The sample Equipment Co-ownership agreement below is provided for illustration only and should not be construed as legal advice or relied upon without the assistance of a qualified legal professional in your state. This sample agreement represents one possible legal arrangement for shared ownership and use of agricultural equipment, with additional variations discussed in the annotations and bracketed italicized language.

The body of the agreement deals with predominantly with the rights and obligations of co-owners vis-a-vis the co-ownership group; it is intended that rights and obligations applicable to the shared equipment itself would be addressed in an attached Equipment Use Manual, a sample of which is provided separately for use and adaptation with either a Co-ownership Agreement such as the one below, or with an LLC Operating Agreement. It is important to note that there are distinct advantages to sharing property through an LLC or other corporate entity, including limitation of liability of the members for damages arising out of the activities or assets of the LLC. As stated above, you should discuss the relative merits of any proposed arrangement with independent legal counsel.

Equipment Co-ownership agreement

This document memorializes a co-ownership agreement effective the \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_, by and between the parties listed in Schedule A below (hereafter, the “Co-owners”).

#### Article 1 - The Equipment The persons or organizations above elect to co-own [*as shares in a Limited Liability corporation*],[*as tenants in common/joint tenants with a right of survivorship*] the agricultural equipment listed in Schedule B below (hereafter, the “Equipment”).

#### Article 2 – Term of the Agreement

This Equipment Co-ownership Agreement commenced on \_\_\_\_\_\_\_\_\_\_, 20\_\_, and shall continue until termination by mutual consent of the Co-owners or as required by the terms of this Agreement.  
  
**Article 3 – Contributions to the Co-ownership and Distributions**

1. Each of the Co-owners has contributed capital (“Capital Contribution”) to the Co-ownership in the form of cash, property or services, representing his or her percentage Equity (“Equity”) in the Equipment. Each Co-owner’s name, address, Capital Contribution and Equity is listed in Schedule A attached hereto.
2. Individual Co-owner Capital Accounts shall be maintained for each Co-owner in accordance with the following:  
   1. To each Co-owner’s Capital Account there shall be credited the fair market value of such Co-owner’s Initial Capital Contribution and any additional Capital Contributions, such Co-owner’s distributive share of profits, and the amount of any Co-ownership liabilities that are assumed by such Co-owner.
   2. To each Co-owner’s Capital Account there shall be debited the amount of cash and the book value of any Property distributed to such Co-owner pursuant to any provision of this Operating Agreement, such Co-owner’s distributive share of losses, and the amount of any liabilities of such Co-owner that are assumed by the Co-ownership or that are secured by any property contributed by such Co-owner to the Co-ownership.
   3. If any Co-owner makes a non-pro rata Capital Contribution to the Co-ownership or the Co-ownership makes a non-pro rata distribution to any Co-owner, the Capital Account of each Co-owner shall be adjusted to reflect the then fair market value of the assets held by the Co-ownership immediately before the Capital Contribution or distribution.
3. The value of any other funds or assets of the Co-ownership, not directly related to the operation and ownership of the Equipment listed in Schedule B shall NOT be included in calculating a Co-owner's Capital Account and shall be accounted for in a separate set of books and accounts.
4. All funds received from Co-owners will be comingled into a dedicated bank account (hereinafter, the “Joint Account”) used to pay expenses and make Co-owner distributions, if any. See ARTICLE 25, “Management and Administration.”
5. On an annual basis, after all expenses have been paid, any excess funds in the Joint Account above the Fixed Expenses and Contingency Fund minimum balance, as defined below in ARTICLE 5, shall [...*may, upon the mutual consent of the Co-owners,...*] be distributed to the Co-owners pro-rata according to each Co-owners Equity interest in the Equipment as described in 3-1) of this Agreement, and shall be debited from each Co-owner’s Capital Account by the amount received.

#### Article 4 – Operating Expenses and Equipment Use Charges

1) Operating Costs are the responsibility of the Co-owners and shall include, but not be limited to... [*e.g., oil changes, replacement of tires, brakes, battery, hydraulic fluids, radios, airframe, engine, and accessory repair and maintenance*]. [*Each Co-Owner shall be individually responsible for the cost of fuel and labor when using the Equipment.*]

2) Operating Expenses shall be paid from funds received from Equipment Usage Charges, or if such funds should be inadequate, from monthly assessments to Co-owners proportionate to each Co-owner’spercentage [*equity in the Equipment…*]use of the Equipment for relevant period, which percentage shall be calculated by dividing each Co-owner’s hours of use for a given piece of equipment by the total number of hours that piece of equipment was in use during the applicable period, and payable on or before the first day of each month. Where inadequate incoming Equipment Use Charges require Co-owners to pay monthly Operating Expense assessments, Co-owners’ Capital Accounts shall be increased by the amount paid by each.

3) Each Co-owner will pay Equipment Use Charges according to [*the fee schedule set forth in Attachment \_\_\_, which shall be amended as necessary by mutual consent*] a per hour [*per mile/acre/other*] custom use rate[[1]](#footnote-0), [*$\_\_\_\_\_ for maintenance (lubrication, maintenance and repair labor, parts, other), $\_\_\_\_\_ for Operating Expense reserve*, *$\_\_\_\_\_\_\_\_ for profit*] for a total of $\_\_\_\_\_ for each hour [*mile/acre/other*] of Equipment use by that Co-owner, [*as measured by the engine hour meter/time of possession/other*].

6) Co-owner payments in the form of labor or property, in lieu of cash, shall not be permitted unless by mutual written consent.

#### Article 5 – Fixed Expenses and Contingencies

A minimum of \_\_\_\_\_\_\_\_\_\_ dollars ($\_\_\_\_\_) shall be maintained in a Fixed Expenses and Contingencies Fund, to be replenished monthly as necessary through a Fixed Expenses Assessment against each Co-owner in an amount proportional to each Co-owner’s percentage equity in the Equipment [ALTERNATIVE 1: *…in an amount proportional to each Co-owner’s use of the Equipment for the prior month/prior quarter/other.* ALTERNATIVE 2: …*in an amount to be split equally between the Co-owners regardless of each Co-owner’s percentage of equity in the Equipment or use of the Equipment*]. The amount of the Fixed Expense Assessments may be adjusted from time to time by mutual consent. Out of this fund all fixed expenses and contingencies shall be paid. Fixed expenses and contingencies shall include, but are not limited to [*housing, insurance, reserves for annual and other required inspections, fees, licensing, taxes; accounting and legal costs*].

#### Article 6 – Equipment Use Restrictions

The Equipment shall not be leased, loaned or otherwise used by any person who is not either a Co-owner or a bona fide employee or agent of a Co-owner without the mutual consent of the Co-owners.

#### Article 7 – Delinquencies

1. Any Co-owner delinquent in the payment of charges or costs/fees arising out of the terms of this Agreement (hereinafter, “Payment Obligation”), whether for fixed, operating or other expenses or assessments mutually agreed to by the Co-owners, shall be provided written notice of said delinquency. Any delinquency lasting more than fifteen (15) days from the date of delivery of notice of said delinquency shall, until the delinquency is cured, result in suspension of the delinquent Co-owner’s voting rights as well as his or her right to possession and use of the Equipment. Any delinquency that continues thereafter for an additional period of fifteen (15) days shall be considered a default and the delinquent Co-owner a Defaulting Co-owner.
2. A delinquent Co-owner shall pay \_\_\_ (\_\_%) percent compound interest on all funds paid on his or her behalf by the Co-ownership or by another Co-owner individually.  
   1. interest may only be waived by a written notice of *Interest Forgiveness* signed by all the Co-owners who actually paid the delinquent Co-owner’s Payment Obligation.
   2. interest shall begin to accrue on the day the delinquent Co-owner’s Payment Obligation is paid by another Co-owner or from the Joint Account and shall cease to accrue on the day the delinquent Co-owner pays back the entire Payment Obligation due, with interest.
   3. Delinquent Co-owners agree to pay for all collection fees and legal fees necessary to collect both delinquent amount and interest.
3. All Co-owners receiving interest as a result of delinquency will receive said interest as personal income and such interest shall not be credited to any non-delinquent Co-owner’s Capital Account.

#### Article 8 – Uncured Default and Expulsion

1. Any Co-owner in default of any of the terms of this Agreement shall be considered a Defaulting Co-owner and shall be provided notice of such status. Any default that is not cured by the Defaulting Co-owner within thirty (30) days after written notice of such default has been delivered shall be considered an Uncured Default.
2. Any Uncured Default shall entitle Co-owners who are not in default to initiate Involuntary Dissolution proceedings. In this event, the dissolution shall be considered involuntary, and the non-defaulting parties shall be the Remaining Co-owners, and the Co-owner who is in default shall be the Retiring Co-owner.
3. To cause an Involuntary Dissolution for an Uncured Default of any of the terms of this Agreement, the Remaining Co-owners shall provide notification to the Retiring Co-owner by mail of the dissolution, and, within \_\_\_\_ days of notice of dissolution, shall deliver payment to the Retiring Co-owner for [*one-half (½) [or any other proportion] multiplied by...*] the lesser of the Retiring Co-owner’s Capital Account balance or the fair market value of the Retiring Co-owner’s Equity interest in the Equipment (hereinafter, the “Involuntary Dissolution Sale Price”).
4. The Involuntary Dissolution Sale Price shall be the entire sales price and the sole compensation due to the Retiring Co-owner. Upon delivery of notice of dissolution, the Retiring Co-owner’s sole remaining right shall be to receive payment of the Involuntary Dissolution Sale Price.
5. Co-owners agree that in the event the Remaining Co-owners’ Equity percentage of the Equipment’s market value is less than retiring Co-owner’s Capital Account balance then the Remaining Co-owners shall, in order to raise proceeds for the Involuntary Dissolution Sale Price, have the right to sell Retiring Co-owner’s share a whatever price the market will bear.

**Article 9 - Fair Market Value**  
  
Co-owners agree that for the purposes of determining the Involuntary Dissolution Sale Price (see ARTICLE 8) and Withdrawal Sale Price (see ARTICLE 13) only, the fair market value of the Equipment shall be:

1. The price contained in a bona fide offer to purchase the interest of any Co-owner, if 100% of the funds are placed in a nonrefundable escrow account, or the actual sale price of a Co-owner’s interest in a transaction that has been completed within the prior [TIME PERIOD]
2. In the absence of a bona fide offer to purchase, the fair market value of the Equipment shall be determined as expeditiously as possible by a disinterested appraiser mutually selected by the and the Retiring Co-owner and the Remaining Co-owners. If the Retiring Co-owner and the Remaining Co-owners are unable to agree on a disinterested appraiser, then the Retiring Co-owner and the Remaining Co-owners shall each select a disinterested appraiser and if the disinterested appraisers selected are not able to agree as to the fair market value of the interest, then the two disinterested appraisers shall select a third disinterested appraiser who shall determine the fair market value. The determination of the fair market value of the Equipment by the appraiser or appraisers shall be conclusive and binding on all parties. All costs of an appraiser mutually selected by the Retiring Co-owner and the Remaining Co-owners or the two disinterested appraisers shall be shared equally by the Retiring Co-owner and the Remaining Co-owners. All costs of an individually selected appraiser shall be borne by the parties selecting such appraiser.

#### Article 10 – Continuation of the Equipment’s Use

If the interest of an expelled, withdrawing, selling or deceased Co-owner is purchased under the terms of this Agreement, this Agreement shall not terminate but shall be continued, as of the withdrawal date, following the required adjustment of the Equity accounts of the Remaining or surviving Co-owners, including any new Co-owners.

**Article 11 – Voluntary Dissolution and Liquidation of Equipments**

1. The Co-ownership may be dissolved upon mutual consent and shall be dissolved and terminated upon any agreement of the remaining or surviving Co-owners to exercise the option to sell, in its entirety, the Equipment listed in Schedule B to this Agreement and granted under this provision.
2. Upon dissolution and termination, the Co-owners shall promptly liquidate the Equipment and wind up the affairs of the Co-owners by satisfying all debts and obligations of the Co-ownership and by distributing all remaining property to the surviving Co-owners in proportion to their respective Equity interests as of the date of the liquidation.

#### Article 12 – Liquidation Sale Price

1. No sale of the Equipment in its entirety shall be for less than the combined value of all the Co-owners Capital Accounts without the mutual and written consent of the Co-owners, excluding any Defaulting Co-owners.
2. If mutual agreement between the Co-owners cannot be reached as to a sale price, then the provisions of ARTICLE 26, "Arbitration," shall apply.

**Article 13 – Voluntary Withdrawal**

1. A Co-owner may withdraw from the Co-ownership upon the sixty first (61st) day after the remaining Co-owners receive written notice of the retiring Co-owner intent to withdraw, unless an alternate effective date is established by mutual consent of the remaining Co-owners (the “Effective Withdrawal Date”).
2. The withdrawing Co-owner has the right to sell their interest in the Equipment at whatever the market will bear, subject to the terms of this Agreement.
3. The remaining Co-owners shall have a right of refusal and first option to purchase the withdrawing Co-owner’s Equity interest. See ARTICLE 14 “Right of First Refusal”.
4. A buyer’s (hereafter, the “New Co-owner") initial Capital Account balance shall be the same as the withdrawing Co-owner’s Capital Account balance on the date of sale and shall not be increased to reflect the actual purchase price paid by the New Co-owner for the withdrawing Co-owner’s Equity. A clause to this effect shall be included in the Purchase and Sales agreement between the withdrawing Co-owner and the New Co-owner.
5. In order to enjoy the rights of Co-ownership set forth by this Agreement, a New Co-owner shall be required to meet with the remaining Co-owners and to consent to be bound by the terms herein. A clause to this effect shall be included in the Purchase and Sales agreement between the withdrawing Co-owner and the New Co-owner.
6. If a withdrawing Co-owner is in delinquent in the payment of any of his monthly contributions for fixed expenses, operating expenses or special assessments as per ARTICLE 7 “Delinquencies” of this Agreement, these delinquencies shall be deducted from the Sale price paid by the New Co-owner and shall be paid into the Joint Account New Co-owner. A clause to this effect shall be included in the Purchase and Sales Agreement between the withdrawing Co-owner and the new Co-owner.

7. Absent a bona fide offer by an outside party to purchase the withdrawing Co-owner’s Equity interest, the withdrawing Co-owner shall be entitled to receive from the remaining co-owners a Withdrawal Sale Price for his or her Equity interest in the amount of [*one-half (½) [or any other proportion, including 1 (i.e. full value)] multiplied by...*] the Retiring Co-owner’s Capital Account balance or the fair market value of the Retiring Co-owner’s Equity interest in the Equipment, with payment due within \_\_\_\_\_\_days after the Effective Withdrawal Date.

#### Article 14 – Right of First Refusal

1. Any Co-owner desiring to sell his/her Equity interest in the Equipment to another Person, shall:   
   1. Provide the other Co-owners with a bona fide written offer from the Person who desires to purchase such Equity interest, stating the terms and conditions upon which the purchase is to be made.
   2. Afford the other Co-owners an opportunity to purchase such Equity interest upon the same terms and conditions as stated in the bona fide written offer.
2. Each remaining Co-owner shall, within \_\_\_\_\_\_\_\_\_\_ (\_\_\_\_\_) days of delivery of the bona fide written offer, provide to the selling Co-owner written notice of his or her intent to exercise his or her right purchase the selling Co-owner’s interest upon the same terms and conditions as stated in the bona fide written offer, or else be deemed to have waived such right.

**Article 15 – Death of a Co-owner**

The Equity of a Co-owner shall be considered to have been withdrawn on the date of the death of the Co-owner. The surviving Co-owners may purchase the deceased Co-owner's Equity interest by paying to the deceased Co-owner’s estate the greater of the deceased Co-owner’s Loan Account balance or fair market value of the deceased Co-owner’s Equity interest in the Equipment. By execution of this Agreement, the deceased Co-owner's estate shall be bound to sell the deceased Co-owner's interest to the remaining Co-owner's.

#### Article 16 – Life Insurance

It is the privilege of the Co-owners to each apply for policies of life insurance upon the life of the other or others in the face amount of the value of the other's interest in the Equipment, or $\_\_\_\_\_. It is thereby intended to enable one Co-owner to buy out the entire interest of the other upon the death of the latter. Each Co-owner/party to this Agreement consents to allow other Co-owners to apply for such insurance on his/her life. The face value of the insurance on any Co-owner may be changed from time to time to enable the entire interest of the insured Co-owner to be so insured. If life insurance is placed on the life of any Co-owner and is in force at the time of his death, the proceeds shall be used to enact the buy-out within 10 days after the receipt of the proceeds from the insurance company.

#### Article 17 – Co-owner Meetings

1. Meetings of Co-owner’s listed in this Agreement shall be held at least two (2) times each year, once every six (6) months, or more often as agreed by the Co-owners. Meetings may be held by internet, phone or in person, with notice of the time and place of each meeting to be provided by the Accounting Co-owner to the other Co-owners at least \_\_\_\_\_\_\_\_\_\_ (\_\_\_\_\_) days prior to such meeting. Special meetings may be called by the Accounting Co-owner on such notice as he/she may deem necessary for the continued welfare of the Equipment but with a minimum of \_\_\_\_\_\_\_\_\_\_ (\_\_\_\_\_) days notice.

2. A minimum of \_\_\_\_\_\_\_\_\_ (\_\_\_\_\_) Co-owners shall be present at each regular meeting or special meeting to constitute a quorum for the transaction of official business of the Co-ownership, with decisions requiring mutual consent to be communicated in writing to Co-owners not present for their vote. Co-owners not present at a duly held meeting of the Co-ownership and receiving notice of proposed action(s) of the Co-ownership for vote, shall respond within \_\_\_\_ days of the date of delivery of such notice or else be deemed to have consented to such proposed action(s).

3) Each Co-owner in good standing, regardless of his or her percentage Equity interest, shall have an equal vote in the affairs of the Co-ownership. In the event of a tie vote, the outcome shall be determined by calculating the percentage of Equity interest in favor and against the proposed action and where a tie remains, by Arbitration per Article 31 below.

#### Article 18 – Management and Administration

1. The Co-owners may designate an Co-ownership Administrator to manage the day-to-day operations of the Co-ownership under this Agreement, and delegate such ministerial authority as the Co-owners deem appropriate.

2. Except as otherwise stated in this Agreement, decisions regarding the sale of the Equipment and the operation of the Equipment shall be made by mutual consent.

3. An Accounting Co-owner shall be selected by mutual consent of the Co-owners. The Accounting Co-owner shall maintain possession of the books and records of the Equipment and shall perform the necessary administrative accounting functions. In place of selecting an Accounting Co-owner, the Co-owners may hire a professional accountant to

4. Complete accounting records of all Equipment’s affairs shall be kept and shall be open to review by the other Co-owners upon reasonable request. Copies of registration certificates, bills of sale, or any other documentation relating to the Equipment and its ownership, shall be maintained by the Accounting Co-owner at note\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_ and made available to the other Co-owners at any reasonable time and upon reasonable notice.

5. A checking account (the “Joint Account”) shall be maintained at \_\_\_\_\_\_\_\_\_\_ Bank, in \_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_. The Joint Account shall be opened with the names of all the Co-owners, any one of which may sign for withdrawal. The Accounting Co-owner, upon mutual consent, may open a savings account, which shall be maintained with the names of all Co-owners, any one of which may sign for any withdrawal up to \_\_\_\_\_\_\_\_\_\_ ($\_\_\_\_\_) without consent of the other Co-owners.

#### Article 19 – Notices

Notification of matters (“Notice”) relating to this Agreement are to be in writing and may be served personally on the Co-owner(s), by certified mail [, *or by electronic communication to the contact information*] to the address or contact information listed in Schedule A.

The Co-owners shall give notice of any change of address or electronic contact to each other within 5 days of such change. If notice is given by U.S. mail, it shall be considered served three (3) days after its deposit, postage prepaid, at any official United States Postal Service office location.

#### Article 20 – Restriction of Co-owners

No Co-owner, without the consent of the other Co-owners shall:

1. Sell, assign, hypothecate, encumber or pledge his/her Equity in any of the co-ownership Equipment, except as provided for in this agreement;
2. Borrow or lend money on behalf of the Co-ownership;
3. Transfer, sell, consign or grant release of any claim of the Co-ownership or consent to arbitration on any dispute involving the Co-ownership;
4. Use the Equipment or identification of the Co-ownership for any purpose other than that provided for herein; or
5. Commit an act detrimental to any Co-ownership activity which would make it difficult or impossible to continue conduct of the Co-ownership's stated objectives.
6. Contract or obligate the Co-ownership to the payment of any sum of money in excess of $\_\_\_\_\_. No Co-owner shall, without the consent of the others, suffer any lien to be levied against the Equipment or other co-ownership Equipments in excess of $\_\_\_\_\_. If a lien is levied for a debt incurred without the consent of all Co-owners, it shall be grounds for Involuntary Dissolution of the co-ownership. At the option of the non-consenting Co-owners, the costs required to satisfy the lien shall be subtracted from the Capital Account balance of the consenting Co-owner, or otherwise borne by such Co-owner.

#### Article 21 – Rules and Regulations

The Equipment shall at all times be operated and maintained in accordance with all applicable Regulations and requirements of duly constituted authority. Any deficiencies which cause any civil penalties to be levied shall be borne by the person responsible for the violation. In the event that the violation is not directly attributable to the responsibility of one of the Co-owners, the cost shall be borne equally by all Co-owners.

Any Co-owner finding an equipment condition or deficiency that presents an significant risk of bodily injury or Equipment damage shall have the right and duty to declare the Equipment disabled and incapable of further operation until the condition is remedied. The condition or deficiency shall immediately be reported to the Co-owner in charge of maintenance as well as other Co-owners.

#### Article 22 – Damage Due to Faulty Technique

Damage resulting from faulty operating and/or handling technique will be the responsibility of the individual Co-owner causing such damage, except as may be paid by insurance on the Equipment. Damage caused by the negligence of a Co-owner not indemnified by insurance (such as a deductible) will be repaired at his/her sole expense and in an expeditious manner so as to permit the operations of the Equipment to continue without undue delay or inconvenience. Penalties levied against any Co-owner for acts in violation of any law governing the operation of the Equipment shall be borne solely by the Co-owner causing the violation.

#### Article 23 – Primary Responsibility

\_\_\_\_\_\_\_\_\_\_ shall be responsible for the receipt and disbursement of all monies relating to Co-owners business, and \_\_\_\_\_\_\_\_\_\_ shall be responsible for the initiation and implementation of maintenance activity and programs.

#### Article 24 – Number of Co-owners

The number of Co-owners shall be limited to \_\_\_\_\_ Co-owners. Mutual and written consent of all Co-owners of this Agreement is required before additional persons can purchase any share of these Equipments.

#### Article 25 – Amendments

All amendments to this Agreement shall be made by mutual consent of the majority of the Co-owners.

#### Article 26 – Arbitration

If any dispute arises under or by virtue of any of the terms of this Agreement and which the Co-owners cannot resolve, the Co-owners shall submit the dispute to arbitration at \_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_, pursuant to the rules regulations of the American Arbitration Association. Judgment may be entered into in any court of competent jurisdiction upon the rendition of any final decision by the arbitrators.

#### Article 27 – Equipment Insurance

Liability insurance in the amount of not less than $\_\_\_\_\_ per person, $\_\_\_\_\_ per occurrence and $\_\_\_\_\_ per passenger shall be procured from a carrier specializing in Equipment insurance.

#### Article 28 – Normal Equipment Damage

Damage to the Equipment due to unforeseeable and unexpected mechanical break-down, except that caused by Faulty Technique as described in ARTICLE 28, as well as that caused by normal wear and tear, shall be the joint responsibility of all Co-owners.

#### Article 29 – Additional Equipment

The Co-owners may, by mutual agreement, add additional equipment to the Equipment or support equipment inventory. However, if the Co-owners are unable to agree upon the addition of said equipment, a Co-owner may add such equipment as he/she desires and pay the entire cost of such equipment and its installation by a competent and certified mechanic.

In this event, one half of the cost of the equipment and half the cost of installation shall be credited to the purchasing Co-owner upon dissolution of this Agreement, regardless of its then depreciated value, excluding materials or labor expended for maintenance, repair or replacement of equipment necessary to keep the Equipment in substantially the same condition as on its acquisition and following subsequent improvement. Maintenance of equipment added by one Co-owner is at his/her sole expense. Once installed in the Equipment, any such added equipment shall become and remain part of the Equipment and removal by the installing Co-owner shall not be permitted.

#### Article 30 – Severability

#### If for any reason a court of competent jurisdiction finds any provision of this Agreement, or portion thereof, to be unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible so as to not affect the intent of the parties, and the remainder of this Agreement will continue in full force and effect. Failure by either party to enforce any provision of this Agreement will not be deemed a waiver of future enforcement of that or any other provision. This Agreement has been negotiated by the parties and their respective counsel and will be interpreted fairly in accordance with its terms and without any strict construction in favor of or against either party.

#### Article 31 – Binding Effect

This Agreement shall be binding upon the parties and their respective heirs, legal or estate representatives, successors and/or assigns.

In AGREEMENT THEREOF the Co-owners have signed this Agreement the day and year first executed on Page 1 of this Agreement and are:

|  |  |
| --- | --- |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Co-owner | Date |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Co-owner | Date |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Co-owner | Date |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Co-owner | Date |

#### SCHEDULE A

#### SCHEDULE OF CO-OWNERS

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Name** | **Address** | **Electronic Contact** | **Capital Contribution** | **Equity Interest** |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |

#### SCHEDULE B

#### EQUIPMENT INVENTORY

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Purchase Date** | **Make/ Model** | **Serial Number** | **Registration Number** | **Additional Description/ Maintenance requirements** |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |

The sample Equipment Use Manual agreement below is provided for illustration only and should not be construed as legal advice or relied upon without the assistance of a qualified legal professional in your state. This sample agreement represents one possible legal arrangement for shared ownership and use of agricultural equipment, with additional variations discussed in the annotations and bracketed italicized language.

The sample Equipment Use Manual below sets out rights and responsibilities applicable to shared equipment itself, as opposed to rights and responsibilities in relation to the co-ownership group or business entity itself. It is intended to serve as an attachment to either an Equipment Co-ownership Agreement or an LLC Operating Agreement, samples of which are provided in this publication, and which establish the structure of the ownership group and addresses financial matters, decision-making and other organizational matters.

SCHEDULE C

EQUIPMENT USE MANUAL

#### A) Operating Expenses and Equipment Use Charges

i.) Operating Costs are the responsibility of the Co-owners and shall include, but not be limited to [*e.g., oil changes, replacement of tires, brakes, battery, hydraulic fluids, radios, airframe, engine, and accessory repair and maintenance*]. [*Each Co-Owner shall be individually responsible for the cost of fuel and labor when using the Equipment.*]

ii.) All Operating Expenses shall be paid from funds received from Equipment Usage Charges, or if should inadequate funds be available, from monthly assessments to Co-owners proportionate to each Co-owner’spercentage (*equity in the Equipment...*)use of the Equipment for relevant period, which percentage shall be calculated by dividing each Co-owner’s hours of use for a given piece of equipment by the total number of hours that piece of equipment was in use during the applicable period, and payable on or before the first day of each month. Where inadequate incoming Equipment Use Charges require Co-owners to pay monthly Operating Expense assessments, Co-owners’ Capital Accounts shall be increased by the amount paid by each.

iii) Each Co-owner will pay Equipment Use Charges according to [*the fee schedule set forth in Attachment \_\_\_, which shall be amended as necessary by mutual consent*] a per hour [*per mile/acre/other*] custom use rate[[2]](#footnote-1), [*$\_\_\_\_\_ for maintenance (lubrication, maintenance and repair labor, parts, other), $\_\_\_\_\_ for Operating Expense reserve*, *$\_\_\_\_\_\_\_\_ for profit*] for a total of $\_\_\_\_\_ for each hour [*mile/acre/other*] of Equipment use by that Co-owner, [*as measured by the engine hour meter/time of possession/other*].

#### B) Equipment Basing and Maintenance

1. Each Co-owner has the right to possession but NOT exclusive use of the Equipment for the same percentage of the days in a year, less maintenance down time, as their percentage equity in the Equipment as listed in Article 3-1). When a Co-owner is in possession of a piece of equipment, that Co-owner must make the equipment
2. Scheduling of the Equipment’s home base will be as follows:
   1. \_[Date]\_\_\_ through \_[Date]\_\_\_ located at \_\_[Location]\_\_\_\_\_\_\_\_.
   2. \_\_\_\_\_\_\_\_\_ through \_\_\_\_\_\_\_\_\_ located at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.
   3. \_\_\_\_\_\_\_\_\_ through \_\_\_\_\_\_\_\_\_ located at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.
   4. \_\_\_\_\_\_\_\_\_ through \_\_\_\_\_\_\_\_\_ located at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.
   5. For maintenance, the Equipment shall be based at \_\_\_\_\_\_\_\_\_\_.
   6. The decision to change the base of operations from the locations specified above requires the mutual consent of the Co-owners.
   7. Costs attributable to storage, parking, [*other*] while the Equipment is being operated away from the home base shall be borne solely by the Co-owner o*perating/in possession of* the Equipment away from the home base.
   8. Maintenance required for basic operation - including but not limited to adding/checking fluids, lubrication, cleaning, etc. - shall be performed by the current Operator.
   9. Repair/replacement and regularly schedule maintenance shall be performed by the individual listed for each piece of equipment:

|  |  |  |
| --- | --- | --- |
| EQUIPMENT | INDIVIDUAL RESPONSIBLE FOR MAINTENANCE | MAINTENANCE DUTIES |
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#### C) Overnight Away From Home Base

A Co-owner may retain the Equipment away from the home base for \_\_\_\_\_ consecutive nights without mutual consent of the Co-owners.

#### D) Scheduling Priorities

1. Co-owners shall negotiate and then schedule tentative Priority dates at least  *[2 months /other]* in advance starting the day after the date of this Agreement. [*Priority use of equipment shall be set on a first-come, first-served basis and documented through use of a dedicated online log form.*]
2. Non-Priority Operators may use the Equipment by securing the permission of the Priority Operator, which, once given for a particular period, is irrevocable during that period. If a Non-Priority Operator is unable to reach the Priority Operator, Non-Priority Operator use the Equipment for \_\_\_\_ hours or less (“Grace Period”).
3. If a Priority Operator is denied his/her privileges due to use by a Non-Priority Operator without permission and beyond the \_\_\_\_ hour Grace Period mentioned above, Priority Operator may rent equipment of roughly similar *size/value* for the and charge the Non-Priority Operator (by subtraction of the expense to the Non-Priority Operator’s Loan Account) for the difference between the cost of the Equipment (as measured by Equipment Use Charges that the Priority Operator would have paid had he/she used the Equipment) and the substitute equipment, if the cost of the substitute is greater.

#### E) Priority Time Trades

Co-owners may trade scheduled priority dates and times as mutually agreeable.

#### F) Maintenance Down-Time

Down time for Equipment maintenance and repairs shall, insofar as possible, be scheduled when the Equipment is at the maintenance home base. The down time will not be counted towards the Priority Co-owner’s time of possession or be available for use to any of the Co-owner. When necessary, if down time occupies a full week or more, a special rotation plan may be devised by mutual consent to share the burden of the loss of time privileges.

#### G) Equipment Use Restrictions

The Equipment shall not be leased, loaned or otherwise used by any person who is not either a Co-owner or a bona fide employee or agent of a Co-owner without the mutual consent of the Co-owners.

#### H) Rules and Regulations

The Equipment shall at all times be operated and maintained in accordance with all applicable Regulations and requirements of duly constituted authority. Any deficiencies which cause any civil penalties to be levied shall be borne by the person responsible for the violation. In the event that the violation is not directly attributable to the responsibility of one of the Co-owners, the cost shall be borne equally by all Co-owners.

Any Co-owner finding an equipment condition or deficiency that presents an significant risk of bodily injury or Equipment damage shall have the right and duty to declare the Equipment disabled and incapable of further operation until the condition is remedied. The condition or deficiency shall immediately be reported to the Co-owner in charge of maintenance as well as other Co-owners.

#### I) Damage Due to Faulty Technique

Damage resulting from faulty operating and/or handling technique will be the responsibility of the individual Co-owner causing such damage, except as may be paid by insurance on the Equipment. Damage caused by the negligence of a Co-owner not indemnified by insurance (such as a deductible) will be repaired at his/her sole expense and in an expeditious manner so as to permit the operations of the Equipment to continue without undue delay or inconvenience. Penalties levied against any Co-owner for acts in violation of any law governing the operation of the Equipment shall be borne solely by the Co-owner causing the violation.

#### J) Equipment Insurance

Liability insurance in the amount of not less than $\_\_\_\_\_ per person, $\_\_\_\_\_ per occurrence and $\_\_\_\_\_ per passenger shall be procured from a carrier specializing in Equipment insurance.

#### K) Normal Equipment Damage

Damage to the Equipment due to unforeseeable and unexpected mechanical break-down, except that caused by Faulty Technique as described in ARTICLE 28, as well as that caused by normal wear and tear, shall be the joint responsibility of all Co-owners.

#### L) Additional Equipment

The Co-owners may, by mutual agreement, add additional equipment to the Equipment or support equipment inventory. However, if the Co-owners are unable to agree upon the addition of said equipment, a Co-owner may add such equipment as he/she desires and pay the entire cost of such equipment and its installation by a competent and certified mechanic.

In this event, one half of the cost of the equipment and half the cost of installation shall be credited to the purchasing Co-owner upon dissolution of this Agreement, regardless of its then depreciated value, excluding materials or labor expended for maintenance, repair or replacement of equipment necessary to keep the Equipment in substantially the same condition as on its acquisition and following subsequent improvement. Maintenance of equipment added by one Co-owner is at his/her sole expense. Once installed in the Equipment, any such added equipment shall become and remain part of the Equipment and removal by the installing Co-owner shall not be permitted.

**M)** **Suspension of Rights Upon Default**

If any Co-owner is more than thirty (30) days in arrears in the payment of the monthly expenses, contribution, or special assessment he or she shall be considered in default, relinquishing his or her rights to vote and to procession and use of the Equipment. The non-delinquent Co-owners may make any decision regarding the Equipment which, under the terms of this Agreement, would otherwise require mutual consent.

1. Custom use rate his typically an approximation of the cost of doing various field operations. Costs include labor, fuel, lubrication, repairs, and the cost of machinery ownership (depreciation, return on investment, insurance, and housing). Custom rates may also include a margin for profit. [↑](#footnote-ref-0)
2. Custom use rate his typically an approximation of the cost of doing various field operations. Costs include labor, fuel, lubrication, repairs, and the cost of machinery ownership (depreciation, return on investment, insurance, and housing). Custom rates may also include a margin for profit. [↑](#footnote-ref-1)