

**SPECIMEN**

**Machinery Sharing  
Agreement**

## INTRODUCTION

This specimen agreement was drawn up to assist farmers intending to enter into machinery sharing contracts. Farmers intending to enter into such an arrangement should draw up an agreed document with the help of their professional advisers. This specimen document puts forward possible clauses which could be adapted as appropriate if circumstances were applicable.

Not more than one machine should be dealt with in an agreement and separate agreements should be made if more than one machine is involved, life expectancy/usage issues etc. will differ.

This specimen document provides that parties who sign the document agree between themselves to purchase and use an item of farm machinery together.

*The main sections are as follows:*

1. In the first section the parties to this agreement, set out their names, addresses and PPS Numbers. When an agreement is reached, parties sign in this section.
2. The First Schedule contains sections to be completed by the parties to this agreement. It details the machine to be purchased, the duration of the agreement, the terms of payment and the shares of ownership in proportion to the contributions to the cost.
3. The Second Schedule contains sections to be completed by the parties to this agreement. It outlines the terms of storage and usage of the machine.
4. The Third Schedule contains details of insurance and vehicle tax.
5. The Fourth Schedule contains details of joint financial arrangements, if any, entered into by the parties together with a Lending Agency or bank.
6. The General Terms and Conditions set out detailed legal terms in the Fifth Schedule to the agreement. This part of the document contains legal detail. Although sometimes seen by people as legal jargon, the purpose of this section, however, is to provide clarity, in writing, about the rights and obligations of each party to a contract. This part of an agreement is very likely to be scrutinized in detail in the event of a difference of opinion or disagreement arising between the parties. The parties to this Agreement are advised to carefully read, understand and amend this section as necessary with the assistance of their professional advisors before finalizing and signing any agreement.

This machine will be the property of the people who enter into this agreement. Before any machine is purchased those people (who will be called 'the Parties' in this document), need to meet and discuss and agree what machine they will purchase. The following points at least, in consultation with Farming Advisors, will need to be considered:

- the area of land to be covered
- the work to be done (for each person)
- the hours worked by the machine each year
- the capacity/output and the efficiency which can be achieved
- the location of the work to be done
- make and type of machine that would be suitable

If the machine is not new, it should be examined by a qualified third party on behalf of the parties prior to purchase.

This specimen agreement envisages a situation where the machine is owned in shares which reflect exactly the shares of the purchase monies contributed by the parties. The parties should fill in the details in the spaces in the First Schedule which deal with basic matters such as the details and price of the machine, the amount each will contribute, the mechanics of paying for the machine, details of the length of the agreement, notice period necessary for opting out of the agreement, repairs, maintenance and breakages, a depreciation schedule to be agreed, and details of a Facilitator, someone to help resolve disagreements should they arise.

### **Financing**

The parties must agree between themselves, in advance, the detail of the financing of the purchase.

- Cost
- Shares of ownership
- New or second-hand
- How much each party will contribute. See notes below about financing by each individual.

### **Booking Procedure**

The Booking procedure refers to time-periods or areas when the machine is to be allocated to each party during the year. In good time before the commencement of the season's work for the machine a meeting should take place of all the parties to agree the general outlines of the procedures to be followed in the booking and using of the machine. This should take into account the area/hours of work involved for each party. This should also include the time frame of notice to be given for each booking of the machine (e.g. 4 days, 7 days, etc.). This should take into account different factors such as, the season, capacity of the machine, types of machine, etc. Notice has to be given and agreed by all parties of the period of time allocated to each party in the planner/diary. A dedicated Year Planner/Wall Chart/diary should be kept for the machine which should contain details of all bookings for the machine to prevent misunderstandings which could lead to disputes. This should be maintained by a named person and be accessible at all reasonable times to all parties.

Factors to be considered shall include location, area involved, number of hectares grown, geographic proximity, variety choice, output capacity of machine, sowing dates, expected harvesting dates, weather considerations, urgency and risk of crop damage, etc.

Details of the agreed procedures for booking can be inserted in the Second Schedule, including the name of the person taking responsibility for organising and maintaining the agreed recording system. The same person will be responsible for the logbook for the machine, ensuring that the logbook is kept up to date, and ensuring that the logbook is kept in an agreed place if not on the machine.

Details can also be inserted in the Second Schedule of agreed measures to compensate for different amounts of usage by different parties, and how these are to be worked out and paid.

The Second Schedule can also be used to record details of where the machine is to be stored, on whose land, and how that person is to be compensated. If certification of the machine is required for use, someone may be named here also who will take responsibility for getting that done.

The Third Schedule deals with Insurance and Vehicle Taxation. The notes to this section should be read carefully. The machine will be owned jointly. This fact needs to be teased out with the Insurance Company. Insurance has to cover transport by road. Self-propelled vehicles need appropriate insurance. Some one party may be named in this schedule as the person who will take responsibility for coordinating insurance and tax (where needed).

If the parties agree to take out a joint loan for the purchase – something which is not recommended because of the complications that could arise – the details may be inserted in the Fourth Schedule. In this event, the notes to this schedule should be read very carefully and the parties should not enter into such an agreement without having consulted their Solicitors and Accountants first.

### **Considerations**

1. Before commencement of the season, careful planning between all parties should take place to minimise risk.  
For example, having different and varied crops on the parties' farms would allow staggered sowing dates, staggered key operation dates, etc. and therefore the risk of clashes can be avoided where more than one farmer at a time needs the machine.
2. Depending on the weather, for example, flexibility will be required at times. It could be more productive sometimes to continue harvesting on the farm where the machine is currently working rather than move to the farm where the machine is next booked to work.
3. If there is a large distance between parties' farms and only a small area is left to complete on the farm where the machine is working, then maybe consideration should be given to completing this work before moving to the next party's farm.
4. Regular meetings, in person or by phone, should take place to ensure that the machine use is maximised and agreement continues. Tools such as WhatsApp are useful for updates and clarity.

### **Dispute Resolution**

This specimen agreement proposes that if a dispute arises, it is referred to the Facilitator named in the First Schedule. If the matter cannot be resolved by the Facilitator, it may be referred to a Conciliator – a less informal process. If it cannot be resolved by the conciliation process, it is referred to Arbitration.

*Notes and headings are inserted in this specimen document for assistance only and, if the agreement is adopted in whole or in part, they should not form part of the legal agreement.*

## **ACKNOWLEDGEMENTS**

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## **DISCLAIMER**

*This suggested specimen agreement contains material in relation to machinery sharing. It has been compiled to assist farmers to inquire and to discuss proposals and alternatives with their solicitors, financial advisers, accountants and other professional advisers. It is not intended for any other purpose. Independent advice should be obtained by each prospective party. Persons proposing to enter into a machinery sharing arrangement should request their own legal advisers to draft this document adapted to the needs and circumstances of the persons involved which complies also with the terms of all relevant legislation. This draft document is intended as a specimen only. It should not be signed in its present format or adopted, even in part, by any party who has not first taken specific legal advice from a solicitor in connection with entering into any proposed agreement and advice in relation in all relevant matters from accountants and all appropriate experts. While every effort has been made to ensure that any information contained in this specimen document is correct at the time of preparation, no liability whatsoever can be accepted by those who compiled this agreement, or by Teagasc for any loss suffered by any person as a consequence of relying on it or on any matter published in it or for any matter whatsoever.*

## MACHINERY PURCHASE AND SHARING AGREEMENT

This Agreement is made on this date: \_\_\_\_\_  
[insert date]

Between the following (hereinafter called '**the Parties**')

**1.** (Name) \_\_\_\_\_  
(Address) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
PPS Number \_\_\_\_\_

(who in this agreement is called "The **First** Party")

**And**

**2.** (Name) \_\_\_\_\_  
(Address) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
PPS Number \_\_\_\_\_

(who in this agreement is called "The **Second** Party")

**And**

**3.** (Name) \_\_\_\_\_  
(Address) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
PPS Number \_\_\_\_\_

(who in this agreement is called "The **Third** Party")

**And**

**4.** (Name) \_\_\_\_\_  
(Address) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
PPS Number \_\_\_\_\_

(who in this agreement is called "The **Fourth** Party")

The Parties to This Agreement agree to purchase and use the item of farm machinery identified at Clause 1 of the Second Schedule in this Agreement in accordance with all the terms and conditions set out in this Agreement.

SIGNED BY THE FIRST PARTY: \_\_\_\_\_

In the presence of: \_\_\_\_\_

Address of Witness: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

SIGNED BY THE SECOND PARTY: \_\_\_\_\_

In the presence of: \_\_\_\_\_

Address if Witness: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

SIGNED BY THE THIRD PARTY: \_\_\_\_\_

In the presence of: \_\_\_\_\_

Address of Witness: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

SIGNED BY THE FOURTH PARTY: \_\_\_\_\_

In the presence of: \_\_\_\_\_

Address of Witness: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

## FIRST SCHEDULE

### 1.1 Identity of machine purchased

Machine Description: \_\_\_\_\_

Manufacture\Make: \_\_\_\_\_

Model: \_\_\_\_\_

Registration Number: \_\_\_\_\_

Chassis Number: \_\_\_\_\_

Serial Number: \_\_\_\_\_

Age of machine: \_\_\_\_\_

Noted defects if purchased second hand: \_\_\_\_\_

Other identifiers: \_\_\_\_\_

If there is a GPS tracker, relevant details to be inserted here: \_\_\_\_\_

Details of Dealer/Person from whom purchased: \_\_\_\_\_

Details of Warranty: \_\_\_\_\_

### 1.2 Commencement and Duration

(1) This Agreement shall continue until the machine is disposed of unless terminated in accordance with this Agreement.

(2) A party may opt out of this agreement in accordance with the general condition 14.2 hereof having given \_\_\_\_\_ month's notice of that intention.

### 1.3 Purchase and Ownership

a) The purchase price of the machine is agreed to be: \_\_\_\_\_

b) The amount to be contributed to the purchase price of the machine by each of the parties is as follows:

Name	(A) Cash	(B) Trade-In	Total (A) + (B)	% contribution of total cost

TOTAL: \_\_\_\_\_



c) Ownership of the machine shall be in the following proportions

Name	Ownership Share	% Ownership of the machine

d) It is agreed that payment for the machine will be made in the following manner on the following date:

e) It is agreed that no party shall use their share of the machine as collateral or security for any loan or credit facility.

**1.4 Purchase with joint loan finance from a Lending Agency by all the parties together:**

- (a) The machine is agreed to be purchased with the assistance of finance as detailed in the Fourth Schedule to this agreement and a full copy of any relevant agreement is stapled to this agreement.
- (b) Each of the parties has read any relevant agreement with the said financial institution and has obtained independent professional advice in relation to it and has noted and accepts the obligations which that agreement imposes on them.
- (c) The parties agree to indemnify each other in accordance with general condition 10 of this Agreement.

**1.5 Depreciation Schedule**

Date of Valuation	Value
Value when acquired	
Value at end of year 1	
Value at end of year 2	
Value at end of year 3	
Value at end of year 4	
Value at end of year 5	
Value at end of year 6	
Value at end of year 7	
Value at end of year 8	
Value at end of year 9	
Value at end of year 10	

The parties have agreed the following annual depreciation schedule over the life of the machine:

**1.6 Facilitator**

In the event of a dispute arising, the following person will be appointed as facilitator to help resolve any issues in accordance with condition 12.1 of the General Terms and Conditions of this Agreement.

Name of Facilitator: \_\_\_\_\_

Address: \_\_\_\_\_

Email Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Signature of Facilitator: \_\_\_\_\_

Date: \_\_\_\_\_

## SECOND SCHEDULE

### 2. USE OF THE MACHINE

#### 2.1 Booking Procedure

The parties agree to book the usage of the machine as set out below:

- (1) The parties to this agreement agree to give a minimum of one week's notice to each other of the intention to use the machine.
- (2) The parties to this agreement agree that a special record/Year Planner/Wall Chart/diary/planner/online electronic diary of agreed booking procedure shall be maintained for the machine and details of all bookings for use of the machine shall be entered thereon as soon as agreed and shall be kept up to date at all times.
- (3) A logbook will be maintained for the machine in which details of use of the machine will be recorded by each party. Where appropriate the logbook will be stored safely on the machine.
- (4) The following party has agreed to be responsible for maintaining the Wall Chart/diary/record of booking procedure and entering all bookings on it and shall also ensure that the relevant logbook is kept up to date and for storing the logbook if it cannot be stored safely on the machine.

Name: \_\_\_\_\_

- (5) After each agreed period of use of the machine, the using party shall update the logbook of the machine with details of use, referring to any counter or recording system attached to the machine.

#### 1.2 Agreed payments to be made between the parties (if applicable):

- (1) Where ownership shares are in a smaller ratio to the area worked on one farm an agreed payment per hectare/per hour/per bale will be paid by the owner of that farm to the other parties for the additional work done/area covered as part payment, the basis of calculation to be agreed in advance by all parties:

(2) Agreed payment: \_\_\_\_\_

(3) Basis of payment: \_\_\_\_\_

(4) This payment shall be made within a period of \_\_\_\_\_ days.

#### 2.3 Storage Location

- (1) The building or specific location where the machine will be stored has been approved by all parties in advance
- (2) The Machine purchased under This Agreement will be stored at:

Description of the building/location: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Eircode: \_\_\_\_\_

GPS Coordinates: \_\_\_\_\_

(3) [Name] \_\_\_\_\_

(a) warrants that he/she has sufficient ownership rights in the premises described in this agreement as the location for storage of the machine for such purposes and agrees to make available such storage for the duration of this agreement.

(b) The said Party hereby grants a licence at all reasonable times to each of the other parties to this Agreement, their servants or agents to enter on the premises of the said party for the purposes of inspection of the machine and to access and remove and deal with the said machine in accordance with the all rights of that party to such machine and to exercise same fully in accordance with the terms of this Agreement.

(4) The following agreed arrangements have been made between the parties about compensation for the use of premises for storage of the machine:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**2.4 Machine certification (Where Applicable)**

(1) All or any certification required by law shall be obtained in good time to enable the machine to comply with statutory requirements for road and all other uses.

(2) [Name] \_\_\_\_\_ agrees to be responsible for attending to arranging for and obtaining such certification.

(3) The cost of such certification shall be borne by the parties in accordance with the ownership shares set out in the First Schedule.

## THIRD SCHEDULE

### INSURANCE OF THE MACHINE AND VEHICLE TAXATION

1. The parties agree to maintain, at all times, all necessary and appropriate insurance in respect of the machine and its storage and use.
2. The parties agree to contribute towards the cost of insurance in accordance with their shares of ownership of the machine.
3. If an insurance claim is brought in respect of the machine giving rise to a payment by the insurer to the owner, the recipient of the payment hereby agrees to hold the same on trust for all the owners in accordance with their shares of ownership of the machine.
4. It is agreed between the parties that: \_\_\_\_\_ [Name] shall be responsible for coordinating insurance and taxation of the Machine.
5. Insurance certificate and all relevant documentation shall be made available by the person responsible for arranging the same for inspection by any other party at all reasonable times and in any event within twenty-four hours.

#### 6. Details of Insurance

Type of Insurance: \_\_\_\_\_

Insurance Company: \_\_\_\_\_

Policy Number: \_\_\_\_\_

Policy Holder: \_\_\_\_\_

Type of Cover: \_\_\_\_\_

Policy Renewal Date: \_\_\_\_\_

#### 7. Vehicle Taxation

- 1 Any Motor/Road/vehicle Tax payable shall be paid annually before the due date and the cost of this shall be borne by the parties in the ownership shares set out in the First Schedule above.
2. All parties shall contribute their share of such renewal charge in good time before the same shall be due.

**FOURTH SCHEDULE**

**JOINT LOAN IN THE NAMES OF ALL THE PARTIES (IF APPLICABLE)**

Lending Agency: \_\_\_\_\_

Loan Account Number: \_\_\_\_\_

Bank IBAN: \_\_\_\_\_

Loan Account Holder: \_\_\_\_\_

At (Name of Bank): \_\_\_\_\_

Address of Bank: \_\_\_\_\_

The financial repayments to the above bank account by the parties to this Agreement for the machine shall be €\_\_\_\_\_ per \_\_\_\_\_

The first loan repayment shall be made on the \_\_\_\_\_

## **FIFTH SCHEDULE**

### **General Terms and Conditions**

#### **1. Definitions**

In this agreement any reference to any numbered schedule is a reference to a schedule to this Agreement and the following terms shall have the following meanings save where the context otherwise requires:

- “Breakages” shall herein refer to minor or major breakages that occur either accidentally or through incorrect operation of The Machine.
- “Fair Wear and Tear” shall mean wear and tear resulting from normal usage of a machine
- “Lending Agency” shall herein refer to an agency from which finance is obtained to purchase The Machine.
- ‘The Machine’ means the machine or implement identified at clause 1.1 in the First Schedule of this agreement.
- “Machinery Dealer” shall herein refer to the machinery dealer from which the machine is purchased.
- “Market Value” shall herein refer to the monetary value of The Machine achievable on the open market on the date of a sale.
- “Operator’s Manual” shall herein refer to the operator’s manual published by the manufacturer and supplied with the machine by the machinery dealer.
- ‘Party’ or ‘Parties’ shall refer to one or more of the people who have entered into this Agreement and reference to an Outside Party means someone other than those people.
- “Storage Location” shall herein refer to the location identified at Clause 2.3 of the Second Schedule for storage of the Machine.

#### **2. Duration of the Agreement**

- 2.1 The duration of this Agreement shall be as set out in Clause 1.2 of the First Schedule in this Agreement unless terminated in accordance with Condition 14 hereof.

#### **3. Scope**

- 3.1 This Agreement represents the entire agreement between the parties. No other terms, promises, or representations are included unless specifically stated in this written Agreement.
- 3.2 This Agreement may be amended, extended or replaced by another agreement between the parties in writing only.
- 3.3 This is a contract and nothing in this Agreement shall establish a relationship of employer and employee, or partnership, between the parties, and nothing in this agreement shall be deemed to operate as a transfer of ownership of machinery or demise of property or to create the relationship of landlord and tenant in any property.

- 3.4 This Agreement relates to The Machine listed in Clause 1.1 in the First Schedule in this Agreement only.

#### **4. General Obligations**

- 4.1 The parties to This Agreement shall during the course hereof, in accordance with the terms hereof, purchase, operate, and maintain, in accordance with best practice in farm safety and the manufacturer's instructions, the Machine identified at Clause 1.1 of the First Schedule above, and on the termination hereof or as required hereunder, subject as herein, sell or replace in accordance with the terms of this Agreement.
- 4.2 The Machine shall be stored and housed when not in use at the location set out in Clause 2.3 of the Second Schedule for the duration of this Agreement unless otherwise agreed between the parties in writing.
- 4.3 The parties shall collect and return The Machine from and to the location set out in Clause 2.3 of the Second Schedule as required for their use at their own cost until the expiry of this Agreement.
- 4.5 The parties agree to adhere to the booking procedures as set out in Clause 2.2 of the Second Schedule.

#### **5. Operating Costs of the Machine**

- 5.1 Fuel consumed during use will be paid for by the user.

#### **6. Condition of Machine when purchased**

- 6.1 If the machine is not new but a used machine when purchased, the parties agree to have the machine examined by an agreed and qualified third party prior to purchase.
- 6.2 The machine is agreed to be in good working order and condition.
- 6.3 The cost of such examination and certification if necessary, will be borne by the parties in the proportions of their ownership shares as set out at Clause 1.3 of the First Schedule.

#### **7. Repairs and Maintenance**

- 7.1 The parties to this Agreement shall each ensure that any necessary repairs are carried out and routine maintenance is carried out as per manufacturer's instructions after use and prior to the return of the Machine to the storage location or to the other party. The party using the machine at any time shall ensure that the machine is clean and in good working order when being returned to the storage location.
- 7.2 The financial cost of routine repairs and maintenance shall be shared by the parties to this Agreement. Where routine repairs are to be carried out by one of the parties this shall be agreed in advance. The cost accruing to each party of repairs and maintenance will be shared in accordance with the shares of ownership set out in the First Schedule unless otherwise agreed. As repair and maintenance costs are associated with use level, other agreed options could include compensation for different use levels as set out in Appendix 1 scenario 2, or agreed rates based on the wear caused by use on different parties fields caused by soil type, depth and speed of working etc.



- 7.3 Routine repairs shall include replacement of wearing parts due to normal wear and tear.
- 7.4 Maintenance shall be carried out at the recommended routine service intervals as set out in the Operator's Manual.
- 7.5 Servicing shall be by the Machinery Dealer unless otherwise agreed.
- 7.6 Where routine repairs and maintenance are carried out by the machinery dealer the cost shall be apportioned in accordance with the ratio of ownership set out in the First Schedule in this Agreement.
- 7.7 The parties agree that where a breakage occurs during the use of the Machine by any of the parties that party will inform all other parties personally as soon as possible, and in any event within 24 hours of the breakage occurring.
- 7.8 In consultation with the other parties, breakages shall be repaired fully and adequately by the party who breaks The Machine during use. The cost of the necessary repairs shall be paid for by the party who broke the machine. Such repairs shall be carried out within five working days at the latest. Such payment shall be made within 30 days by the person liable to the person to the person/company to which the payment is due.
- 7.9 As the machine ages, if all are agreed, a repair to a lower than 'as new' standard can be deemed acceptable (such as by using secondhand parts or non-main dealer service) to reduce operating costs.

## **8. Machine Operation**

- 8.1 The machine shall only be operated by one of the Parties unless all parties consent to the operation of the machine by another named individual.
- 8.2 Only a fully trained operator may be engaged or allowed to operate the machine.
- 8.3 Where one party operates the machine for the benefit of another party or on the lands of another party the terms of such operation including compensation for the operator shall be agreed by all parties in advance.
- 8.4 This Agreement does not include the use of the machine for contract work for outside parties unless otherwise explicitly agreed by all co-owners in advance. In the event of such agreed use, an agreed charging rate, the duration of such use, and other necessary terms shall be calculated and agreed in advance between the parties themselves before agreement is entered into with any other outside party.

## **9. Booking Procedure**

- 9.1 The parties to This Agreement shall agree to be bound by the booking procedure as set out in in the Second Schedule of this Agreement.
- 9.2 The parties agree to share equitably in weather risks and to devise strategies to minimize the impact of extreme weather events on crop production.

## **10 Indemnity**

- 10.1 Each party hereby undertakes to indemnify and keep indemnified the other parties, their heirs, executors and assigns, against any and all loss damage costs or liabilities occasioned by any default on their own part in complying with this Agreement.

- 10.2 If the machine is purchased with the assistance of finance from a Lending Agency or Financial Institution:
- (1) Each party hereby undertakes to fully and faithfully discharge all their obligations under any relevant agreement with a Lending Agency or Financial Institution.
  - (2) Each party hereby undertakes to indemnify and keep indemnified the other parties, their heirs, executors and assigns, against any and all loss damage costs or liabilities occasioned by any default on their part in complying with any such agreement.

### **11. Confidentiality and Records**

- 11.1 The parties to this Agreement agree to maintain and respect confidentiality in respect of the content of it and of all and any knowledge of the affairs of any other party whatsoever which may come to their notice in the course of the negotiation and implementation of this Agreement.
- 11.2 Each party agrees to keep written records of all materials, labour, services and any other matter supplied for or paid for in connection with the implementation of this Agreement.

### **12. Prevention and Resolution of Disputes**

- 12.1 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 Condition.
- 12.2 Any such dispute shall in the first instance be referred to a Facilitator before it may be referred to Arbitration hereunder.
- 12.3 The Facilitator shall be the person named in Clause 1.6 of the First Schedule to this Agreement or any third party agreed by the Parties in writing. 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.
- 12.4 The opinion or recommendation of the Facilitator shall not be legally binding unless adopted by all parties and reduced to writing and recorded and signed as having being agreed between them.
- 12.5 Any dispute, which is not resolved by referring it by agreement to the Facilitator as provided in this Agreement, shall then be referred in the first instance to conciliation in accordance with the provisions specified in this Agreement before being referred to arbitration.
- 12.6 All disputes, which arise between the parties, and which have not been resolved by the intervention of the facilitator under Condition 12.2 hereof, or by the conciliation process set out below, may be referred to a single Arbitrator who shall have all the powers provided for an Arbitrator in the Arbitration Acts 1954 to 2010.
- 12.7 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 on the application of any of the parties in writing on notice to the other parties.

12.8 The Arbitrator shall have full power to dissolve this machinery sharing agreement should he/she think fit. Any decisions made by the Arbitrator shall be final and binding on all parties.

**13. Conciliation Procedure as referred to in Condition 12.5 of this Agreement**

13.1 This procedure shall apply to any conciliation requested under Condition 12.5 of the Agreement.

13.2 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.

13.3 The parties shall agree on a conciliator, and failing agreement within 10 days of notice under Condition 13.1 hereto, either party may request the Facilitator referred to Condition 12.3 of the Agreement to nominate a Conciliator to conduct a conciliation procedure.

13.4 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.

13.5 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.

13.6 The conciliator may consider and discuss such solutions to the dispute as he/she thinks appropriate or as may be suggested by either party. All information given to the conciliator is confidential and shall remain so unless otherwise authorized by the party who supplied the information.

13.7 The conciliator may, having informed the parties, consult independent third-party experts.

13.8 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.

13.9 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 Condition 12.6 of this Agreement.

13.10 Each party to the conciliation shall pay their own costs. The parties shall be jointly and severally liable for the conciliator's costs in equal shares, unless the conciliator decides otherwise.

13.11 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.

13.12 Any agreement reached by the parties in dispute through conciliation shall be set down in writing and duly executed by them or their authorized representative.

#### **14. Termination of the agreement**

14.1 The Agreement can be terminated by mutual agreement in writing at an earlier date than that set out in Clause 1 of the said First Schedule.

14.2 Where it is the intention of one party to opt out of the Agreement before a termination date envisaged at Clause 1.2 of the First Schedule, that party must inform the other parties in writing of that intention with the notice period set out in the First Schedule before date of intended departure.

14.3 In the event of a party giving notice under Clause 14.2 above, the other parties shall have first option to purchase the departing party's interest in the machine. If the parties cannot agree a value between them, an independent Valuer will be asked to give a suggested valuation. If agreement cannot be reached between all the parties within 28 days of said notice being given, then the remaining parties shall be entitled to purchase the departing party's interest at the value of that party's interest in the machine in accordance with the schedule of depreciation set out at clause 1.5 of the First Schedule above.

14.4 In the event of termination of this Agreement, and in default of agreement between the remaining parties to purchase the share of the departing party in the machine, the machine shall be sold at auction or by an agreed process at market value.

14.5 If the machine has been purchased with the assistance of a joint loan from a Lending Agency or financial institution, all monies outstanding shall be repaid to the lender from the proceeds of sale and any other liabilities associated with the machine. The surplus monies if any shall then be divided pro rata in accordance with the ownership shares set out in the First Schedule.

#### **15. Death of a Party**

15.1 If a party dies during the period of this Agreement, the surviving parties shall agree with the personal representatives of the deceased to either terminate this Agreement or if the surviving parties agree between themselves to do so, form a new agreement with an agreed inheritor under the deceased's estate.

15.2 In the event that it is agreed to terminate this Agreement on the death of a party. The Machine shall be sold at market value and all joint outstanding debt (if any) repaid to any Lending Agency or financial institution or other party in respect of the machine. Any surplus shall be distributed between the parties in accordance with the ownership shares set out in the First Schedule. Any monies due to the deceased shall be made to the Personal Representatives of the deceased.

## **16. Payments by the Parties**

- 16.1 Any payment to be made on foot of this Agreement by any party to another, or to any outside party shall be paid in full within 90 days of falling due unless otherwise provided in this Agreement or otherwise agreed in writing between the all parties affected by it.

## **17. Miscellaneous**

- 17.1 Each party's address for the service of notices shall be the address set out in this Agreement. Notices shall be served personally or by registered post.
- 17.2 A Notice shall be deemed to have been served at the time of service if it was served personally, or if a notice is served by registered post to the address set out in this Agreement, it will be deemed to have been served 48 hours after it was so posted.
- 17.3 Capital allowances allocated to each party in respect of the machine shall be in the same proportions as the proportions of ownership set out in this Agreement.
- 17.4 The parties hereby undertake with each other that they will comply in all respects with all conditions attached to any grant received in connection with the purchase of the machine and each party hereby undertakes to indemnify the other parties fully for any loss, damage or costs suffered as a result of any such breach by that party of any such condition.
- 17.5 At all times that the machine is to be taken onto a public or shared roadway, the party in charge of the machine at the time shall ensure that it will only be transported with an appropriate vehicle with hitch, and secure safety chains shall be secured at all times when equipment is in use, and that party shall ensure that all signs and markings and lights necessary to comply with the Road Traffic Acts and all relevant legislation and rules governing such use of such machines are displayed on the machine. In the case of self-propelled machines, same shall only be used in any public place or roadway if all steps have been taken to ensure that all insurance, lights, warning signs are in order and all other necessary steps taken to comply with all applicable legislation and regulations and best practice.

## APPENDIX I

### Scenarios where all members of a Machinery Share Agreement require the machine/equipment at the same time

#### *Scenario 1 – Ownership share of the machine is in the same proportion as area/ amount of work on each owner’s farm*

Farmers A, B and C own a combine harvester under a machinery sharing agreement in the following proportions, 50 : 30 : 20 and their acreage of cereals to be harvested are split in the same ratio.

Farmer	Area of Cereals (acres)	Ownership share (%)	Calculated area to be harvest per rota (acres)
A	250	50	$250/3 = 83$
B	150	30	$150/3 = 50$
C	100	20	$100/3 = 33$
<b>Total</b>	<b>500</b>		

In adverse weather conditions, where broken conditions don't allow continuous harvesting every day, crops on all three farms are ripe and ready for harvest at the same time, a suggested rota for use of the combine harvester to facilitate all parties is outlined below.

This outline is for discussion between the three owners and can be amended by agreement of all parties.

Each farmer owns a proportion of the combine harvester which is equivalent to his land area to be harvested.

It could be agreed that Farmer A would harvest, 83 acres ( $250/3$ ) before the combine is moved to Farmer B who could harvest 50 acres ( $150/3$ ) before the combine is moved to Farmer C who could harvest 33 acres ( $100/3$ ) before combine is moved again.

Suggested Rotas over the harvest			
Rota Number	Farmer		
1	A	B	C
2	B	C	A
3	C	A	B



**Scenario 2 – Equal ownership of the machine/equipment with different areas of use on each farm**

Farmers A, B and C own a plough under a machinery/equipment sharing agreement in equal one third shares. Their lands to be ploughed are split in different ratios as outlined in the table below.

Farmer	Area to plough (acres)	Ownership Share	Calculated area per rota (acres)	Agreed compensation	
A	250	1/3	$250/3 = 83$	-----	
B	150	1/3	$150/3 = 50$	From A	
C	100	1/3	$100/3 = 33$	From A	From B
<b>Total</b>	<b>500</b>				

*As per section 2.2 of the Machinery Sharing Agreement, where ownership shares are in a smaller ratio to the area worked on one farm an agreed payment per hectare/per hour/per bale will be paid by the owner of that farm to the other parties for the additional work done/area covered as part payment, the basis of calculation to be agreed in advance by all parties.*

Situations where all members require use of the plough at the same time.

A suggested arrangement to facilitate all parties is outlined below.

This outline is for discussion between the 3 owners and can be amended by agreement of all parties.

As all farmers own an equal share of the plough but their land areas to be covered are different, then the agreed compensation as outlined above will be paid from Farmer A to Farmer B and Farmer C, and from Farmer B to Farmer C.

The use of the plough could then be as per Scenario 1 whereby it could be agreed that Farmer A would plough, 83 acres ( $250/3$ ) before the plough is moved to Farmer B who could plough 50 acres ( $150/3$ ) before plough is moved to Farmer C who could plough 33 acres ( $100/3$ ) before plough is moved again to Farmer B ..... (see suggested rota below for plough movement).

<b>Suggested Rotas for movement of the plough.</b>			
<b>Rota Number</b>	<b>Farmer</b>		
1	A	B	C
2	B	C	A
3	C	A	B

