that nothing in the Agreement shall affect the entitlement of either party to any EU/Government supports, REPS, Compensatory Allowance Scheme Payments, other subsidies and payments.

#### **14. OCCUPATIONAL SAFETY AND HEALTH**

14.1 The Landowner and the Share Farmer acknowledge that safety in the workplace is a priority to both parties and that both parties will take all practicable measures to ensure safe working conditions and to comply with the Safety, Health and Welfare at Work Act 2005 and all applicable statutory provisions and regulations.

14.2 The Share Farmer and the Landowner hereby undertake to notify each other and all relevant insurers at once of the occurrence of any accident / serious damage / injury that shall occur in the course of this Agreement or on the lands of the Landowner or in the course of the implementation of this Agreement.

#### **15. INSURANCE AND INDEMNITY**

15.1 The Landowner agrees to maintain adequate policies of insurance to cover employer's, public and occupier's liability in relation to the Included Lands, buildings, plant and machinery (including motor vehicles) owned by him or provided by him for the purposes of this Agreement.

15.2 The Share Farmer agrees to maintain adequate policies of insurance to cover employer's, public and occupier's liability in relation to the Included Lands, buildings, plant and machinery (including motor vehicles) owned by him or provided by him for the purposes of this Agreement.

15.3 A copy of any policy of insurance required to be effected by a party under this Agreement shall be furnished to the other party if requested together with the receipt for the latest or current premium.

15.4 The Share Farmer shall not be liable for fair wear and tear arising from reasonable use or for damage by fire, earthquake, flood, storm, act of God, inevitable accident or any risk against which the Landowner shall have insurance cover pursuant hereto unless the insurance monies are rendered irrecoverable in consequence of any act or default of the Share Farmer or his agents. Notwithstanding the provisions of this clause, hedges shall be cut and trimmed as directed by the Landowner but in the event of the hedges not having been cut or trimmed within the period of three years preceding the commencement of this agreement the cost of the first cutting or trimming shall be borne by the Landowner.

15.5 The Share farmer shall use his best endeavours to ensure that Livestock are adequately monitored to prevent straying or damage to the property of third parties, and will indemnify the Landowner against all actions costs demands by third parties arising out of any breach of this provision.

## **16. PREVENTION AND RESOLUTION OF DISPUTES**

- 16.1 Any dispute as to the terms and conditions of this Agreement and/or as to the subject matter hereof shall be resolved or determined in accordance with the provisions of this Clause.
- 16.2 Any such dispute shall in the first instance be referred to a Facilitator before it may be referred to Arbitration hereunder.
- 16.3 The facilitator shall be the person named in TABLE I or any third party agreed by the Parties. The Facilitator shall have the power to nominate at his/her discretion, having consulted with the Parties another person with particularly relevant skills to act in their place as Facilitator. The Facilitator shall also have the power to consult such a person while acting as Facilitator.
- 16.4 The opinion or recommendation of the facilitator shall not be legally binding unless adopted by both parties and reduced to writing and recorded and signed as having being agreed between them.
- 16.5 Any dispute, which is not resolved by referring it by agreement to a Facilitator under clause 16 hereof, shall be referred in the first instance to conciliation in accordance with the provisions specified in the FOURTH SCHEDULE hereto before being referred to arbitration.
- 16.6 All disputes, which arise between the parties, and which have not been resolved by the intervention of the facilitator or under Clause 16.2 hereof, or by the conciliation process set out in the SECOND SCHEDULE hereto may be referred by either of the Parties or both to a single Arbitrator who shall have all the powers provided for an Arbitrator in the Arbitration Acts 1954 to 2010.
- 16.7 If the parties fail to agree on the choice of the Arbitrator, then the arbitrator shall be nominated by the President for the time being of the Law Society.
- 16.8 The Arbitrator shall have full power to dissolve this share farming agreement should he think fit.
- 16.9 Any decisions made by the Arbitrator shall be final and binding on all parties.

## **17. DEATH OF A PARTY**

- 17.1 If the Share Farmer dies during the period of the agreement, this agreement will terminate as from the date of death except that the Landowner shall be at liberty to employ another contractor to complete the obligations of the Share Farmer hereunder in respect of any crop that has been planted in which case the personal representatives of the Share Farmer shall be entitled to any monies due to the Share Farmer from the sale of that crop in accordance with this agreement less the cost of the services of the said contractor.
- 17.2 In the circumstances outlined in Clause 17.1 the Landowner shall have the right without further consent or agreement from the Personal Representatives of the Share Farmer to sell the entire crop when harvested at the best commercial terms reasonably available and shall account to the Personal Representatives of the Share Farmer for the Share Farmer's share of the proceeds of sale in accordance with this Agreement but subject to the provisions of clause 17.1
- 17.3 If the Landowner dies during the period of the agreement, the agreement shall terminate when the harvest of any crop that has been planted before that date is completed and the Personal Representatives of the Landowner shall be paid any monies due to the Landowner on foot of this Agreement but shall have no right to participate in the farming activities contemplated by this Agreement nor to interfere in any way with the Cropping Operations and Harvesting undertaken by the Share Farmer until the date the Agreement shall terminate.

- 17.4 In the circumstances outlined in Clause 17.3 the Share Farmer shall have the right without further consent or agreement from the Personal Representatives of the Landowner to sell the entire crop when harvested at the best commercial terms reasonably available and shall account to the Personal Representatives of the Landowner for the Landowner's share of the proceeds of sale in accordance with the provisions of this Agreement but subject to the provisions of this Clause.
- 17.5 In the event of the death of either party all Livestock coming within the terms of this Agreement shall be divided between the surviving party and the personal representatives of the deceased party proportionately in value according to the undivided shares specified in TABLE E PART 2 hereof. If they cannot agree on the values of the animals to be divided or on a method for fixing those values within one month from the date of death of the deceased party all animals subject to this Agreement shall be sold to *bona fide* buyers acting at arms length and the proceeds divided proportionately with the undivided shares specified in TABLE E PART 2 hereof.

## **18. DISSOLUTION**

- 18.1 If the Share Farmer commits a serious breach or persistent breaches of any kind of the agreement, the Landowner may give the Share Farmer notice in writing to remedy the breach or breaches and, if the breach or breaches are not rectified within 10 working days or recur, the Landowner may terminate the agreement immediately by serving notice in writing to that effect on the Share Farmer.
- 18.2 Where this Agreement is terminated pursuant to Clause 18.1 the Landowner shall be at liberty to employ another contractor to complete the obligations of the Share Farmer hereunder in respect of any crop that has been planted in which case the Share Farmer shall be entitled to any monies due to the Share Farmer from the sale of that crop in accordance with this Agreement less the cost of the services of the said contractor but without prejudice to the rights of the Landowner to recover damages for breach of the agreement, and without prejudice to any other rights of the Landowner, and also without prejudice to the Share Farmer's rights to refer the matter to conciliation under Clauses 16
- 18.3 If the Landowner commits a serious breach or persistent breaches of any kind of the agreement, the Share Farmer may give the Landowner notice in writing to remedy the breach or breaches and, if the breach or breaches are not rectified within 10 working days or recurs, the Share Farmer may terminate the agreement with effect from the completion of the harvest of any crop that has been planted before that date by serving notice in writing of his intention to do so on the Landowner.
- 18.4 Where the Share Farmer serves Notice of his intention to terminate this Agreement pursuant to Clause 18.3 of the agreement, the agreement shall terminate when the harvest of any crop that has been planted before that date is completed and the Landowner shall be paid any monies due to the Landowner on foot of this Agreement but shall have no right to participate in the farming activities contemplated by this Agreement nor to interfere in any way with the Cropping Operations and Harvesting undertaken by the Share Farmer until the date the Agreement shall terminate but without prejudice to the rights of the Share Farmer to recover damages for breach of the agreement, and without prejudice to any other rights of the Share Farmer, and also without prejudice to the Landowner's rights to refer the matter to conciliation under Clause 16.
- 18.5 Where the Landowner pursuant to Clause 18.1 of this Agreement, or the Share Farmer pursuant to Clause of 18.3 of the Agreement, serves notice of his intention to terminate this Agreement any remaining livestock coming within the terms of this Agreement shall be divided within one week of service of that notice between the parties proportionately in value according to the

undivided shares specified in TABLE E PART 2. If the parties cannot agree on the values of the animals to be divided or on a method for fixing those values within one week from the date of service of the said notice of termination all animals subject to this Agreement shall be sold as soon as possible to *bona fide* buyers acting at arms length and the proceeds divided proportionately with the undivided shares specified in TABLE E PART 2

- 18.6 On termination of this Agreement any seeds, fertilisers, lime, sprays, feedstuff or other materials acquired and paid for jointly under this Agreement and still held in stock shall belong to the parties *pro rata* with the manner in which the cost thereof has been discharged, taking into account any contribution made by one party to the other party.
- 18.7 If either party disputes the right of the other party to terminate the Agreement, the dispute may be referred to facilitation/conciliation under Clause 16
- 18.8 If either party shall become bankrupt or insolvent or compound or make any arrangement with creditors or have a petition for a bankruptcy order against him or her presented to the court or insolvency proceedings commenced this Agreement shall terminate.

## **19. STATUTORY OBLIGATIONS & RECORDS**

- 19.1 Each party shall keep proper and true records of all farming and other operations carried out under this Agreement and shall if requested make them available for inspection by the other party or his agent at any reasonable time on reasonable notice and each party shall keep proper and separate books of accounts in respect of expenditure and receipts under this Agreement.
- 19.2 Each Party agrees to take all steps necessary to facilitate any inspection requested or notified by the Department of Agriculture, Local Authorities, Teagasc or any other Statutory Body in the exercise of their statutory functions and hereby covenants to comply, promptly, fully and adequately with any request for information or requirement by the Department of Agriculture or by such Statutory Body in connection with the same.
- 19.3 All Statutory and regulatory provisions applicable to the subject matter of this Agreement shall be complied with in full. Unless otherwise expressly provided in this Agreement, or agreed in writing between the parties, where the relevant provision applies to the Included Land at the date of commencement of this Agreement, the Landowner shall have responsibility for compliance; where the relevant provision applies to any item of the Included Equipment or other asset provided by either of the parties hereto, the party who provided same shall have responsibility for compliance; however, where the provision applies to the conduct of Cropping Operations and Harvesting the Share Farmer shall have responsibility for compliance; and where the provision applies to the conduct of Livestock Keeping the herd keeper shall have responsibility for compliance, except where otherwise agreed. In any other case responsibility shall rest with the Landowner and the Share Farmer jointly and costs of compliance shall be shared in the same ratio as the parties have agreed to share the produce according to this Agreement.

## **20. PENALTIES**

- 20.1 Each of the parties covenants with the other to comply fully in every respect in the course of the implementation of this Agreement with all requirements of any Department of Agriculture or EU support schemes (including Single Payment, Reps, Compensatory Allowance Scheme Payments) relevant or applicable to the undertaking hereby agreed.
- 20.2 If any penalty be levied on the Landowner as a result of non-compliance with any requirement of any Department of Agriculture or EU support schemes (including Single Payment, Reps, Compensatory Allowance Scheme Payments) in respect of any lands other than the Included Lands or arising from any activity of the Landowner not connected with or resulting from the

implementation of this Agreement, with the result that any benefit specified in TABLES C or TABLE D hereto is adversely affected or reduced, or any penalty imposed that would adversely impact hereon, the Landowner shall indemnify the Share Farmer fully in respect of any loss or damage or reduced income resulting therefrom.

- 20.3 If any penalty be levied on the Share Farmer as a result of non-compliance with any requirement of any Department of Agriculture or EU support schemes (including Single Payment, Repts, Compensatory Allowance Scheme Payments) in respect of any lands other than the Included Lands or arising from any activity of the Share Farmer not connected with or resulting from the implementation of this Agreement, with the result that any benefit specified in TABLES C or TABLE D hereto is adversely affected or reduced, or any penalty imposed that would adversely impact hereon, the Share Farmer shall indemnify the Landowner fully in respect of any loss or damage or reduced income resulting therefrom.
- 20.4 Each of the parties hereby undertakes to fully indemnify and keep indemnified the other against any loss or penalty sustained as a result of failure by that party to comply with the terms of clause 20.1 hereof.
- 20.5 The Share Farmer shall bear no responsibility for any obligations of the Landowner under cross compliance, REPS, EU, Government or Local Authority requirements arising solely from any land, buildings or activities that are not the subject matter of this Agreement.
- 20.6 The Landowner shall bear no responsibility for any obligations of the Share Farmer under cross compliance, REPS, EU, Government or Local Authority requirements arising solely from any land, buildings or activities that are not the subject matter of this agreement.

## **21. MISCELLANEOUS/OTHER**

- 21.1 Neither the Share Farmer nor the Landowner shall assign any of his rights, privileges or benefits under this Agreement without the prior consent in writing of the other party.
- 21.2 The parties shall meet at least once in every three months to review the farming operations under this Agreement and after each harvest they shall review the farming policy for the following farming year. Notes shall be kept of decisions made at meetings.
- 21.3 Where one party is registered for VAT and the other is not any sharing of costs and of proceeds shall be calculated on the amounts that are exclusive of VAT and flat-rate addition.
- 21.4 Should this Agreement be silent on any matters or things becoming in dispute between the parties then such matters or things shall be determined in accordance with any recognised custom prevailing and in accordance with good husbandry and farming practice and in default of agreement dealt with pursuant to Clause 16 dealing with the Prevention And Resolution of disputes.
- 21.5 Any reference to any party to this Agreement shall include his or her successors in title and personal representatives, by and against whom, subject as herein appearing; this Agreement shall be enforceable as if they had been originally named as parties.
- 21.6 Where the context so requires words importing the singular number shall include the plural and vice versa and words importing the masculine gender shall include the feminine and neuter and vice versa.
- 21.7 A notice shall be deemed to have been served at the time of service if it was served personally or directed to the intended recipient and sent by ordinary pre-paid post to the address of that party

set out in this Agreement, and if so directed by ordinary pre-paid post it shall be deemed to have been served 48 hours after the envelope containing the same was put in the post.

- 21.8 This Agreement supersedes any previous agreement between the parties in relation to the subject matter hereof and is executed in original and counterpart.

### **FIRST SCHEDULE**

Manner in which each party's portion of the produce will if the parties have not agreed and specified terms for the purposes of TABLE H PART 2 and fail to do so within one week from the completion of the harvest of the Produce.

#### **A. LANDOWNER'S PORTION**

1. The Landowner's portion of the produce shall be placed in storage by the Share Farmer in such storage facilities as are available on the Included Land and best suited for that purpose.
2. If no such storage facilities exist then the Share Farmer may arrange for the Landowner's portion of the produce to be deposited at a reasonable location as he may consider best suitable for that purpose having given 24 hours notice to the Landowner in advance.
3. The Share Farmer shall have no liability to the Landowner for any loss or damage suffered to the produce or otherwise, or for any costs caused to the Landowner by virtue of the Share Farmer's dealing with the Landowner's portion of the produce in accordance with the provisions of this Schedule where this Agreement provides that they should apply.

#### **B. SHARE FARMER'S PORTION.**

1. The Share Farmer's portion of the produce shall be removed from the Included Land within 14 days from the date of service by the Landowner on the Share Farmer of notice in writing requiring him to do so.
2. If the Share Farmer shall fail or refuse to do so within the time allowed the Landowner shall be entitled to arrange for the Share Farmer's portion of the produce to be placed in storage in such storage facilities as are available on the Included Land as the Landowner may decide or to arrange for the same to be deposited at such location on the Included Land as he may consider best suited for that purpose and shall be entitled but without being obliged to do so to sell the Share Farmer's portion of the produce as agent for the Share Farmer on such terms as the Landowner may reasonably decide without liability to the Share Farmer for any loss thereby occurring.
3. In any case where the Landowner sells the Share Farmer's portion of the produce he shall be obliged to account to the Share Farmer for the proceeds of sale after deducting therefrom any reasonable costs incurred in doing so or other loss suffered by the Landowner as a result of the Share Farmer's failure or refusal to remove his portion of the produce from the Included Land within the time allowed in paragraph 1 above.
4. If the Share Farmer shall fail or refuse to remove his portion of the produce from the Included Land within the time allowed by paragraph B1 above the Landowner shall be entitled to serve notice in writing on the Share Farmer of his intention to arrange for the dumping or destruction of the Share Farmer's portion of the produce and if he shall still fail or refuse to remove it within a further period of 14 days from the date of service of such notice the Landowner shall be

entitled to arrange for the Share Farmer's portion of the produce to be destroyed or dumped and to recover the costs of doing so from the Share Farmer.

5. The Landowner shall have no liability to the Share Farmer for any loss or damage suffered to the produce or otherwise by virtue of his dealing with the Share Farmer's portion of the produce in accordance with the provisions of this Schedule where this Agreement provides that they should apply.

## **SECOND SCHEDULE**

### **A. COST ITEMS TO BE PAID FOR JOINTLY**

1. Where a cost item is to be paid for jointly by the parties each of them will contribute their proportions of the costs incurred on or before the date due for the payment of same.
2. Unless the parties have otherwise agreed each party shall arrange for the payment of his proportion of the cost directly to the supplier.
3. The parties may agree that one or other of them will liaise with the supplier and in that case the party doing so will provide full and accurate details of all dealings with the supplier to the other party and produce for inspection by the other party all delivery dockets, invoices, statements and receipts as soon as practicable after such documents are received and allow copies to be taken, if requested.
4. The party liaising with the supplier shall be entitled to notify the supplier of the joint liability of the parties and the proportions in which they have agreed to share the cost item.

**PROVIDED ALWAYS** that in any case where a party having joint responsibility for the discharge of a cost item fails to contribute his proportion on or before the due date for payment the other party shall be entitled to discharge the entire amount due and recover the proportion of the other party on demand together with interest thereon at the Specified Interest Rate, as defined below, from the date on which a demand for the payment of same is made in writing until actual payment.

### **B. COST ITEMS TO BE PAID FOR BY ONE PARTY – REIMBURSEMENT BY THE OTHER**

1. In any case where a cost is to be paid for by one party but subject to reimbursement in whole or in part by the other party then the party responsible shall pay for it in accordance with the terms of payment of the supplier.
2. Save where the parties otherwise agree in writing a party obliged to reimburse the other party in respect of the whole or part of a cost item shall do so within 14 days from receipt of a demand therefor by the party who has paid the cost item but only subject to such demand being accompanied by a copy of the relevant invoice and proof of payment.
3. If a party obliged to reimburse another party shall fail to do so within the time allowed he shall be obliged to pay interest thereon at the Specified Interest Rate, as defined below, from the date on which a demand for the payment of same is made in writing until actual payment.

### C. PAYMENTS BASED ON EU/GOVERNMENT SUPPORTS

In any case where the Agreement provides that one party shall pay to the other party a sum calculated by reference to the amount that the party making the payment receives pursuant to his entitlement to EU/Government Supports, REPS, Compensatory Allowance Scheme Payments, other subsidies and payments he shall pay that amount within the period at TABLE F PART 3 above. If a party is obliged to make a payment of the kind referred to above fails to do so within the time specified for the payment of same, whether demanded or not, he shall be obliged to pay interest thereon at the Specified Interest Rate, as defined below, from the date on which the relevant payment was received by him.

### D. GENERAL

1. For avoidance of doubt it is expressly agreed that any monies owed by one party to another pursuant to the terms of this Agreement may be set off against any other monies owed by that other party to the first mentioned party.
2. It is also expressly agreed that where a party fails to discharge any monies due to another party on or before the due date for payment of same in accordance with the terms hereof the party to whom the monies are owed shall be entitled to a lien over the other party's portion of the Produce and or Livestock the subject of this Agreement and shall be entitled to enforce that lien by a sale of such amount of the produce as is necessary to recover the monies due and this provision is without prejudice to any other rights or entitlement of each party hereto to sell or otherwise dispose of produce other parties in accordance with the terms of this Agreement.
3. In this Schedule "Specified Interest Rate" means the rate payable on undischarged judgments of the Courts of Ireland pursuant to the Courts Act 1981 As Amended from time to time during the period in respect of which interest is payable.

### THIRD SCHEDULE

1. The Licence hereby granted by the Landowner shall be non-exclusive to the extent that the Share Farmer, his servants, and agents, shall be entitled to carry out fully all the provisions of the Share farming Agreement and it is hereby agreed that any Licence hereby granted is to that extent amended.
2. The Licence is personal to the Share Farmer and is not intended to create a tenancy or other demise nor any interest in the premises.
3. It is hereby agreed that this Licence may only be exercised in conjunction with and in furtherance of the Share Farming Agreement to which it is annexed
4. The Share Farmer shall not be entitled to permit any other person to enter the premises or any part thereof as a licensee or otherwise without first obtaining the consent in writing of the Landowner save for the purposes of and in accordance with the terms of this Agreement.
5. The Share Farmer shall not make any structural alterations to the premises nor make any alterations whatsoever in the internal arrangements or external appearance of any buildings on the premises except with the prior consent in writing of the Landowner.
6. The Share Farmer shall maintain and keep the premises and all buildings and structures thereon and the fences including boundary fences, ditches, hedges, timber and other trees, drains, pipes, roads and paths on the Included Land or serving same in good order, repair and condition, from the

commencement of the license until it terminates and then leave it in that condition ordinary wear and tear excluded.

7. The Share Farmer shall notify the Landowner forthwith of any damage that may be occasioned to any property of the Landowner.
8. The Share Farmer shall not use the premises or permit them to be used except for the purposes of share farming.
9. The Share Farmer shall not create or allow to be created any nuisance on the premises nor do or allow to be done anything which may render the Landowner liable to any Third Party or render the Landowner liable for any more than the present rate of premium for insurance.
10. The Share Farmer agrees that the Landowner reserves the right for himself his servants or agents to enter upon the premises with such animals, vehicles and appliances as may be necessary for the discharge of any business or businesses of the Landowner at all times during the period of this license, the Landowner making good damage thereby caused.
11. At the termination of the licence the Share Farmer shall cease all use of the premises and refrain from any act that may interfere or tend to interfere with the possession and exclusive use thereof by the Landowner or any other party entitled to the use or possession thereof and shall have no further claims to or over the premises.

#### **FOURTH SCHEDULE**

Conciliation Procedure as referred to in clause 16.5 of the Agreement.

1. This procedure shall apply to any conciliation requested under clause 16.5 of the Agreement.
2. A party to the Agreement seeking conciliation shall notify the other party to that effect and shall at the same time specify the matter in dispute.
3. The parties shall agree on a conciliator, and failing agreement within 10 days of notice under Article 2, shall request the Facilitator referred to at 16.3 above or a representative of Teagasc or a Farming Organisation to appoint a conciliator.
4. The conciliator shall require the parties to submit, in advance of the hearing, a brief written opening statement and appending the necessary documentation not later than 10 working days after his appointment. The parties shall at the same time notify the conciliator of the names of the persons appearing at the conciliation.
5. The conciliator shall within 10 working days after receipt of statements and documentation establish the order of the proceedings and shall arrange a convenient time, date and place for the hearing.
6. The conciliator may consider and discuss such solutions to the dispute as he thinks appropriate or as may be suggested by either party. All information given to the conciliator is confidential and shall remain so unless authorised by the party who supplied the information.
7. The conciliator may, having informed the parties, consult independent third party experts.

8. The conciliator shall endeavour to commit the parties to reach a mutual settlement failing which he shall within 10 working days of the hearing, issue his recommendation. He shall not be required to give reasons. It shall remain confidential if rejected by either party.
9. If neither party rejects the recommendation within 10 working days after its issue, it shall be final and binding on the parties. If either party rejects the recommendation, a request for arbitration may be made under clause 16.5 of the Agreement.
10. Each party to the conciliation shall pay their own costs. The parties shall be jointly and severally liable for the conciliators costs in equal shares, unless the conciliator decides otherwise.
11. Conciliations are settlement negotiations and are without prejudice to the rights of the disputants. All statements, information and material, made, given or exchanges, orally or in writing either during the conciliation or prior thereto or thereafter upon the request of the conciliator once made in circumstances where the parties agree that same are wholly privileged and are on a without prejudice basis shall be inadmissible in any legal proceedings, in court or arbitration, to the maximum extent permitted by law. Evidence, which is otherwise admissible in legal proceedings, shall not be rendered inadmissible as a result of its use in the conciliation. The parties in dispute agree not to summon or otherwise require the conciliator to appear or testify or produce records, notes or any other information or material in any legal proceedings, in court or arbitration, and no recordings or stenographic records will be made of the conciliation.
12. Any agreement reached by the parties in dispute through conciliation shall be set down in writing and duly executed by them or their authorised representative.

SIGNED SEALED AND DELIVERED BY THE SAID:

(Landowner)

IN THE PRESENCE OF:

(Witness)

**CONSENT OF SPOUSE WHO IS CO-OWNER OR SOLE OWNER OF LANDS**

I ..... being the .....of the Landowner

- (1) hereby consent to the within agreement for the term thereof
- (2) hereby agree and declare that the person referred to in This Agreement as Landowner may deal in all respects with any joint property of us as trustee on my behalf
- (3) hereby confirm and ratify any licence hereby granted
- (4) undertake irrevocably to execute any documentation necessary to give effect hereto on request

SIGNED BY THE SAID:

(Spouse/Co-owner of Landowner)

IN THE PRESENCE OF:

(Witness)

SIGNED SEALED AND DELIVERED BY THE SAID:

(Share Farmer)

IN THE PRESENCE OF:

(Witness)