

FARM LEASE AGREEMENT

THIS LEASE made this _____ day of _____,

BETWEEN:

_____, a body corporate incorporated pursuant to the laws of the Province of Ontario

[Alternatively]

_____, *an individual residing in the Province of Ontario*

(the "**Landlord**")

- and -

_____, a body corporate incorporated pursuant to the laws of the Province of Ontario

[Alternatively]

_____, *an individual residing in the Province of Ontario*

(the "**Tenant**")

[NTD: Every lease will be unique to the experience of each Landlord and Tenant. In this lease we have operated on the assumptions that: a) there are no buildings on the property, b) the Tenant is a grain farmer, and c) there is a municipal drain that flows along a corner of the field.]

IN CONSIDERATION of the rents, covenants and agreements contained in this Lease, and in the spirit of mutual understanding and security, the parties to this agreement (this "**Lease**") agree as follows:

1. LEASED PROPERTY

1.1 The Landlord hereby leases to the Tenant the property at _____ **[NTD: insert address.]** (the "**Leased Property**") and more fully described in Schedule "**A**" attached hereto.

2. TERM OF THE LEASE

2.1 This Lease will be in force for a term of _____ (_____) years beginning on the _____ day of _____, _____ (the "**Commencement Date**") and ending on the _____ day of _____, _____ (the "**Termination Date**") unless terminated in accordance with the provisions of this Lease.

3. RENT

3.1 The Tenant shall pay to the Landlord, during each year of the Term, rent for the Leased Property in the amount of \$ _____ per acre (the "**Rent**") payable in two yearly installments of \$ _____, payable on the _____ day of _____, and on the _____ day of _____.

[NTD: Or alternatively,

3.1 The Tenant shall pay to the Landlord, during each year of the term, rent for the Leased Property in accordance with the Rental Formula, as set out in Schedule "D" as attached hereto.]

3.2 The Tenant shall also pay to the Landlord all other amounts payable by the Tenant to the Landlord or to be discharged as Rent under this Lease (the "Additional Rent") at the times and in the manner provided in this Lease or, if not so provided, as reasonably required by the Landlord.

3.3 The Rent shall be exclusive of property taxes, which shall be the responsibility of and paid by the Landlord.

[NTD: Alternatively, the Share-Cropping Rent provisions below may be used.]

3. RENT

3.1 The Tenant will pay the Landlord a yearly rental of one-third [NTD: or such other percentage as decided between the parties] of the crop annually, subject to adjustment as set forth in this clause. The crop share annually is to be adjusted for the Landlord's one-third share of costs actually incurred annually for the cost of chemicals, fertilizers, crop insurance and liability insurance, all of which will be paid in the first instance by the Tenant and reimbursed by adjustment from the Landlord's crop share. The Tenant will provide a full accounting and such supporting documentation as may reasonably be required in connection with the calculation and adjustments set forth in regard to the Rent.

3.2 The Rent will be paid by the Tenant on or before the anniversary date of the Lease.

3.3 The Tenant will provide timely proof of payment to the Landlord regarding liability insurance, crop insurance, chemicals and fertilizer, in default of which the Landlord may pay any or all of the same. In the event the Landlord pays any or all of the same on behalf of the Tenant, the Tenant will reimburse the Landlord forthwith on demand together with interest at ___ (___%) [NTD: for example, eight (8%)] percent per annum from the date of payment to the date of reimbursement.

4. LANDLORD'S REPRESENTATIONS AND WARRANTIES

4.1 The Landlord makes no representations or warranties regarding the Leased Property, nor does the Landlord represent or make any warranties that any of the land which is the subject of this Lease is cultivated and/or suitable for farming. The Tenant acknowledges that it relies upon its own estimate and judgment.

5. COVENANTS

5.1 The Landlord and the Tenant covenant and agree to discuss and complete the Discussion Checklist as set out in Schedule "B" as attached hereto.

5.2 The Landlord and the Tenant covenant and agree as set out in Schedule "C" as attached hereto.

[NTD: The provision below deals with improvements. A Tenant may want the language modified, by adding in the phrase "acting reasonably", after "consent of the Landlord".]

6. ALTERATIONS BY TENANT

6.1 The Tenant may from time to time at its own expense make changes, additions and improvements to the Leased Property to better adapt the same to its business, provided that any

change, addition or improvement shall be made only after obtaining written consent of the Landlord, and shall be carried out in a good and workmanlike manner and only by persons selected by the Tenant and reasonably approved in writing by the Landlord. The Tenant shall pay promptly when due all costs for work done or caused to be done by the Tenant to the Leased Property which could result in any lien or encumbrance on the Landlord's interest in the property and shall keep the title to the property and every part thereof free and clear of any lien or encumbrance.

[NTD: The provision below is not comprehensive but allows for a method of dispute resolution in mediation that is less adversarial than other traditional formats such as judicial or arbitral.]

7. DISPUTE RESOLUTION

7.1 If a dispute arises between the parties, including in respect of the content or interpretation of this Lease, and which has not been resolved within thirty (30) days **[NTD: or such other period of time]** such dispute may be submitted to a 3rd party mediator, the choice of mediator to be agreed upon by the parties, and failing agreement to choose a mediator within an additional thirty (30) days, the mediator to be appointed by a judge of the Superior Court, for resolution via non-binding mediation conducted pursuant to the National Mediation Rules of the ADR.

8. TERMINATION

8.1 Termination by the Landlord or the Tenant

- (a) Either the Landlord or the Tenant may terminate this Lease by giving notice in writing to the other party at least _____ () months **[NTD: choose a number of months]** prior to the expiry of the Term.

8.2 Termination by the Landlord

Upon the occurrence of any of the following events:

- (a) the Tenant fails to pay any Rent or other sums due hereunder when due, and such Rent or other sums are not paid within fifteen (15) days **[NTD: or alternatively, _____ days]** after notice is given by the Landlord of such non-payment; and,
- (b) the Tenant fails to observe, perform and keep each and every of the covenants, agreements and conditions herein contained to be observed, performed and kept by the Tenant and persists in the failure after fifteen (15) days' **[NTD: or alternatively, _____ days]** notice by the Landlord requiring the Tenant to remedy, correct, desist or comply (or such longer period as may be reasonably required to cure the breach given the nature of same);

then the Landlord may, at its option, and in addition to and without prejudice to all rights and remedies of the Landlord available to it either by any other provision of this Lease or by statute or the general law, either

- (c) terminate this Lease by giving the Tenant ten (10) days **[NTD: or alternatively, _____ days]** prior written notice of the termination, and be entitled to the full amount of the current year's Rent which shall immediately become due and payable; or
- (d) without notice or any form of legal process, forthwith re-enter upon and take possession of the Leased Property or any part thereof in the name of the whole and re-let the Leased Property or any part thereof on behalf of the Tenant or otherwise as the Landlord sees fit,

provided that, if the Tenant has planted crops on the Leased Property, the Tenant shall be entitled to, within a reasonable period of time after termination of this Lease, re-enter upon the Leased Property to harvest such crops,

and the Tenant shall pay to the Landlord forthwith upon demand all expenses of the Landlord in re-entering, terminating, re-letting, collecting sums due or payable by the Tenant or realizing upon assets seized including tenant inducements, leasing commissions, legal fees on a solicitor and client basis and all disbursements and the expense of keeping the Leased Property in good order, and preparing the same for re-letting.

8.3 Compensation by the Landlord

- (a) In the event of early termination pursuant to Section 8.1 of this Lease, the Landlord agrees to compensate the Tenant for certain of the Tenant's investments into the Leased Property as follows:
- (i) **Manure and dry fertilizer.** To reimburse the Tenant for the cost of fertilizers and their application if written notice of termination was given after application. The Tenant will be reimbursed the full cost in the event that the lease is terminated before a cropping season's use of the investment in fertility, and one third (1/3) of the cost in the case of terminating before a second cropping season's use of the investment.
 - (ii) **Cover crops.** To reimburse the Tenant for the full cost of cover crop seed and application if written notice of termination was given after cover crop seeding, but before a cropping season's use of the benefits.
 - (iii) **Subsurface drainage tiling or other structural improvements.** Provided that The Tenant was given written consent by the Landlord to complete subsurface drainage tiling or other structural improvements, the Landlord agrees to reimburse the Tenant for the cost of said improvements as follows:
 - (A) In the event that this Lease is terminated during the same twelve (12) month period in which the improvements were completed, the Tenant shall be reimbursed for 100% of the cost; and,
 - (B) During each subsequent year after the improvements have been completed, the amount for reimbursement shall decrease by 10% until the end of the tenth (10th) year after the improvements have been completed, upon which the Landlord shall no longer be required to reimburse the Tenant. **[For example, if this Lease is terminated prior to the fourth (4th) year after the improvements have been completed, the Landlord will be required to reimburse the Tenant for 70% of the cost]**

[NTD: The below provision commits the Tenant to compensating the Landlord for any harm, liability, or loss arising out of the agreement between them. If preferred, it may be modified by limiting the indemnity of the Tenant to a certain dollar amount.]

9. INDEMNITY

9.1 The Tenant shall indemnify and save harmless the Landlord and its agents and employees from any and all liabilities, damages, costs, claims, suits or actions growing or arising out of:

- (a) any breach, violation or non-performance of any covenant, condition or agreement in this Lease set forth and contained on the part of the Tenant to be fulfilled, kept, observed and performed; and,
- (b) any injury to person or persons, including death, resulting at any time from anything occurring in or about the Leased Property.

9.2 This indemnification by the Tenant shall survive the termination of this Lease.

[NTD: The below provision creates a rolling lease, the term of which can be modified by the parties, depending on whether the Landlord consents to it. If the Landlord does not provide written consent, then the Tenant may remain, however their relationship changes. This provision may be modified by removal of the requirement that the Landlord provide written consent.]

10. OVERHOLDING (“ROLLING LEASE”)

- (a) If the Tenant continues to occupy the Leased Property with the written consent of the Landlord after the expiration or other termination of this Lease, then, without any further written agreement, the Tenant shall be a tenant from year to year and subject always to all of the other provisions in this Lease; provided that if the Tenant continues to occupy the Leased Property without the written consent of the Landlord at the expiration or other termination of this Lease, then the Tenant shall be a tenant at will and shall pay to the Landlord, as liquidated damages and not as rent, an amount equal to the amount the Tenant would otherwise be liable to pay under the terms of the Lease if it had not expired or otherwise been terminated, accruing from day to day and adjusted pro rata accordingly and subject always to all of the other provisions of this Lease insofar as they are applicable to a tenancy at sufferance, and a tenancy from year to year shall not be created by implication of law; provided that nothing herein contained shall preclude the Landlord from taking action for recovery of possession of the Leased Property.

11. GENERAL

[NTD: The below provision is intended to ensure that the Landlord and Tenant do not become liable for one another's actions, as members of a Partnership are.]

11.1 Relationship of the parties

- (a) The parties hereto expressly disclaim any intention to create, and nothing in this Lease shall be deemed to create, a partnership or joint venture between them and neither of the parties hereto shall have any authority to act for or to assume any obligation or responsibilities on behalf of the other except as otherwise expressly provided herein.

11.2 Incoming Tenant

- (a) An incoming tenant, purchaser, or the Landlord shall have the right to enter upon the Leased Property to examine, inspect and show the Leased Property for the purposes of leasing, sale or financing.

11.3 Landlord's Right of Inspection

- (a) The Landlord or his agent or employee may, upon the provision of a reasonable notice period, enter the Leased Property to inspect same.

- (b) If repairs or amendments are required, the Tenant shall make the necessary repairs or amendments within one (1) month [**NTD: or, choose some other period of time**] of receiving written notice from the Landlord.

11.4 Assignment and Subletting

- (a) The Tenant shall not assign or sublet his interest in this Lease, or any part of his interest in this Lease, nor grant any licence or part with possession of the Leased Property or transfer any other right or interest under this Lease without the Landlord's prior written consent, the Landlord acting reasonably.

11.5 Sale of the Leased Property

- (a) If the Landlord sells or otherwise disposes of all or part of the Leased Property, he will do so subject to the provisions of this Lease, unless the Landlord and the Tenant agree otherwise in writing.

11.6 Liens

- (a) The Tenant shall, immediately upon demand by the Landlord, remove or cause to be removed, and thereafter institute and diligently prosecute any action pertinent thereto, any builders' or other lien or claim of lien noted or filed against or otherwise constituting an encumbrance on any title of the Landlord. Without limiting the foregoing obligations of the Tenant, the Landlord may cause the same to be removed, in which case the Tenant shall pay to the Landlord forthwith, the cost thereof, including the Landlord's complete legal costs on a solicitor and his own client full indemnity basis.

11.7 No Transfer on Bankruptcy

- (a) Neither this Lease nor any interest of the Tenant herein nor any estate hereby created will pass or ensure to the benefit of any trustee in bankruptcy or any receiver or any assignee for the benefit of creditors of the Tenant or otherwise by operation of law.

[NTD: The below provision differs from the overholding provision in that a renewal represents a new lease agreement which may be accompanied by new terms, whereas overholding represents an extension of the existing agreement together with its terms.]

11.8 Renewal

- (a) The term of this Lease may be extended by mutual agreement of the Landlord and the Tenant in writing for a further period upon the same terms and conditions herein, except as otherwise agreed in writing by the parties executing a renewal statement.

[NTD: The below provision causes the Lease to be passed down to heirs, for example, if the Landlord or Tenant dies during the Term of the Lease.]

11.9 Enurement

- (a) The terms "Landlord" and "Tenant" shall include their heirs, executors, administrators, successors and approved assigns in the singular or plural number, and all the covenants shall be construed as being joint and several.

11.10 Ontario Law Applies

- (a) This Lease shall be governed by and construed in accordance with the laws of the Province of Ontario and the parties hereto hereby submit to the jurisdiction of the Courts in the Province of Ontario.

[NTD: The below provision refers to the process whereby a Tenant may register a notice of the Lease on title to the property. This would ensure that any subsequent purchaser of the Leased Property purchases the land subject to the lease. Note, however, that if registered, obtaining a discharge of said Lease may be difficult to obtain.]

11.11 Registration

- (a) The Tenant agrees not to register this Lease without the prior written consent of the Landlord, which consent may be unreasonably withheld.

[NTD: The below provision refers to giving notice. Notice is given for termination or for late payment of Rent, etc. Although notice can be given orally, to be legally binding, it is preferable that it is given in writing.]

11.12 Notice

- (a) Any demand, notice, direction or other communication to be made or given hereunder (in each case, “**Communication**”) shall be in writing and shall be made or given by personal delivery, by courier, by facsimile transmission, email, or sent by registered mail, charges prepaid, addressed as follows:

Landlord: _____

Tenant: _____

or to such other address or facsimile number as any party may, from time to time, designate in accordance with this Section.

- (b) A Communication will be considered to have been given or made on the day that it is delivered in person or by courier, or sent by facsimile or, if mailed, seventy-two (72) hours after the date of mailing. If the postal service is interrupted or substantially delayed, any Communication will only be delivered in person or by courier, or sent by facsimile..

11.13 Amendments to the Lease

- (a) No alteration or amendment of this Lease shall take effect unless the same is in writing duly executed by each of the parties in the same manner as this Lease.

[Name of Corporation]

Per: _____

Title

[Name of Corporation]

Per: _____

Title

[NTD: or, alternatively,]

[Name of Individual]

[Name of Individual]

SCHEDULE "A"

LEASED PROPERTY DESCRIPTION

Address:

Concession:

(Part) Lot:

Municipality:

Roll Number:

Provincial Premises ID:

Total Acreage:

Workable Acreage:

Woodlot Acres:

Managed woodlot? Y / N

Tenant rights to harvest according to management plan? Y / N

Organic Certification Y / N

SCHEDULE "B"

DISCUSSION CHECKLIST

Property: Roll # Acreage: Year: Tenant FBR#

CROPPING* _____ (check all that apply/ most accurate)

Tillage No-till Strip-till Min-till Plough

Timing Spring Fall

Crop rotation 1-2 crops 3+ crops Specify:

Cover Crop none after crop into crop Species:

Termination Fall Spring

Spring Residue Cover < 30% 30-50% >50%

Erosion Risks? Steep Slopes Soil Type Floodplain Other:

INPUTS* _____

On advice from accredited professional? CCA P.Ag Agronomist

Fertilizer **Source** Commercial Manure Biosolids, following NASM regulation

Rates Based on crop removal rates Based on soil test levels

Placement Broadcast Banded Side-dressed

Timing Spring Summer Fall

Manure Placement Injected Incorporated Onto living crop

Timing Spring Summer Fall Never on frozen ground

Pesticides Grower Pesticide Safety Certified Hire Licenced Pesticide Applicator

STRUCTURES _____

Tile Drainage Needed Needs Maintenance N/A

Windbreak Needed Needs Maintenance N/A

Grassed waterway Needed Needs Maintenance N/A

Erosion Control Berm Needed Needs Maintenance N/A

Irrigation Pond/Wetland Needed Needs Maintenance N/A

Who is responsible for implementation? Landowner Renter

Who pays for the investment? Landowner Renter (include compensation clause in agreement?)

Up-to-date Environmental Farm Plan for property? • Renter to complete • Landowner to complete

MEASURING SUCCESS _____

Soil Sampling < 3 years > 3 years **Resolution:** > 25 acre < 25 acres Grid sampling

Sharing information Soil Test Results Yield maps Other testing:

OTHER GOALS FOR PROPERTY _____

Are there other concerns for the property?

- Fragile land or steep slopes to be taken out of production?
- Sensitive areas or wells/source water areas to avoid?
- Fence rows, woodlots, waterways or infrastructure to be maintained?
- Soil pH or other issues to be addressed?

*These are goals and sometimes weather will change the best laid plans.

SCHEDULE "C"

COVENANTS

1. LANDLORD'S COVENANTS

The Landlord covenants and agrees with the Tenant:

1.1 General

- (a) to pay all mortgages against the Leased Property, if any;
- (b) for quiet enjoyment of the Leased Property; and,
- (c) to observe and perform all the covenants and obligations of the Landlord herein.

2. TENANT'S COVENANTS

The Tenant covenants and agrees with the Landlord:

[NTD: Inclusion of the majority of the below Tenant covenant provisions is entirely based on the business decision between the parties .]

2.1 Operation and Maintenance of the Leased Property

- (a) Use of the Leased Property
 - (i) to use the Leased Property only for the purpose of farming legal crops on the Land and any and all uses ancillary thereto **[Optional: "save and except that the Tenant shall not be entitled to keep any livestock on the Leased Property."]**;
 - (ii) not to allow any public use of the Leased Property without the written consent of the Landlord, which consent may be unreasonably withheld; and,
 - (iii) not to build any structure, barn, shed, fuel storage facility, or permanent feed storage facility without the written consent of the Landlord.
- (b) Farming Decisions
 - (i) to make all decisions with respect to growing crops on the Leased Property, unless stated otherwise in this Lease, but all decisions made by the Tenant will be in accordance with good farming practices and in accordance with the provisions of this Lease.
- (c) Farming Costs.
 - (i) to be responsible for the payment of all of the costs and expenses associated with the Tenant's obligations hereunder directly to the appropriate party as they come due and shall, at the Landlord's request, provide the Landlord with copies of receipts or other proof acceptable to the Landlord that such costs have been paid.
- (d) Resource Protection

- (i) to comply with present and future laws, regulations and orders relating to the occupation or use of the Leased Property which shall include, but not be limited to, all activities related to groundwater contamination, the application of pesticides and commercial fertilizers, the cultivation of crops and the compliance thereof, and the storage and/or disposal of any hazardous waste;
 - (ii) to be responsible for maintaining nutrient and pH levels on the Land as mutually agreed upon with the Landlord;
 - (iii) to do what is reasonably necessary to control soil erosion and to abstain from any practice which will cause damage to the Land;
 - (iv) to not remove sand, gravel, topsoil or minerals from the Leased Property;
 - (v) to not permit or allow the accumulation of any waste material, debris, refuse or garbage on the Leased Property;
 - (vi) to not allow any site contamination such as, but not limited to, chemicals, oil spills, hydrocarbons, or any other waste materials on the Leased Property or adjacent water bodies;
 - (vii) to not grow the same type of crop for two (2) years in succession;
 - (viii) to not apply manure to frozen ground or to land where, prior to incorporation, it may flow overland into a watercourse; and,
 - (ix) to maintain a ten (10) metre buffer strip of grasses and clover alongside the municipal drain.
- (e) Pesticides and Herbicides
- (i) to perform all acts required to be done under any Act or by regulations or by-laws with respect to weed control, and the Tenant will not sow, or permit to be sown any grain infected by smut or containing any foul seeds or noxious weed, and will not suffer or permit any such foul seeds or noxious weeds to go to seed; and,
 - (ii) to store, use, and dispose of agricultural chemicals, including pesticides, herbicides, and fertilizer, in accordance with label directions and federal, provincial and municipal legislation and recommendations.
- (f) Repair of Fences and Improvements

[NTD: Only include the below provision if appropriate, given the nature of the Leased Property.]

- (i) to be responsible for the maintenance and upkeep of the fences and windbreaks, and to keep same in good order and condition; and,
- (ii) to keep the mouths of all underdrains on the Leased Property open and free from obstruction and in good running order at all times during the Term and will not suffer or permit such drains or the water-courses in any open ditches on the Leased Property, to become obstructed, but will keep them free and clear for the escape of the water flowing therein.

2.2 Insurance

(a) Property Loss and Liability Insurance

- (i) to maintain comprehensive general liability insurance applying to all operations of the Tenant and against claims for bodily injury, including death, and property damage or loss arising out of the use or occupation of the Leased Property and against any liability to third parties arising from or in relation to the Tenant's use or occupancy of the Leased Property, in at least the amount of Two Million (\$2,000,000.00) Dollars combined single limit **[NTD: or alternatively, choose some other limit]**. This policy of insurance shall contain the provision that it shall not be cancelled without the insurer providing the Landlord thirty (30) days' written notice **[NTD: or alternatively, choose some other notice period]** stating when such cancellation shall be effective. Evidence satisfactory to the Landlord of such policy of insurance shall be provided to the Landlord upon request.

2.3 General

- (a) to pay all of the costs and expenses associated with the Tenant's obligations hereunder directly to the appropriate party as they come due and shall, at the Landlord's request, provide the Landlord with copies of receipts or other proof acceptable to the Landlord that such costs have been paid. If the Tenant fails to perform any obligation under this Lease or to pay any costs and expenses as set out herein, the Landlord may at its sole option and discretion, on seven (7) days **[NTD: or alternatively, choose some other time period]** written notice to the Tenant, perform such obligation or pay such amounts on behalf of the Tenant and the Tenant shall forthwith upon receipt of an invoice therefor reimburse the Landlord for the cost of such action or the amount of such payment;
- (b) not to do, omit to do or permit to be done anything which will cause or shall have the effect of causing the cost of the Landlord's insurance in respect of the Leased Property to be increased at any time during the Term or any policy of insurance on or relating to the Leased Property to be subject to cancellation;
- (c) to agree that the Landlord shall not be responsible for personal injury or property damage that the Tenant or the Tenant's invitees, agents, or guests may suffer or sustain by reason of the used of the Leased Property whether arising by reasons of negligence or otherwise; and,
- (d) to observe and perform all the covenants and obligations of the Tenant herein.

SCHEDULE "D"

RENTAL FORMULA AND SCHEDULE

Base: Corn: Actual Production History ("APH") of field x Agricorp fixed claim rate x fifteen percent (15%).

Soys and Wheat: APH x claim rate x twenty percent (20%).

(If property APH not available, use County 10-year average yield)

Bonus: If Agricorp's floating claim rate increases post-harvest (December 1), the renter agrees to pay the difference as Bonus, unless yields were over 20 bushels/acre less than APH.

Payment schedule:

Fifty percent (50%) of base: Due March 1

Fifty percent (50%) of base: Due September 1

Bonus (if applicable): Due December 31