<insert business name>

EMPLOYMENT CONTRACT

*(For Permanent Managers of National System Employers)*

This is an employment contract

**BETWEEN** <insert company name/partnership/other name > **the Employer**

AND

<insert employee’s full name> **the Employee**

1. Commencement Date

This employment contract commences on the <insert commencement date>.

1. Probation (See Note 1)

2.1 Employment is subject to the satisfactory completion of a three-month probation period.

2.2 The purpose of the probation period is to enable the employer and the employee to assess their suitability and capability to work together.

2.3 During the probation period the employer or the employee has the right to terminate the employment with one week’s notice for any reason and without any repercussions.

1. Industrial laws

The federal industrial laws govern this employment contract.

1. Employment Category (See Note 2)

The employee is employed as a full-time permanent/part-time*[delete where not applicable]* <insert position title>to undertake the duties as outlined in the attached position description. *[attach position description.]*

1. Ordinary hours of work (See Note 3)

The ordinary hours of work are <insert ordinary hours of work>*.*

1. **Additional hours (See Note 3)**

6.1 The employee will be expected to work reasonable additional hours.

6.2 This contract anticipates that the employee will work <insert number of additional hours anticipated to be worked >

1. Remuneration (See Note 4)

7.1 The rate of pay is <insert pay rate> per hour/per week/per month *[delete where not applicable]*.

7.2. The employer will pay the employee weekly/fortnightly/monthly *[delete where not applicable]* into a bank account/by cheque/in cash *[delete where not applicable]*.

1. Annual Leave (See Note 5)

*[full-time employees]*

The employee is entitled to four weeks paid annual leave for each completed year of service with the employer. Annual leave accrues throughout the year and from year to year.

**OR**

*[part-time employees]*

The employee*)* is entitled to annual leave of four weeks per year calculated on a pro-rata basis according to the number of hours worked each week. Annual leave accrues throughout the year and from year to year.

1. **Personal/Carer’s leave and Compassionate Leave (See Note 6)**

“Immediate family” is defined as follows:

a) A spouse, child, parent, grandparent, grandchild or sibling of the employee;

b) A child, parent grandparent, grandchild or sibling of a spouse of the employee.

*[full-time employees]*

9.1 The employee is entitled to 10 days paid personal/carer’s leave per year for personal injury or illness. Personal/carer’s leave accrues throughout the year and from year to year.

**OR**

*[part-time employees]*

The employee is entitled to paid personal/carer’s leave of 10 days per year calculated on a pro-rata basis according to the number of hours worked each week. Personal/carer’s leave accrues throughout the year and from year to year.

9.2 The employee can use their personal/carer’s leave as paid carer’s leave for the purpose of caring for a member of the employee’s immediate family or household who requires care or support because of personal injury, illness or an unexpected emergency.

9.3 The employee is entitled to two days unpaid personal/carer’s leave per occasion for the purpose of caring for a member of their immediate family or household who requires care or support because of personal injury, illness or an unexpected emergency.

9.4 The employee is entitled to two days paid compassionate leave per occasion for the purpose of attending the funeral of a member of the employee’s immediate family or a member of the employee’s household or for spending time with a member of the employee’s immediate family or a member of the employee’s household who has a personal injury or illness which poses a serious threat to his or her life.

9.5 The employer may require medical evidence or a statutory declaration for any period of personal/carer’s leave or compassionate leave.

1. **Public Holidays (See Note 7)**

*[full time employees]*

In accordance with the National Employment Standards, the employee is entitled to a day’s paid leave for public holidays which fall on days when the employee would ordinarily work.

**OR**

*[part time employees]*

In accordance with the National Employment Standards, the employee is entitled to be paid for the hours they would ordinarily work on public holidays which fall on days when the employee would ordinarily work.

1. **Community Service Leave (See Note 8)**

The employee is entitled to 10 days paid jury service leave or unpaid leave to attend a voluntary emergency management activity as provided for in the NES. The employee must provide evidence of the need for the leave if required to do so by the employer.

1. **Long Service Leave (See Note 9)**

The employee is entitled to long service leave as provided for in the National Employment Standards or state legislation.

1. **Parental Leave (See Note 10)**

The employee is entitled to Parental Leave in the form of Maternity, Paternity or Adoption Leave as provided for in the National Employment Standards.

1. **Flexible Working Arrangements (See Note 11)**

The employee is entitled to make a written request for flexible working arrangements once the employee has completed 12 months continuous service.

1. Superannuation

The employer will make superannuation contributions to a fund nominated by the employee. The superannuation contribution will be not less than that required under the *Superannuation Guarantee (Administration) Act*.

1. Termination (See Notes 12 & 13)

16.1 The following minimum notice periods apply to termination of employment:

|  | **Employee’s period of continuous service with the employer at the end of the day the notice is given** | **Period** |
| --- | --- | --- |
| 1 | Not more than 1 year | 1 week |
| 2 | More than 1 year but not more than 3 years | 2 weeks |
| 3 | More than 3 years but not more than 5 years | 3 weeks |
| 4 | More than 5 years | 4 weeks |

16.2 If the employee is over 45 years of age and has worked at least two years of continuous service with the employer the period of notice will be increased by one week.

16.3 Payment in lieu of notice will be made if the appropriate notice period is not required to be worked.

16.4 The period of notice to be given by the employer will not apply in the case of dismissal for serious misconduct that justifies instant dismissal, including conduct which causes imminent and serious risk to the health or safety of a person or the reputation, viability or profitability of the employer’s business; attendance at work under the influence of alcohol or drugs; theft, fraud, assault in the course of employment or refusal to carry out a lawful and reasonable instruction.

1. Other Benefits

*[Other benefits e.g. accommodation can be listed here.]* **(See Note 14)**

**SIGNED**

**THE EMPLOYER**

**THE EMPLOYEE**

**DATED**

NOTES TO THE FEDERAL EMPLOYMENT CONTRACT FOR PERMANENT MANAGERS

GENERAL – Interpretation

National system employer

This template is for national system employers employing permanent full time or part time Managers.

All employers in the private sector in New South Wales, Victoria, Tasmania, South Australia, Queensland, the Australian Capital Territory and the Northern Territory are called national system employers.

Businesses in Western Australia run by a company, including trusts with a company trustee, which employ workers as part of their business, are called national system employers.

Employers in Western Australia who run their business as a sole trader, partnership or trust which does not have a company trustee are called non national system employers. They should use the template for Western Australia which applies to managers as well as non managerial employees.

NOTE (1) PROBATIOn PERIODS

All new employees should be placed on a period of probation to enable both the employee and the employer to determine whether the employee is capable of doing the job and is suitable for the enterprise. Probation periods must be determined before work begins and cannot be extended. The length of the probation period must be reasonable in the circumstances and three months is generally accepted to be reasonable. If employers feel they need a longer period this must be justifiable based upon the special requirements of the job and the responsibilities which the employee will be required to undertake.

The federal industrial laws provide that employees of small businesses engaged for less than 12 months and employees of other businesses engaged for less than   
6 months cannot bring an action for unfair dismissal.

NOTE (2) EMPLOYMENT CATEGORY

Full-time employees

Full-time employees are engaged on a permanent basis and the following entitlements usually apply: paid annual leave and personal leave (sick leave, carer’s leave, compassionate leave/bereavement leave); parental leave and notice of termination.

Part-time employees

Part-time employees are engaged for fixed hours every week and receive the same entitlements as full-time employees but on a pro-rata basis calculated on the proportion of the full-time rate.

NOTE (3) HOURS OF WORK

Hours of work may be governed by an award or legislation. Most employees on dairy farms will be covered by the Pastoral Award 2010 (see below).

*Managers*

Some managers may be excluded from awards and therefore the federal industrial laws will govern their employment entitlements.

Employers who wish to engage a manager should check that the duties they are performing and their responsibilities are significantly greater than the duties contained in the FLH7 and FLH8 classifications in the Pastoral Award 2010. If the duties match these descriptions then the manager should be engaged as an award employee.

If employers want to put in place hours of work which are more flexible than the award then they should enter into a formal enterprise agreement or an Individual Flexibility Agreement under the award.

Federal Industrial Laws – The NES

The National Employment Standards (NES) apply to all employment contracts as a minimum for all national system employers.

Ordinary hours

Under the NES, ordinary hours of work for full-time non-award employees are 38 hours per week but these hours can be averaged over a 26-week period by written agreement between the employer and the employee.

This only applies to non award employees such as managers.

Reasonable Additional Hours

The NES does not use the word ‘overtime’. Under the NES, employees may be asked to work reasonable additional hours. The employment contract can only express hours of work in excess of the maximum 38 hours per week as *reasonable additional hours*.

What is reasonable for additional hours is decided by weighing up a variety of factors including risks to occupational health and safety; operational requirements of the business; personal circumstances and family commitments; whether the employee has had notice of the likelihood of the need for additional hours; and whether the employee has previously indicated a willingness or capacity to work additional hours. Generally this will be a process of balancing the needs of the enterprise with the employee’s needs.

The NES does not specify any extra payment for overtime for non award employees.

NOTE (4) PAY RATES

National system employers

The national minimum wage applies to all common law employment contracts for all award free employees of national system employers.

If the employee is not covered by an award, for instance a manager, whose duties and responsibilities are significantly greater than the FLH7 and FLH8 classifications in the Pastoral Award 2010, the national minimum wage still applies to every hour worked and the salary paid must reflect this.

Pay rates

As pay rates vary, no pay rates are included in this document.

Visit the following websites for more information:

National minimum wage

<http://www.fwa.gov.au/index.cfm?pagename=minlatest>

When determining a pay rate employers and employees should consider not only wages and salary but also other benefits which may be provided by the business for the purpose of making the position more attractive to the employee and thus assisting in staff retention. Employers could consider other benefits such as accommodation and use of vehicles, provision of meat and milk, extra superannuation, and extra leave entitlements.

NOTE (5) ANNUAL LEAVE

The National Employment Standards (NES) apply to all employment contracts as a minimum and the template employment contract contains the NES terms.

Whilst the NES is a minimum, employers may wish to consider offering extra annual leave as part of a package.

The NES

The National Employment Standards (NES) for annual leave is four weeks per year which accrues progressively throughout the year and from year to year.

Annual leave must be paid at a rate which is no less than the base rate of pay for ordinary hours the employee is paid at the time of taking the leave.

Cashing out of annual leave

Non-award employees can cash out annual leave by agreement with the employer.

NOTE (6) PERSONAL/carer’s LEAVE and compassionate leave

The National Employment Standards (NES) apply to all employment contracts as a minimum and the template enterprise agreement contains the NES terms.

Whilst the NES is a minimum, employers may wish to consider offering extra personal/carer’s leave as part of a package.

The NES

Personal/ Carer's Leave and Compassionate Leave

Under the NES, employees (other than casual employees) are entitled to 10 days paid personal/ carer’s leave for each year of service.

Personal/carer’s leave accrues on a pro rata basis throughout the year and from year to year and there is no cap on how much of this leave can be used for carer’s leave. Personal/carer’s leave and compassionate leave accrue on the basis of the employee’s ordinary hours of work.

Personal leave can be taken if the employee is not fit for work due to personal illness or injury.

Payment for personal/carer’s leave is at the employee’s base rate of pay for ordinary hours of work.

Carer’s leave

Carer’s leave can be taken to provide care or support for a member of the employee’s household or immediate family due to personal illness or injury or an unexpected emergency.

*Immediate family* is defined to mean:

* a spouse, de facto partner, child, parent, grandparent, grandchild or sibling of the employee; or
* a child, parent, grandparent, grandchild or sibling of a spouse or de facto partner of the employee.

*Immediate family* includes extended and blended families, de facto partners, step-relationships, adoptive relationships and same sex relationships)

All employees, including casual employees are entitled to 2 days of unpaid carer’s leave per occasion. Permanent employees can only take unpaid carer’s leave if they have used up all of their paid leave entitlement.

Compassionate leave

Employees are also entitled to 2 days of paid compassionate leave per occasion and casual employees are entitled to 2 days unpaid compassionate leave.

Compassionate leave can be taken on 2 consecutive days, 2 separate days or any other period as agreed between the employer and the employee.

Compassionate leave is available for employees to spend time with a member of their immediate family or household who has developed personal illness or injury or after the death of a member of their immediate family or household.

Payment for compassionate leave is at the employee’s base rate of pay for ordinary hours of work.

Notice and evidence requirements

When taking personal/carer’s leave and compassionate leave, employees must do the following or they are not entitled to take the leave:

* notify their employer as soon as is reasonably practicable (which can be a time after the leave has started);
* state the period, or expected period, of the absence
* if required by the employer—provide evidence that would satisfy a reasonable person of their entitlement to take the leave. (this can be a medical certificate or statutory declaration)

Cashing out of personal/carer’s leave

Personal/carer’s leave can only be cashed out if it is a term of an enterprise agreement.

NOTE (7) PUBLIC HOLIDAYS

The NES

The NES provides for employees to be absent from work on specified public holidays.

Payment is the employee’s base rate of pay for ordinary hours of work.

Full-time employees are entitled to a paid day off for public holidays if they would normally work on that day.

Part-time employees are entitled to be paid for the hours they would normally work on public holidays. If they do not normally work on the day of the public holiday they are not entitled to public holiday pay.

The following days are public holidays for the NES:

* 1 January (New Year’s Day)
* 26 January (Australia Day)
* Good Friday
* Easter Monday
* 25 April (Anzac Day)
* Queen’s birthday holiday
* 25 December (Christmas Day)
* 26 December (Boxing Day)

If a State or Territory substitutes another day or declares an additional day, the employee is entitled to be absent on that day. If a day is substituted then this day becomes the public holiday for the purpose of working out entitlements and not the other day.

Substitution of other days

Award free employees can agree with employers to substitute public holidays.

Enterprise Agreements can also provide for substitution of public holidays.

Requests to work on public holidays

An employer may request an employee to work on a public holiday if the request is reasonable.

The request may be refused if it is unreasonable or the employee’s refusal is reasonable. The NES provides list of factors to be taken into account when determining the reasonableness of a request or refusal.

Payment for working on public holidays

Payment for working on a public holiday is an award entitlement which does not apply to non award employees such as managers.

**NOTE (8) COMMUNITY SERVICE LEAVE**

The NES provides an entitlement to leave for all employees required to attend jury service and for those who engage in a voluntary emergency management activity.

Jury service leave

Employees are entitled to be paid by their employer for a period of up to 10 days while they are absent from work during a period of jury service.

Payment for jury service leave is the employee’s base rate of pay for ordinary hours of work.

Employers can require the employee to obtain payments for jury service leave from the applicable State/Territory or Commonwealth body and these payments will reduce the amount payable to the employee.

Notice requirements – jury service leave

Employers can request evidence that the employee has taken steps to obtain any available payments and evidence of the payments from the State/Territory or Commonwealth body for the first 10 days of the jury service leave. If this is not provided the employer does not have to make the payment for jury service leave.

Voluntary emergency management activities

Employees are entitled to unpaid leave to engage in voluntary activities which involve dealing with a natural disaster or emergency if they are voluntary members of the emergency management body and the body has requested them to attend. Emergency management bodies include fire fighting bodies, civil defence and rescue.

Notice requirements – community service leave

Employees must give employers notice of the need for community service leave as soon as possible and advise the employer of the expected length of the absence. Employers can also require employees to give them reasonable evidence of the need for the leave.

NOTE (9) LONG SERViCE LEAVE

State and territory laws provide for Long Service Leave.

NOTE (10) PARENTAL LEAVE

The federal parental leave laws contained in the NES apply to all employers.

Parental leave involves unpaid maternity leave, paternity leave and adoption leave.

Parents cannot take parental leave at the same time except for a period of up to eight weeks in total. This period of concurrent leave may be taken in separate periods but unless the employer agrees, each period must not be shorter than 2 weeks.

The concurrent leave must not start before the date of birth of the child or the day of placement of the child if the leave is adoption leave unless the employer agrees.

The entitlement exists once an employee has worked for the employer for 12 months. It also applies to certain long-term casual employees.

The laws about parental leave are complex and there are specific requirements for notification. Employers should seek legal advice or advice from their local state farming organisation if an employee becomes eligible for parental leave.

NOTE (11) REQUESTS FOR FLEXIBLE WORKING ARRANGEMENTS

The laws about requests for flexible working arrangements changed on 1 July 2013.

The NES give employees the right to request a change to working arrangements in the following circumstances:

* If the employee is a parent, or has the responsibility for the care, of a child who is of school age or younger:
* The employee is a carer (within the meaning of the Carer Recognition Act 2012);
* The employee has a disability;
* The employee is 55 or older;
* The employee is experiencing violence from a member of the employee’s family;
* The employee provides care or support to a member of the employee’s immediate family, or a member of the employee’s household, who requires care or support because the member is experiencing violence from the member’s family.

In addition, parents or those who have responsibility for the care of a child and who are returning from a period of parental leave or adoption leave may request to work part-time to assist the employee to care for the child.

Casual employees who work on a regular and systematic basis with a reasonable expectation of continuing work can also make a request for flexible working arrangements.

The request must be in writing and provide details of the change sought and reasons for the change.

Employers must respond to the request in writing within 21 days and give reasons if the request is refused.

 A request may only be refused on reasonable business grounds which should be specified in the written response.

Reasonable Business Grounds are defined as follows:

Fair Work Act provides the following list of matters which may amount to reasonable business grounds but there may be others:

* That the new working arrangements would be too costly for the employer;
* That there is no capacity to change the working arrangements of other employees to accommodate the new working arrangements requested by the employee;
* That it would be impractical to change the working arrangements of other employees or recruit new employees to accommodate the new working arrangements requested by the employee;

Reasonable Business Grounds are defined as follows: (cont.)

* That the new working arrangements requested by the employee would be likely to result in a significant loss in efficiency or productivity;
* That the new working arrangements requested by the employee would be likely to have a significant negative impact on customer service;

NOTE (12) TERMINATION

It is very important to manage employee separation carefully whether the employee is leaving because of resignation, redundancy or dismissal. First, it minimises the risk of legal problems and secondly, it protects the reputation of both your business and you as an employer.

Employers should use fair procedures when terminating employees as replacing employees is expensive and claims for unfair or unlawful dismissal can be costly and time consuming to defend.

Termination of employment can lead to court action. Employers who are considering dismissing an employee should always obtain legal advice before doing so.

NOTE (13) NOTICE PERIODS

The National Employment Standards (NES) apply to all employment contracts as a minimum and the template enterprise agreement contains the NES terms.

The NES

Notice Periods

Continuous service’ is the time an employee has spent working for an employer without a break and this needs to be calculated so that the notice period can be worked out.

Unauthorised absences from work do not break continuous service but are not counted when calculating how long the notice period should be.

Exclusions from notice requirement

The following employees do not have to be given notice:

* employees employed for a specified period of time, for a specified task, or seasonal employees;
* employees whose employment is terminated because of serious misconduct;
* casual employees;
* trainees (other than apprentices) and whose employment is for a specified period of time or is, for any reason, limited to the duration of the training arrangement.

Termination without notice

The NES allows for termination without notice in cases of serious and wilful misconduct. The template contains a clause providing for termination without notice in these circumstances.

*Employee Notice*

Employees can only be required to give notice if it is a term of an award or enterprise agreement. If employers want to enforce employee notice for award free employees they should enter into an enterprise agreement.

NOTE (14) ACCOMMODATION

Residential tenancies laws may apply to accommodation on farms where the accommodation is not a part of the wider lease of the farming property. These laws lay down notice periods for ending the tenancy, whether bonds can be required and how much can be charged as well as rules regarding repairs and inspection and agreements with specific terms. Breaches of these laws attract fines.

*Deduction of rent*

The Fair Work Act requires written authority from the employee if rental is deducted from wages or salary.

New South Wales, South Australia, Tasmania and Western Australia

In New South Wales, South Australia, Tasmania and Western Australia, residential tenancy laws do not usually apply where the tenancy is not ‘for value’ or ‘consideration’ which means that no rent is paid for the accommodation. However, farmers should be aware that making accommodation a part of a formal workplace agreement where the accommodation is used as a part of the Better Off Overall Test may have the effect of making the tenancy ‘for value’ and residential tenancy laws may then apply.

Victoria

In Victoria, residential tenancy laws do not apply where the tenancy is a part of the employment contract. Employers should agree with employees on a fair period of notice which will apply in the event that the employment is terminated. The notice period should be long enough to enable the employee to find alternative accommodation but also recognise the needs of the employer if the property is needed for a new employee. As a minimum, three to four weeks is considered to be fair in these circumstances.

Queensland

The Queensland residential tenancies laws may apply to accommodation on farms where the accommodation is not a part of the wider commercial lease of the farming property. Whilst residential tenancy laws can protect both the tenant and the landlord, the notice periods for ending the tenancy (four weeks) can be problematic when accommodation has been part of a remuneration package and an employee leaves as a result of their employment being terminated either with notice but particularly when dismissed summarily for misconduct. In these circumstances the only avenue available to the employer is to make an application to the tenancy tribunal to have the lease terminated earlier on the ground of hardship.