

Reprint  
as at 1 January 2018



## Sharemilking Agreements Act 1937

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### **An Act to make provision for safeguarding the interests of sharemilkers under sharemilking agreements**

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#### **Note**

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.  
Note 4 at the end of this reprint provides a list of the amendments incorporated.

**This Act is administered by the Ministry of Business, Innovation, and Employment.**

## 1 Short Title

This Act may be cited as the Sharemilking Agreements Act 1937.

## 2 Interpretation

- (1) In this Act, unless the context otherwise requires,—

**employer**, in relation to a sharemilker, means a person by agreement with whom a sharemilker is entitled, otherwise than as a servant under a contract of service, to receive a share of the returns or profits derived from the dairy farming operations which are the subject matter of the agreement

**Inspector** means an Inspector appointed under the Agricultural Workers Act 1977

**sharemilker** means a person who has undertaken to perform in whole or in part the work of a dairy farm otherwise than as a servant under a contract of service, and who is entitled under a sharemilking agreement to receive a share of the returns or profits derived from the dairy farming operations which are the subject matter of the agreement

**sharemilking agreement** means an agreement between a sharemilker and an employer in relation to the carrying on by the sharemilker of the dairy farming operations which are the subject matter of the agreement.

- (2) References in the Schedule to the farm owner shall be read as references to the employer as herein defined.

Section 2(1) **Inspector**: amended, on 1 November 1977, pursuant to section 62(1)(a) of the Agricultural Workers Act 1977 (1977 No 43).

## 3 Sharemilking agreements to which this section applies not to contain conditions less favourable to sharemilker than those specified in Schedule

- (1) This section applies to every sharemilking agreement made between an employer and a sharemilker in any case where the dairy herd is owned or provided by the employer, but does not apply to any bona fide sharemilking agreement whereby the sharemilker receives one-half of the returns or profits derived from the dairy farming operations which are the subject matter of the agreement, and the employer, for the purposes of the agreement, bails or leases the dairy herd or part of it to the sharemilker for an adequate consideration.
- (2) Notwithstanding anything to the contrary in any sharemilking agreement to which this section applies (whether such agreement has been entered into before or is entered into after the passing of this Act) the agreement shall, on and after 1 August 1938, operate not less favourably to the sharemilker in any respect than if the terms and conditions specified in the Schedule were incorporated in the agreement on that date.
- (3) Any terms and conditions included in the sharemilking agreement that are inconsistent with the terms and conditions specified in the Schedule (in so far as

they would operate to the disadvantage of the sharemilker) shall, on and after 1 August 1938 or the date of the agreement (whichever is the later), be deemed to be null and void.

- (4) Notwithstanding any other provision of this section, the Limitation Act 2010 shall be read subject to the terms and conditions specified in the Schedule.

Section 3(1): amended, on 11 June 1985, by section 2(1) of the Sharemilking Agreements Amendment Act 1985 (1985 No 98).

Section 3(4): inserted, on 27 October 1965, by section 2 of the Sharemilking Agreements Amendment Act 1965 (1965 No 110).

Section 3(4): amended, on 1 January 2011, by section 58 of the Limitation Act 2010 (2010 No 110).

#### **4 Provision for variation of conditions set out in Schedule**

- (1) The terms and conditions set out in the Schedule (which have been formulated and agreed to on behalf of the New Zealand Farmers' Union and the New Zealand Workers' Industrial Union of Workers) may at any time and from time to time be altered by the Governor-General by Order in Council if he is satisfied that the proposed alterations have been agreed to by or on behalf of the same organisations, or by or on behalf of any other organisations representing the interests of the employers and sharemilkers respectively or have been recommended by the Arbitration Court.
- (2) The authority conferred by this section to alter the said terms and conditions shall include authority to add any new terms and conditions, or to vary or revoke any of the specified terms and conditions.
- (3) Any Order in Council under this section may be at any time in like manner varied or revoked.
- (4) Every Order in Council under this section shall operate as from a date to be specified therein in that behalf, being not earlier than a date agreed to by the organisations concerned or recommended by the Arbitration Court (which may be before or after the date of the Order in Council).

Section 4(1): amended, on 17 April 1978, by section 6(2) of the Industrial Relations Amendment Act 1977 (1977 No 108).

Section 4(1): amended, on 7 December 1945, by section 75(5)(a) of the Statutes Amendment Act 1945 (1945 No 40).

Section 4(4): amended, on 17 April 1978, by section 6(2) of the Industrial Relations Amendment Act 1977 (1977 No 108).

Section 4(4): amended, on 7 December 1945, by section 75(5)(b) of the Statutes Amendment Act 1945 (1945 No 40).

#### **5 Other classes of sharemilking agreements may be brought within scope of this Act**

- (1) If at any time the Governor-General is satisfied with respect to any class of sharemilking agreements, other than the class of agreements to which section 3 applies, that standard terms and conditions have been agreed to by representative organisations of employers and sharemilkers or recommended by the Arbi-

tration Court, he may by Order in Council apply the foregoing provisions of this Act to agreements of that class.

- (2) In the application of the foregoing provisions of this Act to agreements of any such class, references therein to the terms and conditions set out in the Schedule shall be read as references to the standard terms and conditions agreed to or recommended as aforesaid with respect to agreements of that class.

Section 5(1): amended, on 17 April 1978, by section 6(2) of the Industrial Relations Amendment Act 1977 (1977 No 108).

Section 5(1): amended, on 7 December 1945, by section 75(6)(a) of the Statutes Amendment Act 1945 (1945 No 40).

Section 5(2): amended, on 7 December 1945, by section 75(6)(b) of the Statutes Amendment Act 1945 (1945 No 40).

## **6 Inspector may take proceedings on behalf of sharemilker**

Without limiting any other remedies that a sharemilker may have against his employer, any Inspector, acting in the name and on behalf of a sharemilker, may take proceedings for the enforcement of the rights of the sharemilker under any sharemilking agreement.

## **7 Sharemilking agreements may be enforced though not in writing**

*[Repealed]*

Section 7: repealed, on 19 October 1956, by section 5(1) of the Contracts Enforcement Act 1956 (1956 No 23).

## **8 Act to be administered by Labour Department**

- (1) This Act shall be administered by the Department of Labour established under the Labour Department Act 1908.

- (2) *[Repealed]*

Section 8(2): repealed, on 1 November 1954, by section 17(1) of the Labour Department Act 1954 (1954 No 71).

## Schedule Sharemilking Agreement

Schedule: replaced, on 1 June 2012 (applying only to sharemilking agreements to which section 3(1) of this Act applies), by clause 4 of the Sharemilking Agreements Order 2011 (SR 2011/295).

The terms and conditions of the Sharemilking Agreement (applicable in cases where the sharemilker does not provide the herd) as settled by the Sharemilkers' Section of Federated Farmers of New Zealand (Incorporated) and the Sharemilker Employers' Section of Federated Farmers of New Zealand (Incorporated).

### Definitions

In this Agreement, the following definitions apply:

**agreed share** is the agreed share specified in clause 19(b)

**dairy company** relates to any company that processes milk

**farm owner** is the person named as the farm owner in the Agreement. A farm owner is any person by agreement with whom a sharemilker is entitled to receive a share of the returns or profits derived from the dairy farm operations

**notice of dispute** has the meaning given to it in clause 139

**season** means a dairy season beginning on 1 June in any year and ending on 31 May in the following year

**sharemilker** is the person named as the sharemilker in the Agreement. A sharemilker is any person contracted to perform work on a dairy farm (other than an employee) and who is entitled under a Sharemilking Agreement to receive a share of the returns or profits derived from the dairy farm operation

**working day** means a day of the week other than Saturday or Sunday on which banks are open generally for business in New Zealand.

Agreement made, pursuant to the Sharemilking Agreements Order 2011, on [date]

### between

Full name: (the **farm owner**)

Address:

Telephone number:

Fax number:

Email address:

### and

Full name: (the **sharemilker**)

Address:

Telephone number:

Fax number:

Email address:

## Descriptions Warranty

1 The farm owner warrants that—

- (a) the number of fully paid shares in the [*name of dairy company*] at the commencement of this Agreement is [*number*]:
- (b) the production entitlement is [*specify*]/unlimited\*. If neither is selected, it will be unlimited. Before exceeding this production entitlement (if limited), the sharemilker must notify the farm owner:

\*Select one.

- (c) the amount of milksolids (if any) produced on the farm during the previous 3 dairy seasons were:

<b>Season</b>	<b>Milksolids</b>	<b>Cows in milk 1 November</b>
[ <i>specify</i> ]	[ <i>specify</i> ]	[ <i>specify</i> ]

- (d) the amount and type of fertiliser applied over each of those 3 seasons was:

<b>Season</b>	<b>Type (spring)</b>	<b>Tonnes</b>	<b>Type (autumn)</b>	<b>Tonnes</b>
[ <i>specify</i> ]	[ <i>specify</i> ]	[ <i>specify</i> ]	[ <i>specify</i> ]	[ <i>specify</i> ]

**Note:** If there is likely to be a change in the shareholding during any year and that change has potential to disadvantage the sharemilker, then a separate agreement between the parties must be entered into.

The farm owner must supply to the sharemilker any consents that are required and any soil tests and nutrient budgets of the property that are available.

- (e) the amount of supplementary feed made, purchased, and sold in the year prior to the commencement of this Agreement (expressed as small bale equivalents (15 kg of dry matter (**DM**) equals 1 small bale equivalent)) is as follows:

	<b>Made</b>	<b>Purchased</b>	<b>Sold</b>
Hay	[ <i>specify</i> ]	[ <i>specify</i> ]	[ <i>specify</i> ]
Silage	[ <i>specify</i> ]	[ <i>specify</i> ]	[ <i>specify</i> ]
Other	[ <i>specify</i> ]	[ <i>specify</i> ]	[ <i>specify</i> ]

## Records

- 2 The farm owner must, before signing this Agreement, provide to the sharemilker, for the past and present dairy seasons, the following records, if available, concerning the herd's status:

	<b>Records</b>	<b>Received</b>	<b>Comments</b>
(a)	Brucellosis	[specify]	[specify]
(b)	Enzootic bovine leucosis (EBL)	[specify]	[specify]
(c)	Leptospirosis	[specify]	[specify]
(d)	Milk grading	[specify]	[specify]
(e)	Somatic cell counts	[specify]	[specify]
(f)	Tuberculosis	[specify]	[specify]
(g)	A copy of the herd profile and herd records	[specify]	[specify]

## Annual grazing-off policy

- 3 It is the policy of the farm to graze off the following stock annually:

<b>Class of stock</b>	<b>Numbers</b>
Calves (after weaning)	[specify]
Rising 2-year heifers	[specify]
Winter grazing	[specify]
Other stock	[specify]

## Legal description of land

- 4 The farm owner possesses the farm shown on the plan attached to this Agreement (the **land**), the legal description and area of which follow.

Area in hectares:

Legal description:

## Area of land to be used by sharemilker

- 5 The area of land to be used for sharemilking identified in clause 4 includes [number] hectares, identified on the accompanying map.

## Stock

- 6 The farm owner must provide the following stock at the commencement of this Agreement:

<b>Class of stock</b>	<b>Numbers</b>
In-calf cows	[specify]
In-calf heifers	[specify]
Yearling heifers	[specify]
Other	[specify]

- 7 The cows must be of similar quality to the quality of the herd in the previous 3 years unless otherwise agreed by the parties and recorded in writing.

### Machinery, implements, and vehicles

- 8 The farm owner must supply the following machinery, implements, and vehicles at the commencement of this Agreement: *[list]*
- 9 The sharemilker agrees to supply the following machinery, implements, and vehicles at the commencement of this Agreement: *[list]*
- 10 If the sharemilker is required to supply machinery, implements, and vehicles, the farm owner and the sharemilker must agree on a set amount to meet the running costs and supply of the machinery, implements, and vehicles. These amount(s) are to be specified in Annex 1.

### Small tools

- 11 At the commencement of this Agreement, the sharemilker will supply the following small tools to enable the sharemilker to perform the sharemilker's obligations under this Agreement: *[list]*
- 12 The farm owner and the sharemilker must, on termination of this Agreement, account to each other for the items of machinery, implements, and vehicles.

### Fertiliser and lime costs

- 13 If a contractor is used, the farm owner must pay all costs associated with the purchase, cartage, and spreading of fertiliser and lime.

### Fertiliser

- 14 The farm owner must supply and apply, in each season, the following minimum quantity and type of fertiliser:

<b>Season</b>	<b>Minimum quantity</b>	<b>Type of fertiliser</b>
<i>[specify]</i>	<i>[specify]</i>	<i>[specify]</i>

### Lime application

- \*15 The farm owner must, in each season, supply and apply the following minimum quantity and type of lime:

\*Omit this clause if it does not apply.

### Relationship of parties

- 16 The relationship of the parties to this Agreement is that of farm owner and independent contractor and is not that of employer and employee, nor that of a partnership.
- (a) The farm owner and the sharemilker must each nominate a single representative or point of contact (which could be the farm owner or the sharemilker) for the purposes of this Agreement and write the representative's name below:
- Farm owner's representative: *[full name]*  
Sharemilker's representative: *[full name]*
- (b) Neither the farm owner nor the sharemilker may change their nominated representative without the written consent of the other party. The other party must not unreasonably withhold consent.
- (c) Subject to clauses 131 to 133, 135 to 137, and 161, the farm owner and the sharemilker understand that they will each remain liable to perform this Agreement for the full term of the Agreement specified in clause 18 unless the other party agrees to early termination of the Agreement. Unless the other party agrees, neither the farm owner nor the sharemilker may assign or transfer this Agreement or the responsibility for performing their side of the Agreement to another person. Before any of the parties to this Agreement may change, the Agreement must be renegotiated.
- 17 This Agreement is not a bailment of stock or chattels of either party.

### Term and renewal of Agreement

- 18 (a) This Agreement commences on 1 June *[year]* and terminates on 31 May *[year]*, unless otherwise agreed in writing by the parties.
- (b) If the farm owner and the sharemilker indicate in writing, no later than 3 calendar months before the expiry of this Agreement, a willingness to renew or renegotiate the Agreement for a further term, then the Agreement may be renewed or renegotiated accordingly. If either or both of the parties indicate in writing an unwillingness to renew or renegotiate this Agreement, or the parties do not indicate either way, then this Agreement will terminate on the date specified in paragraph (a).

### *Remuneration*

- 19 Remuneration of the sharemilker for work performed by the sharemilker and the sharemilker's employees under this Agreement is as follows:

*Delete paragraph (a) or (b) as appropriate. Within paragraph (a) or (b), delete subparagraph (i) or (ii) as appropriate.*

- (a) for herds where the minimum number stipulated in clause 42 is not more than 300 cows,—

(i) **Milk price plus any dividend-related payment adjustment (DRPA)**

The sharemilker must receive not less than 21% of income derived from milk supplied to the dairy company during the duration of this Agreement, including deferred payments, from the herd milked by the sharemilker, for the total cost of labour, the rearing of replacement calves under clauses 21 to 25, and all aspects of the operation and management of the farm under this Agreement. The 21% is net of the sharemilker's farm operating expenses and must not be reduced in any way or by any means other than under clauses 63 to 66 or by the result of dispute resolution as provided for under this Agreement.

The farm operating costs outlined in this Agreement to be paid by the sharemilker recorded in Annex 1 will be calculated as a percentage of milk income and added to the 21% to arrive at the agreed share.

An agreed share of the milk price of the dairy company: *[number]* % to the farm owner and *[number]*% to the sharemilker plus an adjustment to the sharemilker's milk price, to reflect the agreed share of any dividend (distributable profit less retentions) paid to the farm owner.

The farm owner and the sharemilker agree to share the revenue from the dividend in the following proportions: *[number]*% to the farm owner and *[number]*% to the sharemilker, based on the option chosen below.

If the parties agree that part of the remuneration to the sharemilker is from the net dividend payment from the dairy company to shareholders, the farm owner will indicate the shares to calculate this as follows:

*Delete 3 options*

- **Option 1:** All shares. Where this option is selected, the farm owner will advise the sharemilker of any change to the number of fully paid shares as stated in clause 1 during this Agreement.
- **Option 2:** Minimum required shares as stated on the dairy company's records (ie, production-backed shares relating to this supply number) at the start of each dairy season to which this Agreement applies. The minimum number of re-

quired shares for the first season to which this Agreement applies is [number]. Where this option is selected, the farm owner must advise the sharemilker of any change to the minimum required shares at the start of each subsequent season to which this Agreement applies.

- **Option 3:** The following number of shares: [number].
- **Option 4:** Production. Where this option is selected, the sharemilker is not entitled to the DRPA on production exceeding the fully paid shares as stated in clause 1 unless the farm owner, in the farm owner's sole discretion, chooses to purchase additional shares and also chooses to include those additional shares in the calculation of the sharemilker's DRPA.

**Note:** Where no option is selected (ie, 3 options have not been deleted), the default option will be: "Production".

The farm owner is to pay directly or through the dairy company an adjustment to the milk price to reflect this decision in the same month the farm owner receives the dividend.

During the term of this Agreement, the farm owner warrants that any shares held will not be disposed of without consultation between the parties, and the sharemilker must not be financially disadvantaged by any disposition.

(ii) **Milk price only**

If the parties agree not to share the revenue from the dividend under the dividend-related payment adjustment (**DRPA**), the parties will agree to a minimum percentage under clause 19(a) to be increased by 1%, to 22%.

- (b) for all other herds where the minimum number stipulated in clause 42(c) is more than 300 cows. The agreed share is not limited by clause 19(a) and the sharemilker must receive [number]% (the **agreed share**) of the proceeds from all milk products (the **milk price**) from the herd milked by the sharemilker during the period of this Agreement, including deferred payments.

(i) **Milk price plus any dividend-related payment adjustment (DRPA)**

An agreed share of the milk price of the dairy company: [number] % to the farm owner and [number]% to the sharemilker plus an adjustment to the sharemilker's milk price, to reflect the agreed share of any dividend (distributable profit less retentions) paid to the farm owner.

The farm owner and the sharemilker agree to share the revenue from the dividend in the following proportions: *[number]*% to the farm owner and *[number]*% to the sharemilker, based on the option selected below.

If the parties agree that part of the remuneration to the sharemilker is from the net dividend payment from the dairy company to shareholders, the farm owner will indicate the shares to calculate this as follows:

*Delete 3 options*

- **Option 1:** All shares. Where this option is selected, the farm owner will advise the sharemilker of any change to the number of fully paid shares as stated in clause 1 during this Agreement.
- **Option 2:** Minimum required shares as stated on the dairy company's records (ie, production-backed shares relating to this supply number) at the start of each season to which this Agreement applies. The minimum number of required shares for the first season to which this Agreement applies is *[number]*. Where this option is selected, the farm owner will advise the sharemilker of any change to the minimum required shares at the start of each subsequent season to which this Agreement applies.
- **Option 3:** The following number of shares: *[number]*.
- **Option 4:** Production. Where this option is selected, the sharemilker is not entitled to the DRPA on production exceeding the fully paid shares as stated in clause 1 unless the farm owner, in the farm owner's sole discretion, chooses to purchase additional shares and chooses to include those additional shares in the calculation of the sharemilker's DRPA.

**Note:** Where no option is selected (ie, 3 options have not been deleted), the default option will be: "Production".

The farm owner is to pay directly or through the dairy company an adjustment to the milk price to reflect this decision in the same month the farm owner receives the dividend.

During the term of this Agreement, the farm owner warrants that any shares held will not be disposed of without consultation between the parties, and the sharemilker is not to be financially disadvantaged by any disposition.

(ii) **Milk price only**

The income from milk is to be shared in the following proportions of the paid milk price only of the dairy company: [*number*]% to the farm owner and [*number*]% to the sharemilker.

- (c) the farm owner must ensure that the dairy company receives instructions as to the payments, deductions, and capacity adjustment payments as specified in this Agreement.
- (d) any agreement to supply contract supply milk will be agreed by the parties in a separate agreement.
- (e) if the farm owner decides to allow the sharemilker to own shares in a dairy company and the sharemilker honours the opportunity, the opportunity will be subject to a separate agreement between the parties involved and that separate agreement prevails over clause 28.

### Penalties

- 20 Penalties incurred by way of grades, or penalties or deductions incurred from the dairy company, must be paid by the sharemilker, unless there are matters outside the sharemilker's control that prevent the sharemilker from producing the finest-grade milk. This clause is subject to clauses 63 to 66.

**Note:** Any historical soil contamination will be the farm owner's responsibility.

### Replacement calves and calves sold

- 21 The remuneration for rearing replacement calves is included in the net returns to the sharemilker from milk. Replacement calves must be reared by the farm owner/the sharemilker\*.

\*Select one.

- 22 The farm owner is entitled to select for rearing for herd improvement and replacement purposes (or in the absence of that selection the sharemilker must do so) up to 25% of the total minimum number of the herd specified in clause 42. Unless otherwise agreed in writing, all other calves are to be sold in the farm owner's name.

- 23 The sharemilker must tend and rear calves if required by clause 21, and must feed the calves according to the directions of the farm owner. In the absence of directions from the farm owner, the sharemilker must observe good farm husbandry in accordance with clause 39.

- 24 The farm owner and the sharemilker agree that the weaning date and/or body weight for the calves is as follows: [*specify*]

- 25 If the parties agree that the sharemilker is to receive a share of the income from the sale of calves not selected for rearing, the payment for that share is as follows: *[specify]*

**Note:** The intention of the parties is that there is an opportunity to pay an amount to the sharemilker for the calves not retained for rearing purposes. However, it is not compulsory to make a payment.

#### Other calves reared

- 26 If, under clause 22, additional calves are reared by either the farm owner or sharemilker in excess of 25%, the terms and conditions under which such calves are to be reared, including the sharemilker's remuneration, must be negotiated and recorded in writing and do not form part of the agreed share.

#### Capacity charge

- 27 Unless the parties agree otherwise in writing, the farm owner and the sharemilker agree that the farm owner is responsible for 100% of any capacity adjustment and the sharemilker is responsible for 0%.

#### Capital distribution and additional shares

- 28 The sharemilker is not required to make a payment toward the purchase of shares in a dairy company. The sharemilker is not entitled to participate in capital distributions.

#### Change to method of payment

- 29 If there is a change to the method by which payments are to be calculated and paid by the dairy company to the farm owner, it is the intention of this Agreement that the sharemilker must not be disadvantaged. Therefore, the method by which the sharemilker's share of income is paid to the sharemilker must be revised by agreement between the parties and if there is no agreement, then by the dispute resolution procedures provided in this Agreement.

#### Method of payment

- \*30 The farm owner and the sharemilker must complete a dairy company order that authorises the dairy company to pay the sharemilker's proceeds by direct credit to the sharemilker's bank account.

*or*

- \*30 If the parties agree to the farm owner paying the sharemilker direct, that agreement must be recorded in writing and payment must be made no later than the 20th day of the month in which the farm owner received payment from the dairy company. The farm owner must provide the sharemilker with a copy of

the dairy company statement including an invoice detailing the deductions agreed between the parties.

\*Select whichever applies.

## Obligations Labour

- 31 The sharemilker must at all times supply the following labour:  
Full-time labour units: [*number*]  
Casual labour units: [*number*]
- 32 The sharemilker must personally supervise each milking or delegate to a competent person in the sharemilker's absence.
- 33 The sharemilker must devote a reasonable proportion of the sharemilker's time and that of the sharemilker's labour force to the general maintenance and reasonable permanent improvement of the land. The farm owner must supply all materials for that purpose.
- 34 The labour requirements recorded in clause 31 must not be reduced in number or varied except with the written consent of the farm owner.
- 35 If extra labour is required for herd testing, the sharemilker must pay for that labour.

## Replacement labour

- 36 Before taking a holiday or time off (or if the sharemilker is unable to perform the sharemilker's duties because of sickness), the sharemilker must arrange, at the sharemilker's expense, for a competent person agreed to by the farm owner to perform the sharemilker's duties during the sharemilker's absence. The farm owner must not unreasonably withhold agreement.

## Children

- 37 If a farm owner employs a sharemilker with young children and the farm owner requires the partner of the sharemilker to milk the cows, the farm owner must ensure a safe area is provided at the farm dairy if it is necessary to accommodate children at the farm dairy during milking. In these circumstances, the sharemilker should view and approve the safe area before the sharemilker signs this Agreement, and if the sharemilker does not do so, the farm owner must, at the farm owner's cost, provide a safe area or upgrade the safe area to a standard that meets the sharemilker's approval (which must not be unreasonably withheld).

- 38 If, after signing this Agreement, the sharemilker becomes responsible for young children and it is necessary to accommodate the children at the farm dairy during milking, then the sharemilker and the farm owner must, in good faith, negotiate to ensure a safe area is provided for the children. If there is a dispute about the provision of a safe area, the dispute must be submitted to conciliation as provided for in clauses 142 to 148.

### Management

- 39 The farm owner or the farm owner's agent must retain the management and control of the farm, and all of the farm's operations, and of the management of the herd. All work to be performed on the farm by the sharemilker under this Agreement must be performed in accordance with any reasonable directions and instructions that the farm owner (or the farm owner's agent) may give from time to time. In the absence of any directions or instructions, the sharemilker must perform the work in a manner that conforms with good farm husbandry.
- 40 The sharemilker must not, without the previous written consent of the farm owner, plough up any permanent pasture land, or cut down or damage or destroy any trees or hedges, on the farm.

### Alterations and improvements

- 41 Before the commencement of this Agreement, the farm owner agrees to carry out the alterations and improvements to the house, farm dairy, or other facilities specified in Annex 2. The alterations and improvements must be done promptly.

### Herd

- 42 The minimum and maximum number of cows (*see* clause 19) in the herd to be milked are as follows:
- Spring-calving herd*
- (a) maximum: [*specify*]  
minimum: [*specify*]  
calving must finish by: [*specify*]
- Autumn-calving herd*
- (b) maximum: [*specify*]  
minimum: [*specify*]  
calving must finish by: [*specify*]
- Total number of cows*
- (c) maximum: [*specify*]  
minimum: [*specify*]

### Spring herd

- 43 The spring herd is to be in calf as at 1 June of the season. Cows or heifers found not to be in calf as at 1 June of the season do not form part of the maximum and minimum cow numbers and must be removed from the farm and replaced with in-calf cows or heifers of similar quality.

Cows and heifers that are unsound at calving in 2 or more quarters and do not respond to treatment, or any cows or heifers that fail to calve and come into profit by *[date]*, must be removed from the farm and only where the herd numbers are reduced to below the minimum number stipulated in clause 42 will these animals be replaced. The farm owner is not required to maintain the minimum number after *[date]*. Before that date, failure by the farm owner to maintain the minimum number will be a serious breach of this Agreement (*see* clause 136).

### Autumn herd

- 44 The autumn herd is to be in calf as at 1 January of the season. Cows or heifers not in calf as at 1 January of the season do not form part of the maximum and minimum cow numbers and must be removed from the farm and replaced with in-calf cows or heifers of similar quality.

Cows and heifers that are unsound at calving in 2 or more quarters and do not respond to treatment, or any cows or heifers that fail to calve and come into profit by *[date]*, must be removed from the farm and only where the herd numbers are reduced to below the minimum number stipulated in clause 42 will these animals be replaced. The farm owner is not required to maintain the minimum number after *[date]*. Before that date, failure by the farm owner to maintain the minimum number will be a serious breach of this Agreement (*see* clause 136).

### Carry-over cows

- 45 Unless the parties agree in writing, carry-over cows do not form part of this Agreement.

### Leptospirosis

- 46 All stock subject to this Agreement must, at the farm owner's expense, be vaccinated against leptospirosis each year.

### Other stock

- 47 Neither party is to graze on the land stock that is not subject to this Agreement (except replacement stock as provided in clauses 21 to 26). If the parties agree, the sharemilker may graze *[number]* horse(s).

### Dogs

- 48 The sharemilker is allowed to have [*number*] working dogs and [*number*] other dogs on the property.

### Domestic consumption

- 49 If stock are reared for home consumption, the condition of rearing and depasturing is: [*specify*]

### Feed on hand

- 50 The farm owner or the farm owner's agent and the sharemilker together must, within 10 working days of the commencement of this Agreement, verify and record in writing the amount of pasture cover and supplementary feed on hand. If the parties do not agree, the farm owner must engage a suitably qualified person to carry out a count or measure and that person must issue a certificate recording the count or measure.

### Insufficient feed

- 51 If there is insufficient feed available on the land at the commencement of this Agreement for the requirements of the stock during the winter and spring immediately following, the farm owner must, at the farm owner's expense, promptly make good the shortfall. For the farm owner to be liable under this clause, the shortfall as at the commencement of this Agreement must be recorded in writing within 10 working days of the commencement of this Agreement.

### Landed cost of bought-in feed

- 52 The landed cost of bought-in feed for the stock that is the subject of this Agreement, except in clause 51, and including meal purchased for calves, must be paid by the farm owner unless otherwise specified in the table in clause 106.

### Extra feed

- 53 If, at the commencement of this Agreement, extra feed input is required over and above that agreed to in Annex 1 (Total C), the cost of bought-in feed (eg, grazing, meal, nitrogen) must be agreed by the parties. The agreed share must be recorded in writing between the parties before purchase.

### Minimum cover and feed

- 54 The sharemilker must, at the termination of this Agreement, leave the property with the following minimum levels of supplementary feed:

- (a) hay (conventional small bale equivalents with 1 small bale equivalent equalling 15 kgs of dry matter): *[number]* bales
- (b) stacked silage: *[number]* cubic metres (where 1 cubic metre of stacked grass silage equals 10 conventional small bale equivalents)
- (c) baled silage (conventional small bale equivalents): *[number]*
- (d) crop as follows:
  - Type: *[specify]*
  - Hectares: *[number]*
  - Yield: *[number]* kg of dry matter per hectare

### Saved pasture

55 *Select the paragraph(s) that apply.*

- (a) The sharemilker must, at the termination of this Agreement, leave the property with an average pasture cover of not less than *[number]* kgs of dry matter per hectare.
- (b) In the absence of a direction from the farm owner or the farm owner's agent to the contrary, the sharemilker must close up, on the dates specified below, the following areas of pasture for winter feed that will not be grazed after that date:
  - (i) not less than *[number]* hectares to be closed by *[date]*; and
  - (ii) not less than a further *[number]* hectares to be closed by *[date]*; and
  - (iii) not less than a further *[number]* hectares to be closed by *[date]*; and
  - (iv) not less than a further *[number]* hectares to be closed by *[date]*.
- (c) The sharemilker, unless otherwise instructed by the farm owner or the farm owner's agent, must implement a grazing rotation of—
  - (i) 40 working days by *[date]* = *[number]* ha/day grazed by all stock subject to this Agreement on the property; and
  - (ii) 60 working days by *[date]* = *[number]* ha/day grazed by all stock subject to this Agreement on the property; and
  - (iii) 90 working days by *[date]* = *[number]* ha/day grazed by all stock subject to this Agreement on the property.

56 If, on termination of this Agreement, the supplements, pasture cover, or area closed as specified above are not on hand, the cost of any shortfall must be met by the farm owner or according to the terms and conditions of clauses 98 to 105. No payment is to be made to the sharemilker for feed left in excess of that specified in clauses 54 and 55.

### Milking plant

- 57 The farm owner must provide an efficient milking plant and cooling system for the milking of the herd (except those accessories that are specifically required to be provided by the sharemilker (*see* clauses 74 to 76). The sharemilker must have the milking plant, cooling system, and cleaning system checked for efficiency each season by a suitably qualified tester who is appointed and paid by the farm owner. This Agreement gives the sharemilker the authority and responsibility to organise the machine test. The sharemilker must deliver the result of the efficiency check to the farm owner and, until this is done, the farm owner is not liable for any inefficiency in the milking plant.

### Milking facilities

- 58 The sharemilker must, at all times, maintain a minimum standard that is acceptable to the farm owner regarding the operation, cleanliness, and efficiency of yards, milking shed and surrounds, plant, utensils, and appliances used for milking the herd to ensure the highest value for milk supplied. All cleansing materials and cleaning costs are to be supplied and met by the sharemilker at the sharemilker's expense.

### Milking times

- 59 The milking times agreed between the parties are as follows:  
Start times: [*specify*] am and [*specify*] pm  
Finish times: [*specify*] am and [*specify*] pm

### Milk collection

- 60 The sharemilker must, in accordance with the terms of the supply agreement with the dairy company, follow good farm husbandry, and in particular must—
- (a) cool the milk to dairy company requirements and standards:
  - (b) have the milk ready for collection by the dairy company within the times advised by the dairy company:
  - (c) pending collection by the dairy company, take all reasonable precautions to prevent any contamination of the milk and observe at all times the directives of the dairy company for the safeguarding and treatment of the milk in vats.

### Supply

- 61 The farm owner has the right to determine the dairy company or other company to which the milk will be supplied. The farm owner may change supply from one company to another during the course of the season, as long as the

sharemilker is not disadvantaged in terms of remuneration. At the commencement of this Agreement, the company to be supplied is [*name of company*].

- 62 The sharemilker must read and comply with the supply agreement.

### Milk and meat contamination insurance

- 63 Despite clause 64 or any other provision of this Agreement,—
- (a) the farm owner and the sharemilker must ensure that at the commencement of this Agreement, under their respective insurance policies, there is adequate protection to cover the following circumstances:
    - (i) contamination of the farm owner's milk supply in the farm owner's vat occurs and the contamination results in the milk being downgraded and used for purposes other than those originally intended; or
    - (ii) a dairy company that the farm owner supplies imposes a monetary penalty because the farm owner's milk contaminates other milk while it is contained in a milk tanker or milk trailer; and
  - (b) if there is to be a further penalty following an action described in clause 65(a) or (b), the sharemilker must pay liquidated damages to the farm owner or supplying shareholder (the sum of money to compensate for losses imposed by a dairy company against the supplying shareholder); and
  - (c) the farm owner and the sharemilker must ensure that at the commencement of this Agreement there is, under their respective insurance policies, adequate protection to cover any penalty of a monetary value on contaminated meat sold under the terms of this Agreement.

### Produce and grading losses

- 64 The sharemilker bears all of the deductions in connection with the grading of milk, subject to anything outside the sharemilker's control that prevents the sharemilker producing the finest-grade milk.

### Downgrades or loss of value

- 65 The sharemilker is responsible for making good to the farm owner any loss or lowering in value of milk arising from non-acceptance or downgrading by the dairy company due to—
- (a) a failure of the sharemilker to maintain a proper standard of cleanliness in sheds, utensils, or appliances, or to operate the plant and machinery in a proper and skilful manner; or
  - (b) the negligent use and control by the sharemilker of any factors leading to the non-acceptance or downgrading of the milk.

- 66 In all other cases, including (without limitation) somatic cell count grades, if there is a downgrading or lowering in value of milk or meat supplied, the party responsible for the downgrading or lowering of value must reimburse the other party to the extent of the loss.

### Effluent disposal

**Note:** The parties to this Agreement must be aware of their responsibilities under the Resource Management Act 1991. The farm owner must obtain and supply to the sharemilker any resource consents that are required.

- 67 The effluent management system used on the property is [*state what type of system is used*].
- 68 The farm owner must—
- (a) obtain the necessary resource consent from the local authority to dispose of effluent:
  - (b) provide the systems for the disposal of such effluent:
  - (c) indemnify the sharemilker against charges or actions arising from the failure by the farm owner to comply with paragraphs (a) and (b), except any charges or actions arising out of the failure of the sharemilker to operate the system in a proper and skilful manner.
- 69 The sharemilker must operate the effluent disposal system in a proper and skilful manner and in accordance with good practice and the standards set by the local authority. The sharemilker must indemnify the farm owner against any charges or actions arising out of the failure of the sharemilker to operate the system in a proper and skilful manner. The sharemilker must notify the farm owner immediately a deficiency or failure is discovered in the equipment or system. In the event that the sharemilker cannot contact the farm owner, the sharemilker is authorised to fix the fault immediately, at the cost of the farm owner.

### Pump or spray effluent disposal systems

- 70 If a pump or spray effluent disposal system is used, the sharemilker must pay the cost of the electricity charges and shift the spray unit. The sharemilker must lubricate the pump and spray unit as required. The farm owner must meet the cost of the maintenance of the unit as required.

### Effluent ponds

- 71 The type of effluent pond must be noted in clause 67. Where an effluent pond and long drains exist, the cost of cleaning these systems must be paid by the farm owner/the sharemilker\*.

\*Select one.

- 72 If other systems of effluent disposal are used, the operation of such systems must be agreed on by the parties in writing at the commencement of this Agreement.

### Rubberware

- 73 The farm owner must provide the rubberware for the milking plant cooler and pulsators as required.
- 74 The sharemilker must, at the commencement of this Agreement, supply and install new milking plant rubberware and, where necessary during the term of the Agreement, maintain and replace all milking plant belting and rubberware (except pulsator and cooler rubberware) required for the efficient operation of the milking plant according to the manufacturer's specifications. The sharemilker must leave the rubberware and belting in working order.

### Utensils

- 75 The sharemilker must supply and retain ownership of all utensils, brushware, and materials for cleaning the milking plant and appliances.
- 76 Unless otherwise agreed, the sharemilker must supply the filter socks and the washdown hose and nozzle.

### Electricity

- 77 The sharemilker must pay for all electricity used by the milking shed and pumps, including the cost for milking machines, water heating, pumping of water, chiller, and effluent pumping.

### Machinery, implements, and vehicles

- 78 The farm owner must provide a suitable cover or shed space for all machinery, implements, and vehicles supplied by the sharemilker.

### Maintenance costs

- 79 The supplier of machinery specified in clauses 8 and 9 must pay the maintenance costs of the machinery.

### Damage to plant or equipment

- 80 Expenses incurred by the farm owner or the sharemilker through damage to plant or equipment (except normal wear and tear) caused by the neglect of, or misuse by, the other party must (at the date the damage is repaired) be paid by the party who caused the damage.

### Fuel and lubricants

- 81 The owner of the machinery, milking plant, effluent disposal unit, and water pumps must supply the fuel and lubricants for the machinery, plant, unit, and pumps.

### Motorbike

- 82 If the sharemilker uses a motorbike on the farm, the sharemilker will provide it. All costs, including fuel, oil, and running expenses, must be paid for by the sharemilker and recorded in Annex 1.

### Tagging of herd

- 83 The herd must be tagged at the commencement of this Agreement and the sharemilker is responsible for maintaining the tagging of the herd with materials supplied by the farm owner.

### Herd testing

- 84 If the farm owner requires the herd to be tested, the farm owner must pay all herd testing charges. If extra labour is required for herd testing, the sharemilker must pay for that labour. The sharemilker must co-operate with the tester in the work of herd testing and provide to the tester the records and assistance that the tester may require.
- 85 All herd records must be provided by the sharemilker to the farm owner when requested and at the termination of the Agreement. All herd records remain the property of the farm owner and are confidential to the parties.

### Bulls and artificial insemination

- 86 The farm owner must provide bulls as required. The farm owner must arrange for the supply of and payment for the bull semen and the services of a trained technician. The sharemilker must present the herd and replacements for insemination or natural mating at the required times.

### Herd records

- 87 The sharemilker must record and provide to the farm owner on request, and on termination of this Agreement, details of—
- (a) all calvings; and
  - (b) calving dates and services of cows, whether by artificial insemination or natural mating; and
  - (c) cow deaths; and
  - (d) records of culls; and

- (e) full details of birth, rearing, calf deaths, and sales; and
- (f) herd test results (if any); and
- (g) non-cycling cows; and
- (h) empty cows; and
- (i) cows with mastitis and a record of their treatment; and
- (j) lame cows and a record of their treatment; and
- (k) all antibiotics used; and
- (l) any other specific records the farm owner requires, as long as the sharemilker is notified at the start of the season.

88 Unless otherwise agreed, the sharemilker must provide the farm owner with a management report in the form specified in Annex 3 at the end of each month.

### Stock responsibilities

89 Unless otherwise instructed by the farm owner, the sharemilker is responsible at all times for the total care and husbandry of all stock that is the subject of this Agreement, including the calling of a veterinarian where necessary.

The farm owner must ensure that adequate supplies of animal remedies are on hand at all times and must instruct the nominated supplier to provide to the sharemilker supplies of products to treat or prevent any diseases and conditions that require treatment or prevention.

**Note:** Both parties must be aware of their responsibilities under the Animal Welfare Act 1999.

The sharemilker has purchasing authority for any one purchase of supplies of animal remedies up to a value of \$[amount] per calendar month without recourse to the farm owner.

The following methods, materials, and period of administration must be used for the prevention of bloat, facial eczema, grass staggers, and mastitis:

	<b>Method</b>	<b>Material</b>	<b>Period of administration</b>
Bloat	[specify]	[specify]	[specify]
Facial eczema	[specify]	[specify]	[specify]
Grass staggers	[specify]	[specify]	[specify]
	<b>Method</b>	<b>Cows to be treated</b>	<b>Period of administration</b>
Mastitis	Teat spray	[specify]	[specify]
	Dry cow therapy	[specify]	[specify]

- 90 The sharemilker must immediately report to the farm owner any sickness, disease, and death in the stock.
- 91 The farm owner must, after consultation with the sharemilker, decide when the cows are to be dried off and the sharemilker must take appropriate steps to dry off the cows. In the absence of this instruction, the sharemilker must seek the authority of the farm owner before the cows are dried off.
- 92 The farm owner must provide a locker for storage of medicines and medicinal requisites at a convenient place at or near the milking shed.
- 93 The sharemilker must provide to the farm owner at end of each month a written monthly management report encompassing such information as requested by the farm owner (*see* Annex 3).

#### Animal health and veterinary expenses

- 94 The farm owner must pay all animal health and veterinary expenses.

#### Weeds and pest control

- 95 The farm owner must, at the farm owner's expense, supply the chemicals and other materials required for weed and pest control and eradication and the sharemilker must provide the necessary labour. Subject to clauses 96 and 97, the sharemilker must at appropriate times of the year eradicate all noxious weeds and weeds of economic importance (except capital weeds as defined in clause 96) from the land.
- 96 It is acknowledged by both parties that the control and eradication of the following weeds (**capital weeds**) is a capital cost in the locations specified:

<b>Weed</b>	<b>Location</b>
[specify]	[specify]

- 97 The responsibility of the sharemilker for the control and eradication of capital weeds is confined, as far as is practicable, to the prevention of any increase in capital weed infestation compared with the extent of infestation at the commencement of this Agreement or any subsequently improved position brought about at the farm owner's expense. If it is considered necessary, the parties may, at the commencement of this Agreement, consult a farm consultant or other acceptable third party to record the extent of capital weed infestation at the specified locations. The cost of any consultation is to be shared in the same proportion as specified in clause 19.

## Harvesting

- 98 Unless otherwise agreed, the costs incurred in employing contractors for any harvesting, collection, carting, and stacking of surplus feed on the land, including the extra labour and machinery required, must be paid by the farm owner. If the parties agree to share the costs, the share to be paid by the sharemilker must not exceed the agreed share and must be recorded in the table in clause 106 and reflected in costs allocated in Annex 1. For the cost of harvesting maize silage, *see* clause 101.
- 99 The sharemilker must provide the sharemilker's labour and the labour of his or her employees at no cost to the farm owner for the harvesting of surplus feed.

## Forage crops and maize silage

- 100 The growing of green feed or other forage crops on the land is to be determined by the farm owner in consultation with the sharemilker and must be recorded in writing. The farm owner must provide seeds, fertiliser, fencing materials, and any other materials required to carry out this work. If outside contractors are used, the farm owner must meet that cost.
- 101 Unless otherwise agreed, in the case of maize grown for silage on the land, the cost of growing and harvesting the crop must be paid by the farm owner. If the parties agree to share the cost, the share to be paid by the sharemilker must not exceed the agreed share recorded in the table in clause 106 and must be reflected in the costs allocated in Annex 1.
- 102 The sharemilker must provide the sharemilker's labour and the labour of his or her employees at no cost to the farm owner for the growing and harvesting of forage crops and maize silage.

## Nitrogen

- 103 Unless otherwise agreed, the costs, including cartage and spreading where a contractor is used, of applying urea to boost seasonal pasture growth on the land, except as provided for in clause 50, must be paid by the farm owner. If the parties agree to share the cost, the share to be paid by the sharemilker must not exceed the agreed share and must be recorded in the table in clause 106 and reflected in costs allocated in Annex 1. If the parties agree that the sharemilker will share the cost of the application of compound nitrogenous fertiliser to boost seasonal pasture growth, the cost to the sharemilker will be determined by calculating the nitrogen content based on the equivalent cost of urea.

## Purchased feed

- 104 Unless otherwise agreed, the landed cost of bought-in supplementary feed for the stock that is the subject of this Agreement, except as provided for in clause

50, including meal purchased for calves, must be met by the farm owner. If the parties agree to share the cost, the share to be paid by the sharemilker must not exceed the agreed share and must be recorded in the table in clause 106 and reflected in costs allocated in Annex 1.

### Grazing off

105 Unless otherwise agreed, the cost including cartage of the grazing off of any stock that is the subject of this Agreement, except as provided for in clause 50, must be paid by the farm owner. If the parties agree to share the cost, the share to be paid by the sharemilker must not exceed the agreed share and must be recorded in the table in clause 106 and reflected in costs allocated in Annex 1. The conditions of grazing off must be recorded in writing before the stock is grazed off.

106 *Insert the % share relating to clauses 98 to 105:*

	<b>Farm owner (%)</b>	<b>Sharemilker (%)</b>
Harvesting (clauses 98 and 99)		
Forage crops and maize silage (clauses 100 to 102)		
Nitrogen (clause 103)		
Purchased feed (clause 104)		
Grazing off (clause 105)		

### Cash cropping

107 If the parties agree that a cash crop is to be grown on the dairying area, the terms and conditions of cropping including the sharemilker's return must be agreed in writing before the preparation of any land for that purpose.

### Freight and droving fees

108 All costs of cartage incidental to the farming operations (except where otherwise provided for in this Agreement) and all droving fees (except for the droving by the sharemilker or the sharemilker's employees of the stock that is the subject of this Agreement, to outside grazing) must be paid by the farm owner.

### Water

109 The farm owner must provide a water supply system of sufficient capacity to provide water of acceptable quality for stock, farm dairy, and household purposes. If satisfactory drinking water for domestic use cannot be obtained from other sources, sufficient tank accommodation for the collection of rainwater

must be provided at the sharemilker's house. The cost of purchased water for household purposes must be paid by the farm owner.

- 110 The cost of providing water to stock, the farm dairy, and for household purposes must be paid for by the sharemilker as follows:
- (a) if the farm owner provides a pressurised water reticulation system or if the farm is supplied through a pressurised system from a storage tank fed by a trickle-feed community water scheme, the sharemilker must pay the cost of the electricity for pumping the water:
  - (b) if the farm is supplied from a pressurised community scheme, the parties must pay the cost of the water supplied from the community scheme in the agreed share.

The sharemilker is responsible for minor repairs to the water system and regular maintenance of the water pump, and the farm owner must provide the materials, where necessary, for this purpose. Any provision for the historical use of the community water supplied to the land must be recorded in Annex 1.

**Note:** It is recommended that the sharemilker ascertain the costs of metered water before signing this Agreement.

- 111 In the event of a serious interruption to the water supply or the need for major repairs to the supply, the sharemilker must immediately advise the farm owner, who must take prompt steps, at the farm owner's expense, to remedy the situation. If a shortfall is due to climatic conditions or a serious malfunction of the water supply system outside the sharemilker's control, the farm owner must meet the cost of imported water.
- 112 If water is being used for a purpose for which the sharemilker does not receive a share of the returns, except for use at the farm owner's house, then all costs associated with the supply of water to such areas must be paid by the farm owner.

### Irrigation

- 113 If irrigation of pastures is practised, the sharemilker is responsible for shifting the irrigation plant and equipment as required by the farm owner. The sharemilker is responsible for minor repairs and the regular maintenance of the irrigation system, and must provide the farm owner with the materials, if necessary, for that purpose.
- 114 The sharing of the total cost of the irrigation operation is to be decided before the signing of this Agreement and must be recorded in Annex 1.

### Accommodation

- 115 On the commencement of this Agreement, the farm owner (or the farm owner's agent) and the sharemilker must inspect the house and surrounds together and—
- (a) a written record must be made of any existing damage or wear and tear using the Accommodation Checklist in Annex 2; and
  - (b) any improvements to be undertaken by the farm owner must be recorded, with a date by which the work will be completed. Both the farm owner and the sharemilker must have a copy of this record, to be signed by both parties.
- 116 The farm owner must provide and maintain in good order and condition suitable accommodation for the sharemilker and the sharemilker's employees. The sharemilker may make this house available to the farm manager. The accommodation must consist of suitable living room, kitchen, including a stove operating to the manufacturer's specifications, bedrooms, bathroom, laundry, and flush toilet. The accommodation must include—
- (a) running water, a sewerage system, and fixtures suitable for modern laundry appliances; and
  - (b) a suitable heating system supplied at the cost of the farm owner; and
  - (c) adequate drapes, fixed floor coverings, and light fittings; and
  - (d) a garage or carport provided by the farm owner; and
  - (e) adequate telephone facility; and
  - (f) a secure stock-proof fence enclosing house and surrounds.
- 117 The cost of septic tank cleaning is to be paid by the farm owner.
- 118 The cost of electricity for lighting, heating, and power (including for pumping water) at the sharemilker's house is to be paid by the sharemilker.
- 119 The sharemilker must keep the house and the surrounds in good and clean condition, and is responsible for any damage sustained to the house and pertinent buildings during the sharemilker's occupation (except fair wear and tear).
- 120 On termination of this Agreement, the sharemilker must leave the house, chattels, and surrounds in a clean and tidy condition. If the sharemilker fails to do so, the farm owner is entitled to have the premises cleaned and to deduct the cost of the cleaning from any money due to the sharemilker.
- 121 Neither the sharemilker nor the sharemilker's employees are a tenant of the land or any building. If the sharemilker or the sharemilker's employees are given notice of early termination of this Agreement, the sharemilker or the

sharemilker's employees have 14 working days to vacate any accommodation provided as part of the contract.

- 122 The farm owner (or the farm owner's agent) has the right to inspect the sharemilker's accommodation. The farm owner (or the farm owner's agent) must give the sharemilker 24 hours' notice of the inspection.

### Administration

#### *Accident compensation levies*

- 123 The sharemilker is responsible during the term of this Agreement for paying the sharemilker's and sharemilker's employees' accident compensation levies as required under legislation.

#### Occupational safety and health

- 124 The farm owner and the sharemilker 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 Health and Safety at Work Act 2015. To this end, the parties agree to take all practicable steps to provide a safe working environment, and act in accordance with good practice and relevant standards set by the Department of Labour. If either of the parties brings people onto the farm, that party will be responsible for those person's safety.

Schedule clause 124: amended, on 4 April 2016, by section 232 of the Health and Safety at Work Act 2015 (2015 No 70).

#### Federated Farmers

- 125 The farm owner agrees to provide reasonable access to officials of the Federation or any duly appointed representative of the sharemilker.

#### Disease reactors

- 126 If an appropriate authority orders the slaughtering of an in-milk cow, and the slaughtering of the animal does not reduce the herd to below the minimum number specified in clause 42, the farm owner may elect whether or not to replace it with a similar-producing animal.
- 127 If slaughtering referred to in clause 126 reduces the herd below the minimum number specified in this Agreement, the farm owner must, at the farm owner's expense, within 14 working days of the animal leaving the farm, replace it with another similar-producing animal, unless the parties agree in writing that it should not be replaced.

- 128 If there is a production compensation paid on account of the slaughtering of such animals, then the sharemilker is entitled to receive the sharemilker's share of the compensation.

### Termination procedures

- 129 The farm owner must advise the sharemilker in writing 3 months before the end of the contract of the work required to be done to meet the terms and conditions of this Agreement. This does not exempt the sharemilker from carrying out maintenance work until the end of this Agreement.

**Note:** It is strongly recommended that the parties record in writing 3 months before the end of the contract any action that may be required to fulfil the terms and conditions of this Agreement relating to pasture and supplementary feed on hand upon termination (*see* clauses 53 and 54).

- 130 If there is a shortfall of feed on hand on termination of this Agreement, then the cost of meeting the shortfall must be met by the parties according to the terms and conditions of clause 56.

### Death of party

- 131 If this Agreement is made with a sole sharemilker and the sharemilker dies during the period of this Agreement, the Agreement will terminate as from the date of the sharemilker's death. In this case, the personal representatives of the estate of the sharemilker are entitled under clauses 19 to 29 to all money due to the sharemilker at the time of the sharemilker's death, including deferred or final payments, but subject to adjustment in respect of any other matters of income or outgoings (or both) arising under this Agreement.

- 132 If this Agreement is with a sharemilking partnership and 1 of the partners dies during the period of this Agreement, the remaining partner or partners have the option of terminating this Agreement immediately or at the conclusion of the season, but the farm owner has the prior option of terminating the Agreement within 1 month of the date of death of the sharemilker in the event that the remaining partner or partners cannot continue to the satisfaction of the farm owner.

In either case, the personal representatives of the estate of the deceased sharemilker and the remaining partner or partners are entitled under clauses 19 to 29 to all money due to the partnership at the time of the conclusion of this Agreement, including deferred or final payments up to the date of the conclusion, but subject to adjustment in respect of any other matters of income or outgoings (or both) arising under the terms of this Agreement.

- 133 If the farm owner dies during the period of this Agreement, the Agreement will terminate at the end of the current season.

### Matters not provided for

- 134 If this Agreement is silent on any matter or thing that becomes the subject of dispute between the parties, then that matter or thing must be determined in accordance with the custom prevailing in the district. If there is no custom prevailing in the district, the matter or thing must be determined in accordance with equity and good conscience.

### Breach of Agreement

- 135 If the sharemilker commits a serious breach of this Agreement, the farm owner may give the sharemilker notice in writing to remedy the breach. If the breach is not rectified within 10 working days, or recurs, the farm owner may terminate this Agreement immediately and the sharemilker is entitled only to money actually due to the sharemilker at the time of termination, but without prejudice to—
- (a) the rights of the farm owner to recover damages for breach of this Agreement:
  - (b) the right of the sharemilker to refer the matter to conciliation under clauses 142 to 148.

Any sharemilker who uses, possesses, or cultivates any illegal substance or who commits an offence against the Misuse of Drugs Act 1975 is to be treated as having committed a serious breach of this Agreement and those actions constitute grounds for immediate termination of this Agreement.

- 136 If the farm owner commits a serious breach of this Agreement, the sharemilker may give the farm owner notice in writing to remedy the breach and, if the breach is not rectified within 10 working days or recurs, the sharemilker may terminate the Agreement immediately. If this Agreement is terminated under this clause, the sharemilker is entitled to money actually due to the sharemilker at the time of the termination and subsequent payments on production up to the date of termination. Termination of this Agreement under this clause does not affect the rights of the sharemilker to recover damages for breach of this Agreement, the rights of any other sharemilker, or the farm owner's right to refer the matter to conciliation under clauses 142 to 148.
- 137 If either party disputes the right of the other party to terminate this Agreement, the dispute must be referred to conciliation under clauses 142 to 148.

**Note:** A breach capable of rectification is not grounds for termination of this Agreement.

### Notices

- 138 A notice given to the farm owner or the sharemilker is to be treated as having been served if—

- (a) the notice is handed to that person or that person's nominated representative under clause 16(a); or
- (b) the notice is posted in a letter addressed to the person at that person's place of residence or business in New Zealand. A notice sent by post is to be treated as having been served on the 5th working day after the day it was posted; or
- (c) in the case of a company or other body corporate, the notice is delivered to its registered office or is posted to its registered office. A notice sent by post is to be treated as having been served on the 5th working day after the day it was posted; or
- (d) the notice is sent by fax to a fax number recorded on this Agreement, or, if applicable, to a number supplied by the intended recipient to replace his or her fax number as recorded on this Agreement. A notice sent by fax is, in the absence of proof to the contrary, served or given if the sender's fax machine generated a record of the transmission of the notice to the fax machine of the recipient, and the date of the record is to be treated as the date of receipt of the notice; or
- (e) the notice is sent by email or other means of electronic communication to an email address recorded on this Agreement, or, if applicable, to an email address supplied by the intended recipient to replace his or her email address as recorded on this Agreement. A notice sent by email or other means of electronic communication is, in the absence of proof to the contrary, to be treated as having been served or given,—
  - (i) in the case of an addressee who has designated an email or electronic communication address for the purpose of being served, at the time the email or electronic message is sent; or
  - (ii) in any other case, at the time the email or electronic communication comes to the attention of the addressee; or
- (f) the notice is served by any other legally recognised means of service.

### Claims

- 139 No claim by the farm owner against the sharemilker or the sharemilker against the farm owner in any way arising out of this Agreement in relation to operations during any one milking season (whether the Agreement is renewed or not) will be recognised or sustainable, and no action in respect of any claim is enforceable, unless full details of the claim in writing (the **notice of dispute**) are served by the claimant on the respondent within 20 working days of the claimant becoming aware of the alleged breach of this Agreement, but in any event no later than 20 working days from the end of the season to which the alleged breach relates, time being strictly of the essence.

## Counterclaims

- 140 If a claim is made by either party, a period of 10 working days after the claim has been served is permitted within which to make a counterclaim. No counterclaim will be recognised or sustainable, and no action in respect of any counterclaim will be enforceable, unless adequate details, in writing, of the counterclaim have been served by the respondent on the claimant within that 10-working-day period.
- 141 A party to this Agreement must not withhold proceeds or commence court action or arbitration relating to any dispute arising out of this Agreement unless that party has first completed the dispute resolution procedures set out in clauses 142 to 148.

## Dispute resolution

- 142 If any dispute arises out of and in relation to this Agreement,—
- (a) the parties to this Agreement will negotiate in good faith and co-operate and use their best endeavours to resolve the dispute expeditiously. The parties may ask an independent third party to assist them to resolve the dispute; and
  - (b) if the dispute is not resolved under paragraph (a) within 10 working days of receipt of the notice of dispute (or any further period that may be agreed in writing), the parties must proceed to conciliation and appoint a conciliator; and
  - (c) if the parties are unable to agree on a conciliator within 5 working days of proceeding to conciliation under paragraph (b), the conciliator will be appointed from the National Panel of Conciliators and either party may request the Chairperson of the Panel to make an appointment; and
  - (d) the conciliator must convene a conciliation meeting as soon as practicable; and
  - (e) the conciliator must assist the parties in an independent and impartial manner to reconcile their views on the dispute or difference to reach an amicable settlement or a solution; and
  - (f) if the parties are unable to reach an agreement or a solution, the conciliator must produce a written reasoned proposal for the determination of the dispute; and
  - (g) the conciliator's proposal for determination is binding on both parties unless within 5 working days of receiving the proposal at least one party notifies the other in writing that they reject the conciliator's proposal; and
  - (h) if the conciliator is unable to convene a conciliation meeting within 20 working days of the notice of dispute (or any further period as may be

- agreed in writing) because of lack of response from either party or for any other reason, the conciliator must notify both parties that the conciliation has been unsuccessful.
- 143 The conciliation procedure terminates—
- (a) by the signing of a settlement agreement by the parties; or
  - (b) by a written declaration of one party to the other and to the conciliator that the conciliation is terminated; or
  - (c) by a written declaration by the conciliator to the parties that the conciliation has been unsuccessful; or
  - (d) by the parties not objecting to the conciliator's proposal for determination in writing within 5 working days of receipt of the conciliator's proposal; or
  - (e) by the passing of 20 working days or more from the date of service of the notice of dispute without a conciliated outcome and where the parties have not agreed to extend time for the conciliation process to continue.
- 144 The parties must pay half the costs of the conciliation as well as paying their own costs of the conciliation procedure.
- 145 All discussions in the conciliation process are without prejudice to, and must not be referred to in, any subsequent proceedings of any kind.
- 146 The conciliator must not, unless by consent of the parties, act as arbitrator, witness, counsel, adviser, or representative of any party in any subsequent arbitration or judicial proceedings in respect of any dispute that has been the subject of the conciliation procedure where he or she has been the conciliator.
- 147 If the dispute is not resolved by agreement within 20 working days of the notice of dispute, the parties' dispute must be treated as having been submitted to arbitration as provided for in clauses 149 to 159.
- 148 If the dispute is not resolved by conciliation, the farm owner is entitled to withhold the sharemilker's proceeds to the value of the claim as follows:
- (a) the farm owner must notify the sharemilker in writing of the intention to retain the sharemilker's payment:
  - (b) the farm owner is not entitled to retain or deduct from any one payment due or to become due to the sharemilker more than 75% of any such payment:
  - (c) all money deducted from the sharemilker will be paid into the farm owner's solicitor's interest-bearing trust account to be accounted for on request by either party.

## Arbitration

- 149 If a dispute, difference, or question arises between the parties or a party's representative in relation to the construction of this Agreement or in relation to any matter or thing connected with or arising out of this Agreement (a **dispute**) that cannot be resolved by conciliation under clauses 142 to 148, the dispute must, in the absence of any provision to the contrary, be referred to arbitration with a sole arbitrator in accordance with and subject to the Arbitration Act 1996.
- 150 Arbitration is commenced by one party serving notice in writing on the other party.
- 151 The parties may agree on the arbitrator. If the parties are unable to agree on the arbitrator within 20 working days of the dispute being referred to arbitration, then the arbitrator is to be appointed by the President of the Arbitrators' and Mediators' Institute of New Zealand Incorporated (or the President's nominee) in accordance with the Arbitration Act 1996. The arbitrator must not be a person who has participated in any conciliation procedure in respect of the dispute unless by consent of the parties.
- 152 The arbitrator must deliver an award within 3 months of the arbitrator's appointment. The parties agree to fully co-operate in the arbitration. Subject to the Arbitration Act 1996, the arbitrator may conduct the arbitration in the manner that the arbitrator considers appropriate.
- 153 If the farm owner withholds more money from the sharemilker than the amount the farm owner is claiming, then, in the absence of extenuating circumstances, the arbitrator must award interest on that money at a rate of 8% per month or part of the month compounding.
- 154 If the farm owner withholds only the amount being claimed and the farm owner's claims are subsequently not awarded in full, then, in the absence of extenuating circumstances, the arbitrator must award interest at a rate of up to 5% per month or part of the month compounding on the excess money withheld.
- 155 The arbitrator has the power to direct by whom, in what amounts, and in what manner any fees and charges must be paid.
- 156 The arbitrator may require the parties to lodge with the arbitrator a sum of money as a deposit against the arbitrator's fees and charges.
- 157 In assessing a claim for interest, the arbitrator may set interest rates in excess of the rate that would apply on an award of interest on a money judgment under Part 1 of the Interest on Money Claims Act 2016 if the arbitrator considers it appropriate to do so.

Schedule clause 157: amended, on 1 January 2018, by section 29 of the Interest on Money Claims Act 2016 (2016 No 51).

- 158 The arbitrator must give the award in writing within 1 month of the hearing. However, the arbitrator may extend the time for giving the award by a further month by giving notice in writing to the parties.
- 159 The award in the arbitration is final and binding on the parties. The parties agree that clause 5(1)(c) of Schedule 2 of the Arbitration Act 1996 (which allows the High Court to grant leave to appeal on any question of law arising out of an award) does not apply to the arbitration.

### Public liability insurance

- 160 The farm owner and the sharemilker must each take out public liability insurance to a recommended amount of at least \$2 million. At the commencement of this Agreement, each party must produce to the other a copy of the certificate of insurance cover.

### Sale of farm

- 161 The farm owner has the right at any time during this Agreement to sell the farm or any part of the farm and, in doing so, to cancel this Agreement. If the farm owner sells the farm or any part of the farm, the sharemilker is entitled to receive from the farm owner the sharemilker's proportion of the actual, deferred, and final payment unpaid on milk or milksolids produced during the season up to the date on which the cancellation takes effect, together with an amount equal to the sharemilker's net proportion of the value of the estimated milk or milksolids for the unexpired period of the season, including deferred and final payment. If the farm owner and the sharemilker fail to agree as to the estimated amount of milk or milksolids, the previous 3 years' average production must be used as the basis for the calculation. The total production in the previous 3 seasons for the month in question must be divided by the number of cows milked during those months in the previous 3 seasons, giving, for the purposes of the calculation, a standard of production per cow.

If the farm owner has not been dairying on the farm during the previous 3 years, the standard of production per cow for the purposes of the calculation is the declared average production per cow supplied during the months that milk was supplied to the farm owner's dairy company from all its suppliers in the previous year. From the sharemilker's proportion of the estimated gross value of the standard production per cow must be deducted the estimated cost of production per cow by way of labour charges, shed expenses, power costs, and all other charges that are the responsibility of the sharemilker. The difference must then be multiplied by the number of cows milked at the date on which the cancellation takes effect, and the result is the sharemilker's net proportion of the value of the estimated milk or milksolids for the unexpired period of the season, including deferred and final payments.

## Acknowledgement

162 By signing this Agreement, the parties acknowledge that they have had the opportunity to seek advice from an independent third party and to seek legal advice on the terms of this Agreement.

## Signature and date

**Note:** Before signing this Agreement, parties should take particular note of clause 16.

### **Farm owner**

Name of farm owner (print):

Date:

Signature of farm owner:

Name of witness (print):

Signature of witness:

Occupation of witness:

Address of witness:

### **Sharemilker**

Name of sharemilker (print):

Date:

Signature of sharemilker:

Name of witness (print):

Signature of witness:

Occupation of witness:

Address of witness:

## Annex 1

### Sharemilker's expenses

**Note:** Before completing this Annex, parties are advised to take independent advice.

#### *Calculation of the percentage to be paid to the sharemilker*

	(\$)
Minimum cow numbers (clause 42)	
Expected total production $[number]$ cows $\times$ $[number]$ kg/cow	
Expected payout \$ $[amount]$ kg/milksolids	
Expected gross milk income	
<b>Total A</b>	

#### *Sharemilker's expenses (to be quantified)*

	(\$)
Electricity	
Shed expenses	
Rubberware (based on manufacturers' specifications)	
Machinery (provision and maintenance—agreed figure)	
tractor	
farm bike	
implements	
Fuels and lubricants	
Administration (agreed figure)	
ACC levy	
Insurance (public liability)	
Insurance (farm-related)	
<b>Total B</b>	

*Shared expenses subject to the provisions of this Agreement*

	<b>Total</b> <b>(\$)</b>	<b>Farm</b> <b>owner</b> <b>(%)</b>	<b>Farm</b> <b>owner</b> <b>(\$)</b>	<b>Sharemilker</b> <b>(%)</b>	<b>Sharemilker</b> <b>(\$)</b>
Harvesting (clauses 98 and 99)					
Forage crops and maize silage (clauses 100 to 102)					
Nitrogen (clause 103)					
Purchased feed (clause 104)					
Grazing off (clause 105)					
Water (clause 110(b))					
Irrigation (clause 113)					
<b>Total C</b>					

Total sharemilker expenses:  $B + C = D$  \$[*amount*]

Percentage of costs to be paid by the sharemilker =  $D \div A \times 100 = E$  [*number*]%

**Labour and management**

Minimum of 21% of milk returns for herds with a minimum number not exceeding 300 cows (clause 19(a))  $\div A \times 100 = F\%$

*or*

For herds with a minimum number exceeding 300 cows (clause 19(b))  $\div A \times 100 = F\%$

Gross percentage to be paid to the sharemilker:  $E + F$  (includes cost of all labour).

## Annex 2

### Accommodation checklist

Room	Item	Condition acceptable		Damage (detail as required)	Agreement to modify (detail as required)
		Farm owner	Sharemilker		
Lounge	Walls/doors				
	Lights/power points				
	Floor/floor coverings				
	Windows				
	Blinds/curtains				
Kitchen/ Dining	Walls/doors				
	Lights/power points				
	Floors/floor coverings				
	Windows				
	Blinds/curtains				
	Cupboards				
	Sink/benches				
	Stove				
Bathroom	Refrigerator				
	Walls/doors				
	Lights/power points				
	Floors/floor coverings				
	Windows				
	Blinds/curtains				
	Mirror/cabinet				
	Bath				
	Shower				
	Wash basin				
Laundry	Toilet				
	Walls/doors				
	Lights/power points				
	Floors/floor coverings				
	Windows				
	Blinds/curtains				
	Washing machine				
Bedroom 1	Wash tub				
	Walls/doors				
	Lights/power points				
	Floors/floor coverings				
	Windows				
Bedroom 2	Blinds/curtains				
	Walls/doors				
	Lights/power points				
	Floors/floor coverings				
Bedroom 3	Windows				
	Blinds/curtains				
	Walls/doors				
	Lights/power points				

Room	Item	Condition acceptable		Damage (detail as required)	Agreement to modify (detail as required)
		Farm owner	Sharemilker		
General	Blinds/curtains				
	Telephone facility				
	Rubbish bins				
	Locks				
	Garage/carport				
	Grounds				
	Number keys supplied				
	Water supply				
	Stock-proof fence (clause 116(f))				

### Annex 3

## Monthly management report

Ending: [*date*]Stock numbers as at [*date*]

	Stock on hand	Grazed off	Number	Type
Cows milking			Births	
Cows to calve			Deaths	
Dry cows			Sales	
Heifers			Purchases	
Heifer calves				
Bull beef calves				
Other				

### *Production*

	Current month			Year to date		
	Actual	Budget	Last year	Actual	Budget	Last year
Protein (kg)						
Fat (kg)						
Milksolids (kg)						

### *Maintenance*

**Complete and proposed**  
[*specify*]

**Materials needed**  
[*specify*]

### *Pasture*

**Comment**

General feed position  
Present round  
Hay/silage made during month  
Crops planted  
Weed programme  
Regrassing/undersowing  
Supplements used  
Fertiliser applied/required

### *Animal health*

**Comment on problem areas or actions proposed**

Bloat/milk fever/staggers  
Calves/growth rates/weight  
Milk quality/mastitis  
Blood/liver test results

Facial eczema

*General*

**List matters to be discussed**  
[specify]

**Maintenance/strategies the sharemilker believes  
need to be implemented**  
[specify]

## Reprints notes

### 1 *General*

This is a reprint of the Sharemilking Agreements Act 1937 that incorporates all the amendments to that Act as at the date of the last amendment to it.

### 2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

### 3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

### 4 *Amendments incorporated in this reprint*

Interest on Money Claims Act 2016 (2016 No 51): section 29  
Health and Safety at Work Act 2015 (2015 No 70): section 232  
Sharemilking Agreements Order 2011 (2011 No 295): clause 4  
Limitation Act 2010 (2010 No 110): section 58  
Sharemilking Agreements Amendment Act 1985 (1985 No 98)  
Industrial Relations Amendment Act 1977 (1977 No 108): section 6(2)  
Agricultural Workers Act 1977 (1977 No 43): section 62(1)(a)  
Sharemilking Agreements Amendment Act 1965 (1965 No 110)  
Contracts Enforcement Act 1956 (1956 No 23): section 5(1)  
Labour Department Act 1954 (1954 No 71): section 17(1)  
Statutes Amendment Act 1945 (1945 No 40): section 75(5), (6)