



FARM COMMONS

# Creating a Strong Incubator Farm Lease: A Toolbox

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**By: Rachel Armstrong, Erin Hannum & Laura Fisher**  
**[info@farmcommons.org](mailto:info@farmcommons.org)**  
**[www.farmcommons.org](http://www.farmcommons.org)**

**DISCLAIMER:** This guide does not provide legal advice or establish an attorney-client relationship between the reader and author. Always consult an attorney regarding your specific situation.

## TABLE OF CONTENTS

<b>Opening This Toolbox</b>	<b>3</b>
<b>Checklist for a Thorough Incubator Lease</b>	
Getting going	6
Summary checklist	6
Understanding the checklist in detail	8
<b>Tales from the Field: The Incubator Farm Lease in Action</b>	<b>18</b>
<b>Sample Farm Incubator Lease with Annotations</b>	<b>23</b>
<b>Tip Sheet for Creating an Equipment Manual</b>	<b>41</b>
<b>Tip Sheet for Creating an Animal Husbandry Manual</b>	<b>44</b>

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## Opening This Toolbox

Farm incubators are sprouting up throughout the country as an innovative way to support beginning farmers. By providing access to affordable land, farm incubator programs help remove a key barrier faced by most new farmers. The arrangement allows multiple farmers to each have access to a portion of one or more farm properties where they can launch and run their respective separate farm operations. The farm incubator typically provides tools and equipment as well as packing and storage facilities for the participating farmers to share. In addition, most incubators offer training and technical assistance to help farmers refine both their farming and business skills. In this way, farm incubators provide beginning farmers the opportunity to learn the trade and get a sense of whether they enjoy running a farm business without having to incur a lot of risk and upfront costs. This resource comprises the “tools” that landowners and farmers need in order to build a strong incubator farm program based on a solid lease.

“Farm incubators provide beginning farmers the opportunity to learn the trade.”

### **The most important tool: good communication**

An essential component of a successful farm incubator project is the lease agreement between the landowner and each of the participating farmers. The lease agreement defines the relationship between the parties. A well-thought-out lease agreement can help facilitate good communication and provide stability and predictability for all parties by setting clear expectations. The lease agreement also protects the farm incubator project from liability by holding each beginning farmer accountable should she decide to back out of the arrangement. What if the farmer simply gets cold feet? Or suddenly decides to quit upon realizing it’s rather exhausting to work 12-hour days in the blaring sun? This wouldn’t exactly be fair to the farm incubator project who has dedicated time and energy and committed a plot to the farmer. In this way, the lease helps make sure the beginning farmer takes the arrangement and opportunity seriously. The lease keeps the farmer on the hook to do the best she reasonably can to stick it out for the duration of the lease. Of course, the lease can include provisions to give farmers an out if there’s an emergency or crisis. Bear in mind that a lease is only as good as the foundation of communication on which it rests. If the landowner and beginning

farmer haven't laid that foundation during the process of assembling the lease, the product won't be as strong.

### **A toolbox with many parts**

Farm Commons focuses on creating flexible, adaptable tools that empower farmers to move forward in addressing their legal matters. Farmers, and business owners of all types, are sometimes under the misimpression that legal matters can be addressed by simply using the "correct" form or language. This often isn't the case, especially when it comes to leases. The "correct" language varies widely between farmers as it's based on each business' unique circumstances and process.

There is no single contract that is best for all farmers and all incubator programs. To build legal resiliency, each farmer will need to follow a process of exploration, negotiation, and drafting that is unique to his or her farm.

Legal risks cannot be completely eliminated by using a lease. Enforceability depends on many factors, such as the specific circumstances of the problem that arises, the farmer's specific state laws, past practices, and many other factors that can't be explored in this type of resource. This toolbox is designed primarily to help farmers build their own strategy to avoid legal problems through good communication, which is also good legal protection should a problem materialize. This toolbox IS NOT legal advice specific to any circumstance and should not be used as such.

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There is no one single contract that is best for all farmers. This toolbox is meant to help you think through strategy and communication to avoid legal problems.

The tools we provide are meant to help farmers and landowners who are setting up an incubator farm navigate the process of creating a strong lease agreement. The checklist that follows highlights the key points you should thoroughly consider and address in your lease. We also include a profile of an incubator farm in Wisconsin, Prairie Fruits Farm and Creamery (PFFC), that has a solid lease in place between the landowner and participating farmer. This true story helps illustrate the importance of going through the process of getting a lease in place at the outset and demonstrates how having a lease in place can really help foster good communication, a respectful relationship, and a successful program. Farm Commons helped create the lease that PFFC is using. A version of this lease is included in this resource as a sample lease along with explanations of the various provisions. In addition, we include two tip sheets for creating an Equipment

Manual and an Animal Husbandry Manual. Having these manuals in place, if applicable to your situation, can be helpful to further set up clear expectations, systems, and procedures for how things are managed on the incubator farm.

**After opening this toolbox, farmers should**

1. understand how careful selection of beginning farmers and solid communication between parties leads to a successful farm incubator lease;
2. know the basic elements of a thorough farm incubator lease;
3. gain a sense of how to adapt farm incubator lease elements for different situations; and
4. have the resources they need to begin a farm incubator lease adapted to their own unique situation.

## Checklist for a Thorough Incubator Lease

### Getting going

This checklist provides a list of key items you should consider when drafting your farm incubator lease agreement. Using this checklist alongside the sample Farm Incubator Lease included in this resource is a great way to get started in outlining the terms of your lease, whether you decide to draft it yourself or have your attorney do it. If you do decide to draft it yourself, Farm Commons strongly encourages you to have an attorney look it over before finalizing it to make sure all the legal aspects are accurate and practical and that each provision complies with your state's laws.

Use this checklist alongside the sample Farm Incubator Lease included in this toolbox.

### Summary checklist

#### The Basics

- Who are the parties to the lease?
- What is the duration of the agreement?
- What is the process for renewing the lease?

#### Access

- What is the precise location and boundary of the site to be leased by the participating farmer?
- May the landowner also use the site that's leased?
- What other areas of the property may the participating farmer access and what areas are off limits?
- Are there any restrictions or special instructions for accessing the property?

#### Use

- What uses are permitted and prohibited by the participating farmer?
- Can the participating farmer have employees, interns, and volunteers?
- Can the participating farmer make significant changes or improvements to the leased area?

- Does the participating farmer have shared access to tools and equipment and, if so, what policies and procedures must be followed?
- Does the participating farmer have shared access to facilities on the property and, if so, what policies and procedures must be followed?
- Can the participating farmer bring farm animals onto the property and, if so, what animal husbandry practices or standards must be followed?
- How is water handled?
- Are there any specific farming practices or stewardship standards that the participating farmer must abide by?

#### Rent and Expenses for Other Services

- How is rent handled?
- If the participating farmer can use equipment and other facilities, is the cost included in the rent?
- Who pays for utilities and other services?
- How is insurance handled?

#### Changes and Disputes

- How can the lease be modified?
- How are disputes resolved?

#### Transfer and Termination

- What happens if the lease ends early?
- Can the lease be transferred (i.e., assigned or subleased) to someone else?
- What are the procedures and expectations for how the leased site is left once the participating farmer leaves?

## Understanding the checklist in detail

### The Basics

#### Who are the parties to the lease?

When it comes to a lease agreement, you need to be clear about who the contracting parties are. Is the participating farmer party an individual or his or her business entity (i.e., LLC or corporation)? Is the farm incubator party the landowner or the director of the farm incubator project, if they are not one in the same?

If the **participating farmer party** is a business entity, keep in mind that most landowners will be hesitant to lease to a business without any further security or collateral offered by the individual farmer as a personal guarantee. This is because if the business doesn't pay the rent, the landowner can only seek business assets to cover the debt. If the business is gone, it is difficult to recover. So if the farmer has established a business entity and that business entity is the contracting party on the lease, the farmer may have to negotiate whether and to what extent she agrees to a personal guarantee.

The **farm incubator or landowner party** will generally be whoever owns the land. So if the title to the land has been placed in an LLC or corporation, then that business entity will likely be the contracting party. Whoever has control to make decisions for that business entity will sign the lease and be the person(s) responsible for making sure all the terms are followed. However, it may be that the farm incubator project leader or administrator (whether an individual or a business entity) does not in fact own the land. Perhaps they've entered a lease agreement with the actual landowner to run the farm incubator project! If this is the case, the lease with the participating farmer would be considered a "sublease." It is very important to be absolutely sure that the landowner approves this sublease arrangement and that the underlying lease permits it. It may be that both the landowner and the farm incubator project leader need to be parties to the "sublease" with the participating farmer. Note that this checklist and the Model Farm Incubator Lease provided in this packet assumes that the farm incubator party is the landowner and is therefore referred to as "landowner." This may not be the case in your situation.

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This checklist and sample lease assume that the farm incubator party is the landowner. If this isn't the case in your situation, be sure to check to make sure the landowner approves the sublease arrangement.

Flexibility is an important factor to consider when deciding the duration of your lease.

### □ What is the duration of the agreement?

Some farm incubators have established multi-year programs. Others are more open. Either way, you can base the duration of your lease on the entire span of the farm incubator program, or you can make the lease season-to-season or year-to-year with an option to renew. It's up to you. Keep in mind that while a long-term agreement may seem preferable to provide a sense of stability, a seasonal or annual lease allows flexibility for both parties to adapt to changing circumstances. This flexibility is particularly important for farm incubator projects that are just starting out and will likely want to make some adaptations based on lessons learned.

### □ What is the process for renewing the lease?

Does the lease automatically renew? Or does renewal require some action? Oftentimes, leases require the tenant, here the participating farmer, to provide written notice in advance—such as 30 days ahead—if she wants to renew. Otherwise the lease would automatically terminate. Again, it's up to you. Just be sure to clearly explain the terms and process for renewal in the lease.

## Access

### □ What is the precise location and boundary of the site to be leased by the participating farmer?

It is essential that the farmer knows exactly what area on the property she has rights to farm. You may want to include a map to be as precise as possible.

### □ May the landowner also use the site that's leased?

Typically, when you lease a house or an apartment the tenant has exclusive rights to that space. The landlord can't just move into the third bedroom even though he sees that the tenant isn't using it. Oftentimes, farmers leasing land want to have the same exclusive rights and autonomy. However, here the landowner likely has interest in maximizing the use of the land. What if the landowner notices that the farmer is only cultivating one-quarter of the one-half acre that she has leased? The Model Farm Incubator Lease provides a creative arrangement to address this situation. It allows the landlord to start using any "uncultivated areas" if the farmer doesn't explicitly give notice of her intentions to use the uncultivated areas later in the season. You may want to consider such an arrangement, particular if the overall acreage on

See Section 2 of the Model Farm Incubator Lease for one way to address the issue of unused land.

the land is minimal and there's a strong interest in maximizing yields.

□ What other areas of the property may the participating farmer access and what areas are off limits?

The lease should set clear parameters of where on the property the farmer can and cannot go and under what conditions.

□ Are there any restrictions or special instructions for accessing the property?

You should include specific terms regarding particular days or times of day that are off limits, specific roads or routes that the farmer must use to access both the overall property and the leased fields, and specific parking locations or instructions if they are applicable.

## Use

□ What uses are permitted and prohibited by the participating farmer?

It's a good idea to include a detailed list of permitted and prohibited uses to establish clear expectations of what can and cannot be done. One option is to include a list of permitted uses and then a catch-all phrase that all other uses are prohibited without the prior written consent of the landowner. This will make sure any additional or unexpected uses are clearly communicated beforehand. Permitted uses could include things like production of annual crops, preparation for market of crops, sale of crops produced on the premises, raising of broilers, raising of laying hens, and so forth.

□ Can the participating farmer have employees, interns, and volunteers?

Allowing the participating farmer to bring on additional labor—whether employees, volunteers, or interns—exposes both the landowner and the participating farmer to liability. The landowner should be very cautious to openly allow it. One option would be to prohibit the participating farmer from having employees, volunteers, or interns on-site without the written consent of the landowner. Another would be to allow it only if the participating farmer has workers' compensation insurance. See more about dealing with insurance below.

### Key issue to consider if employees, volunteers, and interns are permitted

If employees, volunteers, or interns are allowed, it's also recommended that clear policies are in place regarding what they can and cannot do. What areas can they access? What equipment can they use? What times of day can they be on-site? Does the participating farmer need to be present to supervise whenever they are there? You could either include these terms and conditions in the lease or in a separate employee, volunteer, and intern policy that you require the participating farmer and all employees, volunteers, and interns to sign. Also, to ensure liability protection for both the landowner and the participating farmer, it's essential to be sure that all permitted activities by employees would be covered by the applicable insurance policy. For example, if employees are not listed on the automotive liability insurance policy then they should not be permitted to drive the farm truck.

☞ Can the participating farmer make significant changes or improvements to the leased area?

Significant changes include adding improvements such as fences, storage sheds, or other permanent structures. Do you want to openly allow this, allow it only upon written notice and approval, or strictly prohibit it? If improvements are allowed and made, what happens when the participating farmer leaves? For example, if the farmer puts a fence or a shed on the site, can she disassemble it and take it with her?

☞ Does the participating farmer have shared access to tools and equipment and, if so, what policies and procedures must be followed?

If the incubator farm project offers access to tools and equipment, it's a good idea to include a list of tools and equipment that are available in the lease. This could also be done with a catch-all phrase such as "all tools in the toolshed and all equipment in the barn." If there are multiple farmers involved in the farm incubator project, is there a procedure for who gets to use what when? Who is responsible for day-to-day care and overall maintenance? If something breaks, who's responsible for dealing with the repair and paying the costs? Ideally, the farm incubator project will have an equipment manual that provides detailed policies and procedures that the farmer must follow to make sure the equipment is

See the Equipment Manual Tip Sheet for key items to include in an equipment manual.

used safely and is well taken care of. The Model Farm Incubator Lease refers to an equipment manual that the farmer is required to follow.

□ Does the participating farmer have shared access to facilities on the property and, if so, what policies and procedures must be followed?

Again, you should thoroughly list what other facilities are available to the farmer. This could include greenhouses, packing rooms, storage rooms, barns, toilets and washrooms, etc. It's important to consider the roles and responsibilities for taking care of these facilities. Again, you could include general guidelines in the lease such as, "farmer must maintain the cleanliness of all facilities after each use," and set forth the specifics in a separate policy document, or you could include the specifics in the lease.

### Residential leases for residential farm incubator projects

Note that if your farm incubator project is residential and housing is made available to the participating farmer, you should enter into a separate residential lease. Farmland leases are very distinct from residential leases in legally significant ways. It would be ill-advised to try to include provisions regarding the use of residential areas in your farmland lease. Templates for residential leases are widely available on the internet. Be sure you find one that is specifically applicable in your state.

□ Can the participating farmer bring farm animals onto the property and, if so, what animal husbandry practices or standards must be followed?

You should be clear upfront about whether farm animals are allowed to set the appropriate expectation of the participating farmer. If they are allowed, the lease provides a good opportunity to establish standards for how any farm animals will be treated. This, of course, includes abiding by any state or local regulations regarding farm animal care. The Model Farm Incubator Lease refers to an animal husbandry manual that the participating farmer is required to follow. Having such a manual is an effective way to make sure that if a participating farmer brings farm animals on-site she will take their care and treatment very seriously.

See the Animal Husbandry Manual Tip Sheet for key items to include in an animal husbandry manual.

See Section 6 of the Model Farm Incubator Lease for one example of how the landowner and participating farmer may agree upon water issues.

#### How is water handled?

Depending on the geography of the area, water usage may be a significant concern to all parties. A separate water or irrigation section may be helpful to fully hash out all the issues surrounding water usage, including timing, flow rate, repairs, cost, etc.

#### Are there any specific farming practices or stewardship standards that the participating farmer must abide by?

Do you want the farmer to abide by specific farming practices such as organic standards? Are there any other specific practices or stewardship standards you want to include? What about weed control—is the farmer responsible for preventing excessive weed growth? Is the farm property subject to a conservation plan? Are there special waterways that need to be protected? Are there any specific issues you want to include related to your particular property or region? These are all things you should consider putting into the terms of your lease.

#### Organic farming requirements

If the incubator farm property is Certified Organic or is in transition, it's a good idea to include a provision in the lease requiring that the participating farmer understands and follows the requisite organic practices. This is definitely something that should be taken seriously, as one mishap by a participating farmer could risk losing certification for the farm or significantly prolong the transition process. Section 9 of the Model Incubator Farm Lease provides an example of a very robust provision that requires the participating farmer to follow organic standards. However, you should not expect that a beginning farmer will be fully up to speed on all the elaborate organic regulations and standards despite every intention to become an organic farmer. It's not an easy feat to learn! The incubator farm project can safeguard its own interest in gaining or maintaining organic certification by taking on some of the responsibility to train the farmer and show her the ropes. This could include providing training and technical support on organic farming practices.

### Rent and Expenses for Other Services

#### ☞ How is rent handled?

This is pretty straightforward. You need to decide and include in the lease clear terms on the rent amount, when it is paid and how, and what the penalties are if it is late. This will vary based on your unique situation.

#### ☞ If the participating farmers can use equipment and other facilities, is the cost included in the rent?

Some farm incubators include the use of tools and equipment and other facilities as part of the rent cost. Others charge an additional fee. If you have multiple participating farmers, it could be that some of the farmers won't need any of these additional offerings while others will need all of them, and still others will need something in between. In this scenario, it may be better to establish a system to charge by usage rate for tools, equipment, and facilities. On the other hand, this will require tracking systems that will take additional thought and time. What's best for you? Another consideration is fuel costs. If equipment is available that runs off gas or diesel, such as a tractor, who pays for the fuel costs and how will usage be monitored? Is it all-inclusive, do you charge by the gallon, or do you want to set up some other arrangement? Whatever the case, the basic cost structure should be outlined in the lease so that the participating farmer has a good idea of what her overall costs will be in the whole package.

#### ☞ Who pays for utilities and other services?

You'll need to be sure to clearly set forth who is responsible for covering the costs of utilities and other services that are necessary to operate the farm. These costs could be prorated if there are multiple farmers. Or the landowner could cover all of the utility and services costs, which would of course be reflected in the overall rent costs. Utilities and services include things like electricity, natural gas, irrigation, trash collection, toilet facility maintenance, lawn-mowing services, and even snow removal if it's an issue in your area. Again, it's important to outline who is responsible for these additional costs upfront so the farmer knows at the get-go what her overall costs will be.

### How is insurance handled?

Farm Commons strongly recommends that the farm incubator project has adequate insurance, which includes coverage for each of the participating farmers. This includes liability insurance to deal with injuries, workers' compensation if employees are involved and it's required in your state, automotive liability to cover things like farm vehicles, and property insurance. You'll need to decide who is responsible for covering the costs of the policy and the minimum premium amounts.

#### Insurance

Part of any farm incubator is educating the beginning farmer on all aspects of the business. There is an opportunity to teach the participating farmer the realities of insurance by passing the responsibility and cost of insurance onto the farmer. However, in some cases it may make more sense for the landowner to maintain the insurance and cover all of the costs. For example, if eight farmers are participating in the farm incubator project and each farmer is leasing just one-quarter acre to farm, it may be too cumbersome for everyone to get their own insurance. Indeed, in some states it can be difficult to find insurance agents who are willing to insure smaller plots. If this is the case, it may be more cost effective and efficient for the landowner to take on the responsibility to maintain adequate insurance covering the activities of all the farmers. If so, the landowner would need to contact his insurance carrier and add each participating farmer—or her business entity if there is one—to all policies in place. Also of note, if the participating farmers are allowed to have employees, they may be required to carry their own workers' compensation. So be sure to check your state's laws on workers' compensation if employees are involved.

For a more thorough overview of key issues related to insurance, see Farm Commons' insurance guide *Managing the Sustainable Farm's Risks with Insurance: Navigating Common Options*.

### Changes and Disputes

#### How can the lease be modified?

Be sure to consider how changes can be made to the lease if you realize certain aspects aren't working or need to be tweaked. Oftentimes, leases require that any amendments must be agreed to by both parties in writing. How do you want to handle the amendment process should it arise?

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See Section 16 of the Model Farm Incubator Lease for an example of an innovative dispute resolution provision involving the appointment of a dispute resolution committee.

### How are disputes resolved?

Farm Commons highly recommends including a dispute resolution clause that provides an alternative mechanism for deciding disputes to prevent going to court. This could include appointing a dispute resolution committee or requiring an experienced mediator to resolve any dispute. Just know that if you don't include an alternative dispute resolution clause you could end up in court with an expensive and drawn-out lawsuit.

## Transfer and Termination

### What happens if the lease ends early?

It's important to consider what will happen if the lease terminates before the established end date. What is the process for terminating the lease early? On what grounds can it be terminated? If one party breaches the lease, are they allowed a reasonable time to remedy the breach before the other party can terminate the agreement? What happens to pre-paid rent if the lease is terminated early? Will rent be adjusted on a pro rata basis based on when the farmer leaves? Perhaps rent is only adjusted if the landowner is able to find another farmer to take over.

### Can the lease be transferred (i.e., assigned or subleased) to someone else?

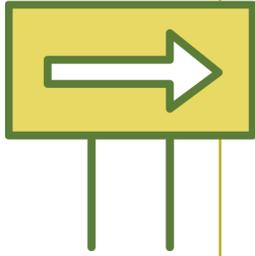
If the farmer wants out, one option could be to allow her to find someone to take over the lease. Perhaps the farmer just wants someone to take over part of the site—such as one-quarter of the one-half acre leased. The legal terms for scenarios involving the transfer of the lease to another person are called assignments or subleases. Oftentimes landowners don't allow outright assignments or subleases because they want to have a say in who takes it over. It makes sense that the landowner would want to meet the new person first to be sure she will be a good steward. It's up to you how you address subleases and assignments.

### What are the procedures and expectations for how the leased site is left once the participating farmer leaves?

How do you want the farmer to leave the land once the lease is over? For example, if the farmer is cultivating crops, do you want her to establish a cover crop before leaving? This should be clearly set forth in the lease to be sure the participating farmer knows well in advance what is expected of her once the lease ends so she can plan the wind-down of her farm season accordingly.

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Section 14 of the Model Farm Incubator Lease requires the landowner's written permission prior to any transfer of the lease by the participating farmer to another person.



### **Next steps: Learn from others**

Now that you've read through the elements of a thorough lease and understand how these details set up an incubator farm program for success, let's explore the experience of one incubator program in particular. Their experience will help all types of farmers understand the importance of this overall process. Plus, our farmer profile contains a few keys to success that deserve emphasis before we dive into the model.

## Tales from the Field: The Incubator Farm Lease in Action

### Two years down the road

Developing a strong lease is an integral part of making a farm incubator program a success, but you might already be thinking ahead to what happens after you sign on that dotted line. How does this all play out in real life? What else should you keep in mind to make the arrangement work for everyone involved?

Luckily, we have a perfect case study to share with you. Farm Commons developed the sample lease in this packet in tandem with a lease written especially for an Illinois farmer to start up a farm incubator program in conjunction with a local farmer training organization. We were able to catch up with the folks involved to get a behind-the-scenes look at how this process played out for them.

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“We started thinking bigger...[the incubator farm program] seemed like the ideal scenario.”  
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### How the Prairie Fruits Farm and Creamery incubator farm came about

Prairie Fruits Farm and Creamery (PFFC) is located in Champaign, Illinois. Owners Leslie Cooperband and Wes Jarrell opened up shop in 2003. Since then, PFFC has become famous for their creamy cheeses and traditional Italian gelato, both made with goat milk from their herd of Nubians, LaManchas, and Nigerian Dwarfs.

In 2013, Leslie and Wes partnered up with the Land Connection, a local nonprofit farmer training organization, to host the Farm Beginnings training classes at PFFC. After the yearlong program, Leslie, Wes, and Cara Cummings, the Land Connection’s executive director, were so pleased with the way things had worked out that they decided to take it one step further.

Cara of the Land Connection told us, “We started thinking bigger. Wouldn’t it be great if we could have an incubator program to provide some of our students with land? And what if we were doing it out here on the farm where we’re already doing our other classes? We are also out on the farm a lot through the program, so it would be more than just providing land access. We would be there for guidance and in case anything went wrong. And, the incubator farmers would be right there so they can continue to come to the Farm Beginnings classes, help teach classes, and be more involved in the program in general. It seemed like the ideal scenario.”

In 2014, Shea Belahi became the first participant in the incubator farm program at PFFC, leasing an acre of land to grow on for her own business, Heirloomious Farm. Shea had been a student in the Farm Beginnings program, so she already had developed a relationship with Cara, Leslie, and Wes. According to Wes and Leslie, knowing Shea's personality and already having a mutual trust and respect going into the arrangement was integral to their success.

Shea stayed on for her third season in 2016, and the program expanded to include three flower farmers on their own plots on the property. Additionally, PFFC is trying to work out an arrangement with the nearby town of Urbana to use a piece of land adjacent to the farm to expand the incubator program.

### Top Insights for a Successful Incubator Farm Program

So what made this program such a success? We pulled together the top insights and tips from the team to share with you:

- **A strong lease**
- **Trust**
- **Complementary businesses**



#### A strong lease

If you're reading this resource, we don't need to spend too much more time going over the importance of having a thorough, written lease. Even if you're not thinking about legal enforceability or don't feel that you need the formality of a written lease, the lease writing process itself offers a lot in terms of setting up the relationship with the tenant and ensuring that everything is out and on the table. In Wes' words:

"The lease is more of an organizational document at the beginning for everyone to put everything on the table and say with formality at the beginning that this is a lease contract, it's not just random piece of paper that you sign without even really reading it. I think it's critical at the beginning. I don't think that we've referred to it once, but it was critical that we did it."

In case you were wondering, the resolution in this case was just for Wes and Leslie to replace the kale with some from their own vegetable garden.

Even in the smoothest of situations, things come up. Farming is unpredictable. For example, Wes and Leslie’s goats got out at one point and munched through some of Shea’s kale crop. But, because they had gone through the process of discussing all the possible scenarios and how they would be handled, Shea, Wes, and Leslie were able to navigate the situation easily.

“There was no awkwardness or animosity when things came up because they all knew that there was an agreement on how things would be handled. The lease helped preserve the relationship between the landowner and farmer.” – Cara

Also important to note is that the lease has allowed the intermediary party, the Land Connection, to become virtually uninvolved past the initial program set-up. This is important when dealing with a situation with multiple relationships. If Shea and PFFC had to come to Cara to figure out what to do every time a question came up, the program might not have unfolded as organically as it did.

**Trust**

We mentioned this before, but Wes and Leslie stressed that working with farmers who you already know is their top tip for running a successful incubator program.



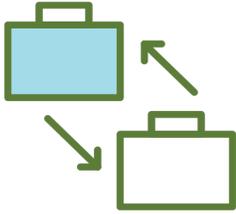
“If you have some history with the person or people that you’re going to enter into this relationship with, that goes a long way. The lease and adhering to the lease would be more important or would come up more often if we were starting from ground zero with the person.” – Leslie

“The lease helped preserve the relationship between farmer and landowner.”

Be selective in whom you accept as an incubator farmer, and ensure that there is mutual respect and consideration. If you don’t already have a relationship with that person, Wes and Leslie recommend asking someone that you trust, like another farmer, to vouch for the potential tenant. In a situation where you are inviting someone onto your business property and often into your home, it’s important to get a sense of how they might behave in a variety of situations. Cara, Wes, and Leslie all knew that Shea was hyper-responsible and accommodating from working with her in the Farm

Beginnings program. While there are never any guarantees, they expected that she would act the same way throughout the incubator program.

### Complementary businesses



PFFC sells cheeses, gelato, and sorbets. They do not sell produce. The vegetable garden we mentioned before is only for their personal use and for some on-farm events. As a result, Heirloomious Farm’s product of fresh vegetables is not in direct competition with PFFC’s business. In fact, from Wes and Leslie’s perspective, having Shea on the farm added a whole new dimension to their own business and made their farm even more of an attraction. This allows the relationship to be more of a partnership than a tenancy—or landowner and lessee relationship—and encourages Wes and Leslie to find creative ways to support Shea’s business endeavors.

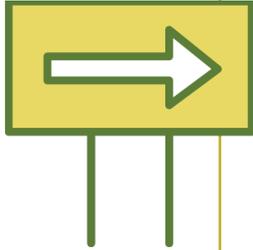
“We are trying to figure out ways to co-market with Shea and our other future incubator farmers. We’re thinking about putting a produce stand on the farm, and part of the idea would be to have the incubator farmers as the major players in the shop. That will help with their sales and retail experience and will help us to diversify the products that we can offer on the farm. It will also help the community because there aren’t any produce stands around. We’re surrounded by corn and soybeans. So it’s a completely beneficial situation for everyone.” – Wes

This is not to say that having an incubator farmer that has a similar business to your own would mean an unsuccessful program. But considering how to build a mutually beneficial business arrangement can strengthen the relationship between farmers.

### The big picture

The idea of a formal lease can be jarring to some farmers. Many farmers choose their profession so that they can get away from a corporate way of doing business and toward a more organic way of life. But as we can see from the situation described here, it is exactly the process of putting together the lease that allows for that natural growth of relationships. Ironically, putting a formal structure in place allows for flexibility and freedom. Having thought through all the possible things that can go wrong and how they will be dealt with means that there is no awkwardness when things do arise. The natural flow of the farm and the

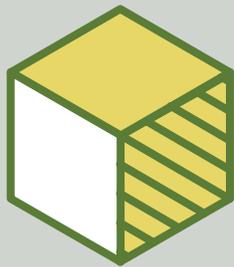
relationship between farmers is not broken. The process also sets a precedent for how circumstances will be handled in general and puts everyone on the same page. It almost seems counterintuitive—if a lease works well, you never have to look at it again. That is how it worked out in this case, at least. We are thrilled at the success of the farm incubator program that the Land Connection and PFFC developed and look forward to seeing its growth. We hope that this resource helps you build a strong program based on a solid lease as well.



**Next steps: Read a sample**

Now that you've worked your way through this checklist you're ready to put the lease in writing. But first, check out the Farm Incubator Lease that follows for sample provisions with detailed explanations to help you further develop the ideal lease terms for your scenario. Again, if you decide to draft your lease yourself, Farm Commons strongly encourages you to have an attorney look it over before finalizing it to make sure all the legal aspects are accurate and practical and that each provision complies with your state's laws.

Once your lease is in place, it should go without saying that both parties need to follow through on the terms of the agreement. While the lease will operate as the determinative legal document to resolve disputes should they arise, Farm Commons sees a greater purpose in the lease-drafting process. Ideally, the lease will serve as a guidepost to facilitate open and clear communication and encourage each party to take seriously their roles and responsibilities in making each participating farmer's operation and the farm incubator project overall a success.



# Sample Lease

Use this sample Farm Incubator Lease  
as inspiration for your own.

## SAMPLE FARM INCUBATOR LEASE

### FARM INCUBATOR LEASE

The parties to this Lease (the “Parties”) are as follows:

Landowner Farm Name: <sup>1</sup>

Landowner Farm Owner(s) Names:

Address:

City, State, Zip:

Hereafter referred to as the, “Landowner,”

And

Incubator Farmer Name: <sup>2</sup>

Address:

City, State, Zip:

Hereafter referred to as the, “Participating Farmer.”



<sup>1</sup> When it comes to a lease agreement, you need to be clear about who the contracting parties are. The farm incubator party will generally be whoever in fact owns the land, which is why the term “landowner” is used here. Note that if the title to the land has been placed in an LLC or corporation, the business entity will likely be the contracting party. Whoever has control to make decisions for the business entity will sign the lease and be the person(s) responsible for making sure all the terms are followed. However, it may be that the farm incubator project manager (whether it be an individual or a business entity) does not in fact own the land. Perhaps they’ve entered a lease agreement with the landowner to run the farm incubator project. If this is the case, it would be considered a “sublease.” It is very important to be sure that the actual landowner is okay with this “sublease” arrangement and that the underlying lease permits it. It may be that the landowner and the farm incubator project manager both need to be signatories on this lease.

<sup>2</sup> If the participating farmer party is a business entity, keep in mind that most landowners will be hesitant to lease to a business without any further security or collateral offered by the individual farmer as a personal guarantee. This is because if the business

*is gone, it is hard to recover. So if the farmer has established a business entity and that business entity is the contracting party on the lease, the farmer may have to negotiate whether and to what extent she agrees to a personal guarantee.*

The Parties agree to the following, which taken as a whole, constitute this Lease:

### 1. Agreement to Lease

Landowner agrees to lease to Participating Farmer and Participating Farmer agrees to rent from Landowner the portion of land identified on Exhibit A: Map of Premises <sup>3</sup> (the “Premises”), subject to all the terms of this Lease.

Participating Farmer has permission to use the rest of Landowner’s property only as necessary to utilize the Premises, including vehicle access to and from the Premises <sup>4</sup> and to utilize equipment and storage specifically identified within this Lease. <sup>5</sup>



<sup>3</sup> *This means you have to create a map of the premises that identifies the exact boundaries of the leased areas and attach it to the lease as an exhibit. Alternatively, you can describe the leased premises in this section and remove the mention of an exhibit. Either way, it’s important that you provide as much detail as possible in defining the “Premises” so that all parties are clear on the portion of the land that is subject to the terms of the lease.*

<sup>4</sup> *If you want to assign specific parking instructions or establish any restrictions about access such as times of day that are off limits or identify specific access routes to the overall property or the leased fields you can include that here.*

<sup>5</sup> *Participating Farmer has no right, absent written permission, to wander the entire farm at will. This lease is for the “Premises” which is just the leased fields specifically, and for portions of the farm necessary to conduct the farm work, such as washing and packing facilities and storage areas.*

### 2. Exclusivity as to Cultivated Portion

Participating Farmer has an exclusive right <sup>6</sup> to use all portions of the Premises that have been put under cultivation by [JUNE 1]. As to any portion of the Premises that is neither under cultivation by [JUNE 1] nor designated for fall cultivation in a written communication to Landowner (together, the “Uncultivated Areas”), Participating Farmer has a non-exclusive right to use the Uncultivated Areas for the remainder of this Lease term. Participating Farmer must secure written permission <sup>7</sup> from the Landowner <sup>8</sup> to use the Uncultivated Areas after [JUNE 1]. <sup>9</sup>



<sup>6</sup> An "exclusive right" means that Landowner cannot use the portion of the land described as the "Premises" without the permission of Participating Farmer.

<sup>7</sup> Requiring written notice helps prevent any confusion. Here, this could include a quick email around June 1 from Participating Farmer to Landowner saying, "I'm planning to use 50 more feet of a bed on the north side of . . . this fall, please confirm that you agree by replying to this email." But any other writing will work as well, including a piece of paper outlining the request with the signatures or initials of both parties. Once Landowner provides written permission, Participating Farmer has the exclusive use of the "uncultivated areas" and any additional areas detailed in the email for the duration of the lease. On the other hand, if Participating Farmer doesn't cultivate an area and doesn't secure written permission to do so within the allotted time, Landowner can use it first. Agreeing to this type of arrangement will help maximize the use of the land.

<sup>8</sup> Note that anytime this lease says Landowner, it's referring to all agents of the farm operation—whether it's the private landowner(s) (e.g., husband and wife) or the manager(s) of a business entity. Unless the agents have an agreement otherwise, any can commit Landowner. So that means Participating Farmer would only have to ask one person for permission and it counts against all.

<sup>9</sup> Again, this kind of clause can help Participating Farmer and Landowner maximize the use of land even as circumstances or cultivation plans may change. The date and any of the parameters can certainly be changed, depending on the type of operation considered. However, if the land is leased for pasture, then the tenant would most likely use the entire pasture. In this case, this provision could be deleted.

### 3. Lease Term, Renewal, and Termination

This Lease begins on the date the Lease is executed.<sup>10</sup> This Lease expires on [OCTOBER 31]. The Parties have the option of renewing the lease. Renewal shall occur only if Participating Farmer gives Landowner written notice of his or her desire to renew the lease by [SEPTEMBER 1]. If Participating Farmer does not give written notice of his or her desire to renew by [SEPTEMBER 1], the Lease shall terminate on the expiration date.<sup>11</sup> Landowner has [30] days to provide written acceptance or rejection of the renewal proposal, after receiving notice of Participating Farmer's desire to renew. If Landowner fails to provide written acceptance or rejection of Participating Farmer's desire to renew, the lease shall automatically renew for the same period as the term of this Lease.<sup>12</sup> If the lease is not renewed, Participating Farmer must place any cultivated areas into a suitable cover

crop in a timely manner, such that the cover crop is established at the end of the Lease term.

The Lease may be terminated early upon mutual written consent by both Parties. The rent will be allocated pro rata based on the agreed upon termination date and any prepaid rent that exceeds the pro rata amount must be returned to Participating Farmer within 30 days. In addition, the parties each reserve the right to terminate the Lease upon breach of any of the terms of the Lease by the other party. The non-breaching party must give the breaching party written notice of the breach upon which the non-breaching party will have ten days to reasonably remedy the situation. If the breaching party fails to do so, the non-breaching party may terminate the lease. The parties agree to take reasonable steps to mitigate any damages arising from a breach. Upon early termination of the Lease, Landowner will have immediate rights to exclusive use of the Premises. The dispute and determination of any damages or monetary remedies to be awarded as a result of the breach will be determined pursuant to Section 16.



<sup>10</sup> *You can also specify a start date.*

<sup>11</sup> *It can be wise to have the lease lapse in a year as the default. Therefore, no obligations automatically extend to either party for an additional year. However, if things get busy or for whatever reason the lease isn't renewed properly before this date passes, the parties can always sign another lease.*

<sup>12</sup> *Thus, if this lease is for one year, from January to December, then the lease automatically renews for the same January to December period. But, if the lease was just a six-month lease over the summer, it would renew for another six-month period over the summer. Meaning the lease wouldn't be in effect during winter.*

#### 4. Permitted Uses

Landowner permits and consents to Participating Farmer's use of the Premises for all of the following activities as well as any activities incidental to the agricultural uses of the Premises listed below:<sup>13</sup>

- a. [List use(s) here, such as, production of annual crops;
- b. Preparation for market of crops produced on the Premises;
- c. Sale of crops produced on the Premises;
- d. Raising of broilers, slaughter and preparation of broilers for market, raising of laying hens, preparation of eggs for market, sale of poultry produced on Premises, sale of eggs produced on Premise, and so forth.]

Uses not expressly permitted<sup>14</sup> are prohibited<sup>15</sup> without the written consent of the Landowner. Landowner may approve, disapprove, require more information, or require certain modifications to any additional proposed activity at the Landowner's discretion.

Participating Farmer may not have employees, including interns or volunteers, working on-site without the prior written consent of Landowner.<sup>16</sup>

Participating Farmer agrees to comply with all federal, state, and local laws, regulations, ordinances, decrees and rulings in connection with any agricultural or other activities conducted on Landowner's property.<sup>17</sup>



<sup>13</sup> *This means that the tenant can't use it for residential purposes, throw non-farm related parties, and that sort of thing.*

<sup>14</sup> *Note that the permitted uses are quite broad. It includes everything on the list AND any activities incidental to the agricultural uses listed below. Incidental uses are those that necessarily accompany a specific use. For example, accepting a diesel delivery or compost shipment would be incidental and permitted because it's necessary to run the farm.*

<sup>15</sup> *You could otherwise detail specific activities that are prohibited. We would have some gray area if an activity is neither clearly prohibited nor permitted. For example, I might argue that slaughter is not incidental to raising of animals and that it's an entirely separate operation. But that might not be another person's understanding. So if this were the case, you may want to add the following: "Slaughter of animals is specifically prohibited."*

<sup>16</sup> *Allowing Participating Farmer to bring on additional labor—whether paid employees, volunteers, or interns—exposes both Landowner and Participating Farmer to liability. Landowner should be very cautious to openly allow it. Requiring written consent provides one safeguard. If employees are allowed, it's highly recommended that clear policies are in place regarding what they can and cannot do. It's also essential to make sure that all employee activities are covered by insurance, which may require Participating Farmer to carry workers' compensation. See Section 12 on insurance for more on this.*

<sup>17</sup> *For example, Participating Farmer is agreeing to follow the zoning code, to adhere to permitting requirements of the Clean Water Act, and all sorts of other things. Failure to do so is a breach of the lease.*

## 5. Rent and Taxes

Participating Farmer shall pay to Landowner rent in the amount of \$500,<sup>18</sup> due on the effective date of this Lease and delivered to the address listed above. A late penalty of 5% per month may be assessed on a late payment at the Landowner's discretion. Participating Farmer agrees and acknowledges that the late penalty is necessary to compensate Landowner for lost interest, the opportunity cost of renting the property, and any fees or expenses in enforcing this Lease.

Landowner shall pay for all taxes and assessments on the Premises, with the exception of any taxes directly attributable to sales-based activities being conducted by Participating Farmer on Landowner's property.<sup>19</sup>



<sup>18</sup> *The rent amount must be negotiated between the parties. Note that many options other than cash are available for rental arrangements including crop share and hybrid models. See Farm Commons' other lease materials for additional ideas.*

<sup>19</sup> *The second half of the clause protects Landowner if Participating Farmer starts selling products that are taxable and those taxes end up being assessed to Landowner.*

## 6. Utilities and Services

Landowner agrees to provide and pay for all utilities and services incidental to Participating Farmer's use of the property including washroom or portable toilet facility maintenance, trash collection, lawn mowing, and electricity and/or natural gas services<sup>20</sup> as necessary for permitted equipment usage under Section 7 and permitted buildings and storage area usage under Section 8.<sup>21</sup>

Notwithstanding the paragraph below, Landowner agrees to provide and pay for irrigation water as necessary for Participating Farmer's irrigation of the Premises via drip tape. If Participating Farmer wishes to use any other irrigation method aside from drip tape, written permission of the Landowner must be received in advance.<sup>22</sup>

Participating Farmer specifically acknowledges and agrees to reasonable delay in the provision of irrigation water should the related equipment malfunction, water pressure drop, available capacity decrease, or other contingency occurs that is outside the control of the Landowner. The Landowner agrees to use best efforts to remedy any adverse contingency and resume the provision of irrigation water as soon as is reasonably possible.

Participating Farmer specifically acknowledges and agrees that irrigation may not occur between the hours of 7 a.m. and 1 p.m. on Monday through Saturday, unless verbal permission of the Landowner is received on the day Participating Farmer wishes to irrigate.<sup>23</sup>



<sup>20</sup> *In the way that this is written, Landowner must provide and pay for whatever electricity and/or natural gas services are required for using buildings, storage areas, and permitted equipment. For example, if access to a refrigerated storage unit is included as part of the lease terms then Landowner must pay for the electricity to run the refrigeration system. Or, if the Equipment Manual attached to the Lease specifies that a particular piece of equipment must be power washed after each use, Landowner must pay for the electricity to run the power washer for this purpose.*

<sup>21</sup> *The way this clause is written provides just one example of how the utilities and services could be handled in a farm incubator situation. The parties could of course agree on a different arrangement. The key is to be clear on who is responsible and will pay for what. This clause should be as specific as possible. For example, if portable toilets are only provided at specific times of the year, the dates should be included. Or, if the lease runs through the winter in a place where it snows, you should include who is responsible for snow removal.*

<sup>22</sup> *Depending on the geography of the area, water usage may be a significant concern to all parties. A separate water or irrigation section may be helpful to fully hash out all the issues surrounding water usage, including timing, flow rate, repairs, cost, etc. This is one example of the limitations Landowner and Participating Farmer may agree upon.*

<sup>23</sup> *Here, just verbal permission is required given the spontaneous nature of the request. In this particular situation, it may be too burdensome to require written notice given it's just a day's notice. Whether written notice or verbal notice is required for any of the terms in the lease is up to the parties to decide. Keep in mind that while verbal notice may be more practical, written notice is generally preferred in contracts because it leaves a paper trail and prevents the ambiguities in a "he said, she said" debate if a dispute were to arise.*

## 7. Equipment

Participating Farmer is granted a non-exclusive right to use the following of Landowner's equipment:

- a. [List equipment here, such as . . .
- b. Kubota tractor,
- c. Rototiller,
- d. . . . and so forth.]

Usage of the equipment must be coordinated with other users. In return for this right, Participating Farmer agrees to pay Landowner an equipment fee in the amount of \$250,<sup>24</sup> due on the effective date of this Lease and delivered to the address listed above. The equipment fee includes fuel.<sup>25</sup>

Landowner is responsible for regular maintenance of the equipment. Landowner will schedule and pay for any repairs resulting from regular, non-negligent use of the equipment. Landowner will schedule and pay for any repairs resulting from Participating Farmer's negligent use of the equipment, and Landowner may invoice Participating Farmer for the cost of repairs caused by his or her negligent use.<sup>26</sup> Unless the Parties otherwise agree in writing, Participating Farmer agrees to pay any invoice received from Landowner for his or her negligent use of the equipment within 15 days of receipt.<sup>27</sup>

Participating Farmer acknowledges and agrees to adhere to each provision of the Equipment Manual<sup>28</sup> provided by the Landowner and attached as Exhibit B as a term of this Lease.<sup>29</sup>

Participating Farmer will demonstrate to Landowner that he or she has been trained in safe operation of farm machinery before operating equipment. Landowner may accept or deny Participating Farmer's training as adequate at his or her discretion.<sup>30</sup>

Participating Farmer will return all equipment to its appointed storage location in a clean condition after every use.



<sup>24</sup> *The parties must negotiate whether an equipment-usage fee is charged and, if so, how much.*

<sup>25</sup> *It's up to the parties to decide whether fuel is or is not included in the equipment fee price. Another option would be to set an additional price for fuel by gallon. In that case, a system would need to be in place for tracking usage.*

<sup>26</sup> *Again, any arrangement that works for all parties is possible here. In this example, Landowner must schedule and pay for the repair upfront so the equipment will be efficiently back in use. If a dispute about fault arises, that could hold up everything.*

*Under the terms here, Landowner doesn't have to invoice Participating Farmer if for whatever reason Landowner decides to cover the costs.*

*<sup>27</sup> A security deposit is another way to address the costs that could be incurred if equipment breaks at the fault of Participating Farmer. However, beginning farmers may not have the money to pay upfront.*

*<sup>28</sup> Of course, then we need to have this Equipment Manual! See Farm Commons' model.*

*<sup>29</sup> It's not entirely necessary to attach an equipment manual to the lease. It helps though, because it proves all the papers were together in one place at the time of signing. If you take it out, just make sure that Participating Farmer has received the manual before signing the lease.*

*<sup>30</sup> There isn't a single ideal resource for beginning farmer training on equipment at this time. Hopefully one will emerge in the future. In the meantime, this clause is very flexible. Participating Farmer just has to show that he or she has done something—such as read a resource online, attended a class, etc.—that shows he or she is trained. Landowner can accept the training as adequate or request additional training efforts before allowing use.*

## 8. Buildings and Storage Areas

Participating Farmer has a non-exclusive license to utilize designated areas for:

- a. [List use(s) here, such as . . .
- b. Washing and packing of produce,<sup>31</sup>
- c. Storing of hand tools and fuel in the barn,
- d. using the washroom;
- e. . . . and so forth;]

and to access any other areas of Landowner's property when necessary for use and maintenance of the equipment specified in Section 7.<sup>32</sup>



*<sup>31</sup> It may be a good idea to specifically identify the washing and packing area, which could be included on the map or description of the Premises. It's also fine to do this verbally, as long as there has been a specific designation of a washing and packing area to make things perfectly clear. This is particularly important as more Participating Farmers come onto the scene. The same goes for the storage areas.*

*<sup>32</sup> At some point, you may want to consider a chore schedule. Who cleans the bathroom? This would be a good place to specify that sort of thing. Of course, it could be an informal schedule, but if chores are expected as a part of "rent," it belongs here.*

### 9. Stewardship and Housekeeping

Participating Farmer agrees to use good stewardship of the Premises. Good stewardship is defined as adherence to the USDA National Organic Program (NOP) Handbook in addition to minimizing water and wind erosion. In accordance with organic standards, Participating Farmer agrees not to use any product that is not expressly approved by the Organic Materials Research Institute (OMRI). If any product is not clearly and expressly approved by OMRI, Participating Farmer must receive approval from Landowner before utilizing the product. If any farming or processing practice is not expressly allowed under the organic standards, Participating Farmer must receive approval from Landowner before implementing the practice. Participating Farmer, in collaboration with Landowner, agrees to make best efforts<sup>33</sup> to learn and understand organic practices and products set forth in the NOP Handbook and OMRI listings to determine if a practice or product is approved and in accordance with current organic standards.<sup>34</sup>

Participating Farmer will not abandon the Premises or cease cultivation of the Premises without establishing a cover crop. Participating Farmer will not allow excessive weed growth on any cultivated portion of the Premises. Participating Farmer will prevent any unnecessary waste, loss, or damage to the Premises. Participating Farmer agrees to return all areas of the Landowner's property that are used by Participating Farmer to a clean, tidy, and safe condition after each use.<sup>35</sup>



*<sup>33</sup> "Best efforts" is a phrase often used in contracts to provide a measure, albeit subjective, of something that is relatively hard to measure. What this means here is that Participating Farmer agrees to act in good faith and take reasonable steps to learn, understand, and abide by the organic standards. If a dispute arises, a court will consider the surrounding circumstances, including the experience and expertise of Participating Farmer and the complexities of the particular organic standard at issue to determine whether Participating Farmer acted in good faith and made her best effort to learn and abide by it.*

*<sup>34</sup> If the incubator farm is certified organic or is in transition, it's a good idea to include a requirement that Participating Farmer understands and follows the requisite organic practices. To take this lease seriously, Participating Farmer should make a special effort to really learn and*

*understand the organic standards. Please note, however, it's not entirely reasonable to expect that a beginning farmer will be fully up to speed on all the elaborate organic regulations and standards despite every intention to become an organic farmer. And it's not an easy feat to learn! The incubator farm project can safeguard its own interest in gaining or maintaining organic certification by taking on some of the responsibility to train farmers and show them the ropes, so to speak. This could include providing training and technical support on organic farming practices.*

*<sup>35</sup> This clause reinforces good stewardship practices to make sure that the land is left in as good or better condition as it was found. It's important to include a provision requiring Participating Farmer to reasonably manage weed control to avoid creating a huge seed bank in one year.*

## 10. Animals

Participating Farmer acknowledges and agrees to adhere to each provision in the Animal Husbandry Manual <sup>36</sup> provided by Landowner and attached as Exhibit C as a term of this lease. <sup>37</sup> If Participating Farmer installs improvements such as fences or permanent, non-movable animal containment systems, the improvements become the property of Landowner upon installation, unless the Parties otherwise agree to in writing.



*<sup>36</sup> Such a manual should detail standards of care for various animals. Participating Farmer especially may need additional guidance for care.*

*<sup>37</sup> One bonus of packaging animal information in a separate manual is that it keeps the lease from becoming too long. And, it's easier to review the manual frequently and make changes as necessary. The lease, on the other hand, shouldn't need to change often. However, we need to always make sure that the lease and the manual do not conflict. For example, don't say that slaughter is allowed in the manual and then prohibit it in the lease. You can always make an exception, in writing, for a specific event without creating a conflict.*

## 11. Improvements

Participating Farmer may not make alterations or improvements <sup>38</sup> to the Premises without written consent of Landowner. Consent shall be obtained by submitting a written description of the proposed improvement to Landowner. Landowner may approve, disapprove, require more information, or require

modifications at his or her sole discretion.<sup>39</sup> Written consent of Landowner will be considered given when the Landowner signs the written plan, together with any amendments or modifications.



<sup>38</sup> *Examples of alterations or improvements include putting up a new fence or packing shed, installing drain tile, grading to divert water flow, and those sorts of things.*

<sup>39</sup> *Landowner should seriously consider whether and how any proposed alterations and improvements should be dealt with at the end of the lease term before approving the plan. For example, can Participating Farmer take the new shed with him or her?*

## 12. Insurance

Participating Farmer shall at Participating Farmer's sole expense continuously maintain insurance as follows:<sup>40</sup>

- a. Workers' compensation insurance, where required by law.
- b. Liability insurance of not less than [\$1,000,000] for injury to or death of any one person; and [\$2,000,000] for injury to or death of any number of one persons in one occurrence; and [\$100,000] for property damage. Such insurance shall insure Participating Farmer against all liability assumed under this Lease and imposed by law.
- c. Automobile liability insurance on all automotive equipment used on the Premises in amounts not less than [\$100,000] for bodily injury and the same for property damage and liability.
- d. Participating Farmer shall name Landowner as an additional insured on any liability policy during the Lease term. <sup>41</sup>
- e. Participating Farmer will provide evidence of insurance to Landowner and Participating Farmer may not cancel his or her insurance policy without giving Landowner 30 days notice of the date of cancellation.
- f. Participating Farmer will provide written evidence that injuries to Participating Farmer's employees, interns, or volunteers are covered under a liability or workers' compensation policy before Participating Farmer has employees, interns, or volunteers on the Premises.



<sup>40</sup> Insurance is highly recommended to protect both Landowner and Participating Farmer. This is just one example of how adequate insurance could be dealt with. It's up to the parties to come up with a reasonable risk management strategy, which may or may not include insurance. Another option would be to require Landowner to carry a robust commercial line of policy that would list Participating Farmer as an additional insured. If this was the case, the lease should also require Participating Farmer to maintain workers' compensation insurance if required by law. **For more on issues related to insurance, see Farm Commons' insurance guide *Managing the Sustainable Farm's Risks with Insurance: Navigating Common Options*, which is available for download on our website.**

<sup>41</sup> If Participating Farmer will use the buildings in a significant way—like storage of Participating Farmer's tractor or valuable equipment—then you may want to require Landowner to carry fire insurance and to repair or replace those buildings or equipment as soon as practical if a fire occurs. Few Participating Farmers will have that kind of investment, however.

### 13. Indemnification

Participating Farmer shall indemnify, defend, and hold harmless Landowner against any liability and to pay for any and all damages, losses, or expenses that are incurred by Landowner in connection with the Premises that extend from Participating Farmer's negligence or failure to perform the terms of this Lease. Landowner shall indemnify, defend, and hold harmless Participating Farmer against any liability and to pay for any and all damages, losses, or expenses that are incurred by Participating Farmer in connection with the Premises that extend from the Landowner's negligence or failure to perform the terms of this Lease. <sup>42</sup>



<sup>42</sup> An indemnification provision is simply a promise by the other party to cover your losses if he or she does something that causes you harm or causes a third party to sue you. Indemnification provisions can vary quite a bit. This one strikes a balance. Basically, each party agrees to cover the other's losses that are caused by her actions. In other words, each party is responsible for the results of her actions. This provision does not specifically limit the value of indemnification to what the other person's insurance will provide—the other party has to pay regardless of whether that party has insurance coverage for the specific issue.

#### 14. Assignment of Lease

The Landowner may assign this Lease or assign rights and interest under this Lease to agents, employees, and assignees. This Lease is binding on all persons who succeed the Landowner including but not limited to heirs, executors, and purchasers.

Participating Farmer may not assign this Lease or his or her lease interest under this Lease without Landowner's written consent.<sup>43</sup>



*<sup>43</sup> As this provision is written, Landowner may freely assign the Lease—or hand over the rights and obligations under the agreed terms—to another person or business. Landowners oftentimes have this discretion in a lease given so many circumstances may change. For example, Landowner may be forced to sell the land because of financial hardship, or perhaps it becomes too cumbersome to manage. Whomever the Lease is assigned to will be required to follow through with the terms, which protects Participating Farmer. On the other hand, Participating Farmer must get Landowner's written permission before assigning the lease. This allows Landowner to have some say in whether and who takes over if for whatever reason Participating Farmer wants out.*

#### 15. Partnership

This Lease does not create a partnership and neither party has the authority to obligate the other without written consent.<sup>44</sup>



*<sup>44</sup>This sounds like legalese, but it's very important. If the relationship is a partnership, we have detailed tax and liability obligations to deal with. Farmers should make sure this isn't a partnership in practice either, including keeping key aspects of their business operations separate such as banking and accounting.*

#### 16. Dispute Resolution

Prior to taking any action in a court of law, the Parties to this Lease agree to appoint a dispute resolution committee to evaluate the dispute and make recommendations for its resolution. The Dispute Resolution Committee shall consist of three persons: (1) one adult appointed by Participating Farmer who is not a member, partner, director, or employee of Participating Farmer's business or

an immediate family member of Participating Farmer; (2) one adult appointed by Landowner who is not a member, owner, partner, director, or employee of Landowner or an immediate family member of the same; and (3) a neutral individual with expertise in farm-related matters to be agreed upon by both Parties. The Dispute Resolution Committee shall review written submissions and supporting evidence submitted by both Parties within 30 days of the committee's creation. The Dispute Resolution Committee shall make findings of fact and propose a resolution for the dispute within 60 days of the Committee's creation. The Parties may accept the resolution if they wish. If the Parties do not accept the Dispute Resolution Committee's proposed resolution, the Parties agree and acknowledge that the Dispute Resolution Committee's findings of fact shall be presumptively valid in a court of law.<sup>45</sup> Participating Farmer and Landowner agree to each assume 50% of the costs of the Dispute Resolution Committee, as they are incurred.<sup>46</sup>



<sup>45</sup> Findings of fact are things like: Participating Farmer did in fact operate the tractor without checking the oil level. Findings of fact are not: Participating Farmer was negligent in the use of the equipment and should pay Landowner \$4,000. The latter is called a "finding of law." If one party didn't like the Committee's finding of law, and decided to sue in small claims court, for example, the parties can't argue that the Committee's findings of fact as to what actually happened were wrong. Small claims court would then come up with its own findings of law and decide a fair resolution based on the submitted facts.

<sup>46</sup> This dispute resolution clause is optional. It's a nice way to resolve the many issues that come up. For example, if we have a tractor repair and we can't agree on whether it was caused by negligence or regular use, we would use this process to appoint people to review the situation and suggest a resolution. Ideally, the committee is not emotionally invested and will be able to suggest a resolution that works for everyone. If there's no dispute resolution clause, then the parties are free to sue each other at the get-go if a dispute arises. This can be very costly.

## 17. Right of Entry

Landowner may enter the Premises at any reasonable time in order to examine the Premises, inspect conditions, conduct repairs, and replace systems.

**18. Severability**

If any part of this Lease is invalid or unenforceable, the remainder of the Lease shall remain effective.

**19. Amendments**

Any amendment to this Lease is ineffective unless in writing and signed by both Parties. <sup>47</sup>



*<sup>47</sup> This means that any change to this lease needs to be in writing or it's not enforceable. As the Equipment Manual and the Animal Husbandry Manual are terms of this lease, any changes to the manuals also need to be in writing and agreed to by both parties to the lease. "In writing" is as good as scratching something out and writing on top of the manual. Nothing fancy is needed. Announce when a change has been made to the manual and ask everyone to sign the page as soon as possible. At the close of the year, edit the file, reprint, and start fresh with revisions next year.*

**SIGNATURES**

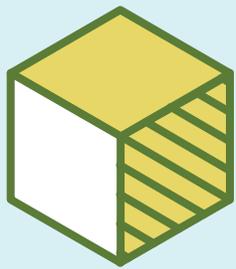
**Landowner**

Signature: \_\_\_\_\_

**Incubator Farmer**

Signature: \_\_\_\_\_

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# Tip Sheets

Use these tip sheets to help you consider what information to include in your Equipment Manual and Animal Husbandry Manual.

## Equipment Manual Tip Sheet

An Equipment Manual basically puts in writing common sense understandings for how equipment on the farm must be used and cared for. Two fundamental objectives or guiding posts are ensuring both the longevity of the equipment and the safety of the user. The following tips highlight key aspects that an effective Equipment Manual should be sure to cover:

### **Pre-Operation Protocol**

What needs to be checked before anyone operates each piece of equipment? Pre-operation protocols could include the requirement to check oil, tire pressure, and mileage. Checking mileage is particularly important if you are charging the participating farmer for fuel costs based on usage.

### **Safety Protocol**

What safety measures must be taken for each piece of equipment? Safety measures could include requiring specific gear to be worn or properly using available safety devices.

### **Special Procedures for Equipment**

What special procedures or issues should participating farmers be aware of for each piece of equipment? Are there any oddities or quirks for turning a specific piece of equipment on or off, shifting gears, or setting safety devices, etc.? Does the tractor attachment have to be hooked up in a certain way? The more details you can provide the more likely they'll be followed.

### **Equipment Return Requirements**

When and where must the participating farmer return the equipment? Is the participating farmer required to return the equipment after each use? Do they need to securely lock the building or facility where it is kept? Note that insurance policies often require equipment to be secured in order to be covered. If the barn was unlocked and your tractor was stolen, you may not be able to recover on an insurance claim. So be sure to read your insurance policy and include any special requirements in your equipment manual.

### **Post-Operation Protocol**

Before the equipment is returned, what does the participating farmer need to clean or check? Requiring the participating farmer to clean the equipment after each use will help maintain the value of the equipment over

time, which makes good business sense. Also, if the participating farmer is responsible for paying for fuel costs you'll need to be sure he checks and logs the mileage after each use. Post-operating monitoring requirements could include other things that may need to be checked such as oil gages, tire pressure, warning lights, etc.

### **Usage Limitations**

What restrictions or limitations on usage must the participating farmer follow? While it may seem obvious, it's a good idea to explicitly state that equipment can be used only for farming purposes and only on-site. For example, it would be inappropriate to use the tractor to get a car out of the ditch or to drive the tractor to a friend's farm to help with a massive compost project. This is particularly important as most insurance policies will only cover a claim if the use is proper and on-site.

### **Repair Protocol**

What procedure must the participating farmer follow if a piece of equipment breaks or is not operating properly? If multiple farmers have access to the equipment it's important that repairs are dealt with as efficiently as possible. You could post a phone number or email address and require the participating farmer to immediately report malfunctions, odd noises, repair needs, etc. Also, you may want to establish a policy that allows the landowner to handle and pay for all repairs upfront and to pass on the cost of the bill should it become clear that the damage was caused by negligence or misuse on behalf of a participating farmer. This may ensure that repairs are handled as efficiently as possible.

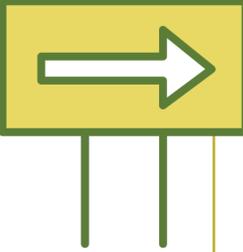
### **Usage Tracking**

What is the protocol for tracking equipment usage? Tracking usage serves a number of purposes, including to remind farmers of all of the above procedures, as well as to investigate what happened if a piece of equipment ends up broken and nothing was reported. A tracking procedure could simply include a clipboard with a pre-printed usage log where farmers "check out" and "check in" each piece of equipment whenever they use it. The usage log could include columns for date, time, and name as well as check boxes for the participating farmer to indicate that the pre-operation items above were checked, the equipment was returned clean, and that malfunctions were either not observed or were reported according to the procedure above.

## Sample Usage Log

DATE	NAME	EQUIP- MENT	CHECK- OUT TIME	CHECK- IN TIME	MILEAGE OUT	MILEAGE IN	USAGE PROTOCOLS
							PRE-OPERATION RETURNED CLEAN POST OPERATION NO MALFUNCTION REPAIR REPORTED

### Next Steps



Each of these tips work together to create a system of accountability. Ultimately, a well-thought-out Equipment Manual will not only help prolong the life of the equipment and protect farmers from injuries, it will also help instill good habits in the beginning farmers. It will teach them best practices for taking care of the equipment as if it were their own. In addition, the data on the usage log will be useful for tracking repair costs, upcoming repair needs, and other details that will help the farm incubator manager track the overall costs and effectiveness of offering equipment as part of the farm incubator project.

Be sure to have each incubator farmer review the Equipment Manual and acknowledge her agreement to follow the terms. Ideally, this would be in writing. You could either have them sign or initial at the bottom or acknowledge in an email that they've read it and will abide by it. Also, be sure to keep a copy in a visible and relevant location such as on a clipboard in each place where equipment is kept on the property so that the participating farmers can review it as needed.

It's a good idea to include the manual as an addendum to the lease agreement. See Section 7 of the Model Incubator Lease for one example of how to include it. If you do decide to include it as part of the lease, then any changes to the manual need to be in writing and agreed to by both parties to the lease. "In writing" is as good as scratching something out and writing on top of the manual. Nothing fancy is needed. Announce when a change has been made to the manual and ask everyone to sign the page as soon as possible. At the close of the year, edit the file, reprint, and start fresh with typed revisions next year.

## Animal Husbandry Manual Tip Sheet

Every farm incubator project that allows participating farmers to bring farm animals on-site as part of their farm operation should have an Animal Husbandry Manual. This helps guarantee that all farm animals are treated humanely and in accordance with applicable laws. Basically, it puts in writing common sense understandings for how farm animals should be treated. When developing your Animal Husbandry Manual, it's important to keep in mind that many states have specific laws and regulations that establish how farm animals must be treated. Be sure to review your state-specific laws and include all applicable requirements in your manual. The following tips highlight key aspects that an effective Animal Husbandry Manual should be sure to cover.

### **Animal Monitoring Schedule**

How often must animals be checked for food and water? At least twice per day? Do you want a different schedule for excessively hot or cold weather? This should be common sense, but beginning farmers may not think through this fully and may not realize the impact of taking off for a day or two. Requiring and setting up specific protocols for an animal monitoring schedule helps clearly assign responsibilities to the participating farmer so that the landowner doesn't end up having to take care of farm animals.

### **Assignment of Duties**

Can the participating farmer send someone else to monitor the animals (who may not have experience) or must she do it herself? To be on the safe side, you may want to only assign duties to someone with experience caring for that specific type of animal, or even require written approval of the landowner.

### **Animal Containment**

Containment of animals will be an important issue for any farm incubator project that has other farming operations running on the property. It's a good idea to outline specific containment structure standards to be sure animals stay where they're supposed to stay. What specific standards should the participating farmer adhere to when constructing a chicken tractor? What about fences? Suitable standards may be found in Extension publications or online resources.

You could require the landowner's written approval of fence construction before allowing participating farmers to move animals onto the property. You could also set up a protocol schedule for checking their workmanship as the fence is being built.

The manual should also say the following: "New fence construction must be in compliance with all laws." Participating farmers must investigate the local zoning code and state fence laws to make sure they meet the requirements. Generally, insurance policies won't cover a claim that results from animals getting out if the fence was not compliant. The obligations often change and depend on the type of fence (i.e., electric or barbed wire). Local insurance agents are the best source of information on the latest standards in your state. Requiring the participating farmer to look into fencing standards herself is a good opportunity to teach her the resourcefulness skills that every successful farmer needs.

### **Feed Storage**

Where may feed be kept? What storage standards must be followed to cut down on rodents? For example, it may be advisable to keep all feed in metal containers that can be latched closed.

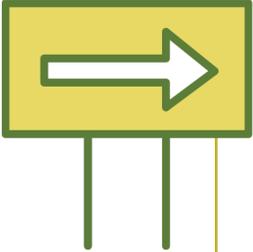
### **Animal Slaughter**

Do you have appropriate facilities to allow for animal slaughter on the farm? If so, do you want to allow it only at specific times or by pre-approval? It's also essential that you lay out disposal procedures. Does it include burying or composting? If so, where and what are the specific procedures that need to be followed?

### **Heat and Electric Supply**

If a participating farmer wants to provide a heat source for chicks, it's important to assess whether the electricity in the barn or shed can withstand the increased load. Does this present a fire hazard? It is a good idea to specify rules in this section about wattage and usage, for example: "Keep three feet of clear space around any heat lamp."

### Next Steps



These tips work together to create a system of accountability for taking care of farm animals. Not only will it guarantee the animals are well treated, it will help teach the beginning farmers the basic laws and standards required for running a farm operation involving farm animals.

Be sure to have each participating farmer read the Animal Husbandry Manual and acknowledge her agreement to follow the terms. Ideally, this would be in writing. You could either have her sign or initial at the bottom or acknowledge in an email that she has read it and will abide by it. Also, be sure to keep a copy in a visible and relevant location, such as on a clipboard in each place where animal feed is kept on the property, so that the participating farmers can review it as needed.

It's a good idea to include the manual as an addendum to the lease agreement. See Section 10 of the Model Incubator Lease for one example of how to include it. If you do decide to include it as part of the lease, then any changes to the manual need to be in writing and agreed to by both parties to the lease. "In writing" is as good as scratching something out and writing on top of the manual. Nothing fancy is needed. Announce when a change has been made to the manual and ask everyone to sign or initial the page as soon as possible. At the close of the year, edit the file, reprint, and start fresh with typed revisions next year.

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