# Heads of Terms Template

LANDMATCH ENGLAND
& EPSOM RURAL

Please note, this is a guidance template and is intended to help parties prepare for entering into a legal agreement. It should not be a substitute for proper professional advice.

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JULY 2026

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# Introduction

Heads of Terms is a document that sets out, in plain language, the key terms that the landowner and the prospective tenant or land user have initially agreed on before a formal legal agreement is drafted. Its purpose is to support early discussions between the parties, providing a framework for negotiation and allowing both sides to refine the terms in wording that is clear and acceptable to all.

Heads of Terms are not legally binding. This allows the parties to consider the proposed terms carefully, to explore any practical or financial implications, and to seek professional advice if they wish, before entering into a legally enforceable contract. It is important that both parties fully understand what is being proposed, including any obligations or costs that may arise.

Once both parties are satisfied with the Heads of Terms, a legal professional can be instructed to prepare the formal lease or agreement. The legal adviser may also suggest additional clauses that should be included to ensure the final document is robust and comprehensive.

Until a binding contract is executed, it is essential that the Heads of Terms document is clearly marked "Subject to contract and without prejudice." If these statements are omitted, there is a risk that the document—or parts of it—could be interpreted as legally binding, which is not the intention at this stage.

- "Without prejudice" ensures that neither party can be legally bound by the terms set out in the document during negotiations.
- "Subject to contract" indicates that the parties intend to enter into a legally binding agreement in the future, but that the Heads of Terms themselves do not create legal obligations.

At the end of this document there is a glossary of common sections and terms that could appear in the final agreement.



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# Heads of Terms

The below details must be for the legal entity entering into this agreement.

| | |
|---|---|
| **LANDSEEKER NAME(S), ADDRESS, PHONE:** | |
| **LANDOWNER NAME(S), ADDRESS, PHONE:** | |

Include the details of any agent/solicitor acting on behalf of the relevant parties.

| | |
|---|---|
| **LANDSEEKER AGENT / SOLICITOR** | |
| **LANDOWNER AGENT / SOLICITOR** | |

| | |
|---|---|
| **VISION:**<br>It can be very helpful to briefly set out the vision for the parties' relationship and for the stewardship of the land in question. This can include the intended legal relationship, e.g. partnership, landlord/tenant etc. and expectations for use of the land. | |



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## OBJECTIVES

Out of the vision, there could be some key objectives which will guide the parties.

This could include:
- The farming methodology
- The environmental objectives
- Any community or education goals

## THE LAND

Describe the property, include the acreage, any buildings or accommodation and fixed equipment. Provide an address. It is also helpful to attach a plan.

## TYPE OF AGREEMENT

If you know the type of agreement you wish to enter into then do include it. Otherwise, your advisor will be able to help.

## TERM

Consider the initial term being proposed.

## START DATE

This could be “on signing” or could be a date in the future.



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## RENT / LICENSE FEE / RATE OF EXCHANGE / CONTRACTORS CHARGES

Include any financial or exchange agreements which have been agreed. Naturally, how this is structured will depend on the agreement type and the intention of the parties.

## EXCHANGE REVIEW & DATES

Detail the approach to reviewing the rate of exchange. This could take the form of moving from an exchange to a rent or visa versa, changing the rent in line with the viability of the land based business, agreeing a profit share, or amending capital shares in the business.

Ideally you will take into account the viability of the landseeker's business and look to support rather than exploit it.

If applicable, consider how the dates will be detailed in the agreement. For example: "The rent will be capable of being reviewed 3 years after the Start Date and thereafter every three years"

## ASSIGNMENT & SUBLETTING

Consider whether the Landseeker can sublet the property, or, assign their agreement. In the case of the former, the landseeker would share possession of the property and in the case of the latter the landseeker would transfer their agreement to another landseeker.

It is common for landowners to require written consent, any income derived could be required to be shared with the landowner.


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## ACCESS & RIGHTS OF WAY

Consider how the landseeker will access the property and any conditions that relate to this. This is helpful to show on a plan.

## MAINTENANCE & REPAIRS

Consider what responsibilities the parties will have for maintenance and repairs. This should cover:
- Buildings
- Access and other roads
- Yards
- Fences and gates
- Ditches
- Water supplies
- Electricity supplies
- Gas supplies
- Other infrastructure

Typically, there is also a provision that the landseeker is responsible for repairing damage done by them or someone acting on their behalf.

## ALTERATIONS & IMPROVEMENTS

Is the landseeker permitted to make alternations or improvements? Detail any conditions that will require further agreement by the landowner. This could be permitted "subject to landlord's consent which should not be unreasonably withheld".

Certain consents can be pre-agreed, for example, "the landseeker is permitted to erect three polytunnels". Consider what happens if planning consent is required. How will the landseeker be compensated for improvements?
(See Landmatch England's Guide to Calculating Tenant Improvements)



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## INSURANCE

Note the responsibilities for insurance. Generally, the parties will agree who is responsible for insuring the buildings, infrastructure and any equipment. Additionally, there is normally a requirement for public liability insurance and employers' liability insurance.

## BREAK CLAUSE

Detail any break clauses. These could be for the benefit of both parties or only one party and are normally subject to a notice period.

## UTILITIES

It is helpful to document what utilities will be provided, by who and how charges will be dealt with.

## ROLES & SERVICES

In the case of a share farming agreement, contract farming agreement or partnership, it is important to note what services / roles each party will contribute.


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## RESERVED RIGHTS BY THE LANDOWNER

In a tenancy, it would be standard for the landowner to reserve certain rights such as:
a. With reasonable notice, to allow the landowner, their agents, guests or contractors access to the property to view the holding or action their responsibilities.
b. Access through the property if reasonably required.
c. The right to lay or maintain across the Holding any pipes, drains, conduits, cables, wires or other conducting media as are reasonably required for the benefit of any other land or for the exercise of any of the rights reserved.

## MANAGEMENT REQUIREMENTS

Detail any specific management requirements, such as not to use chemicals, to become certified as organic, or, to cut hedges in a 5-year rotation. It is helpful to establish these requirements as early as possible.

## GUARANTORS

In some cases, especially where the landseeker is an entity with a limited liability (such as a limited company) the landowner may require that a guarantor is listed in the agreement. This has the effect of making the guarantors legally liable for any unpaid rent or liabilities under the agreement.



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## DISPUTES

Consider how disputes will be addressed. The regular options include:
- At mediation
- At arbitration
- By an Independent Expert

## NOTES



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# Common Sections & Terms

**[Prescribed Clauses]**: Found at the beginning of Lease Agreements with a term of 7 years+, prescribed clauses are designed to make it easy for the Land Registry to find the information it needs to register a lease. They are a summary of information that is contained within the Lease Agreement such as the date of the lease, the title number, who the lease is between and other information that will assist the Land Registry. They do not form part of the contract between the parties; they are there for the benefit of the Land Registry, it being a mandatory requirement to register at the Land Registry all leases that have a term of 7 years +.

**[Parties]**: This refers to the people or organisations that the agreement is between. For example, the agreement could be between the landowner and the landseeker, these are the two parties referred to in a legal document – there can be more than one landseeker/tenant, with each person named in the tenancy agreement being equally responsible for following all the rules of the Agreement and for each other – so, for example, if one person breaks the rules of the lease then everyone who is a tenant will be considered to have broken the rules.

**[Recitals]**: Introductory statements that provide the background, purpose, and context for the lease, explaining the parties' intentions and the reasons for the agreement. While often non-binding on their own, recitals can be used by courts to interpret the main, legally binding terms of the lease, especially if those terms are ambiguous.

**[Agreed Terms]**: This section gives the definitions of terms that are used throughout the agreement. Often given as a list of terms, the list confirms their given meanings with respect to the agreement. For example: *'Plot'* means the defined area within which the landseeker has permission to carry out their land-based business.


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**[The Tenancy]**: This section sets out the agreement between the landowner (Landlord) and the landseeker (tenant). For Example it will describe the type of legal agreement that is being agreed;

- "The tenancy granted by this Lease is a Farm Business Tenancy as defined by the Agricultural Tenancies Act 1995."
- It can also describe the expected exchange of land for rent;
- "The Landlord lets and the tenant takes a tenancy of the Property for the Term at a rent of amount of (rent in words per month) (the 'Normal Rate') and in consideration of the Premium the receipt of which the Landlord acknowledges."

**[Rights Granted]**: There may be a schedule which sets out the rights given to tenant/s on the land. This section of the lease can confirm that tenants will only have these rights if they comply with any stated conditions.

**[Rights Reserved]**: There may be a schedule which sets out rights retained by the landowner.

**[Covenants]**: The lease is likely to contain covenants. These are contractual promises within the lease that help regulate how the property is used and protect the interests of the landowner and the landseeker. Covenants typically relate to but will not be limited to permitted and prohibited use, insurance and maintenance of the Property.

**[Premium]**: The Premium is a deposit or upfront payment which is sometimes paid at the beginning of the lease. This is not a deposit in lieu of damages but a downpayment on rent or purchase. Unless otherwise stated it is not repayable.

**[Payments]**: This section sets out the way rent is paid. Other payments covered in this section are for maintenance of any common areas of the land, utility bills for shared services and fees for any services performed by the landlord.

**[Encroachments]**: This section describes general access rights to or across the land or facilities that are being offered by the landowner (landlord) and rented by the landseeker (tenant). It will describe the division of responsibility in the case of an obstruction and the permissions for third parties to operate on the land.


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**[Use and Management]:** This refers to the division of responsibilities between the landowner and the landseeker to maintain the land and facilities that are defined within the agreement. These might include responsibilities for boundaries, gateways, access tracks, waste and refuse, vehicles on site, water and flooding, sheds, buildings, and natural assets. There may be a requirement to report any involvement from statutory bodies with the relevant land and facilities.

**[Alterations and Improvements]**: This section outlines the agreement concerning alterations or improvements to the site. This should give the definition of an improvement as opposed to an alteration, along with the process for gaining permission to make the improvement. This might also reference compensation for an improvement or include reference to a valuation process.

**[Compensation for Improvements]**: This should give a clear process for calculating compensation due to the landseeker for any permanent improvements they make to the land or facilities. It is often understood however, that the tenant is responsible for maintaining the property in reasonable repair and any work done to achieve this is not classed as an improvement. A schedule for when payments might be calculated and made should be included here.

**[Management Plan]**: If there are expectations around the method of farming or if there are conditions on the use of the land or facilities these will be explained here. It might detail nature protection or regeneration approaches or limit the use of fossil fuels on site. There might be periods in the year that certain activities are not permitted or a limit on visitors to the site. The Management Plan can be referenced throughout the agreement regarding conditions that must be met and should contain details on how the plan will be audited and what the consequences will be if conditions are breached.

**[Planning]**: This section should describe which party will be responsible for gaining and paying for any planning consents that are required for the successful running of the landseekers' land based business. Details of which consents will fall to which party can be listed here.

**[Termination of Agreement]**: This section will clarify under what circumstances each party can terminate the lease giving details of notice periods and expectations regarding return of assets in a suitable condition.

**[Agreement Transfer and Subletting]:** There may be circumstances whereby a business partner leaves the business and needs to transfer the agreement to another party within the business or they need to pause the running of the business for a period and would like to sublet their land. In this section details will be given regarding permissions, timeframes and notice periods.

**[Forfeiture]**: This clause gives the landowner the right to re-enter the property if there has been a breach of the terms of the agreement. This will include the process by which they can terminate the agreement in such circumstances and the notice periods involved in returning the property.

**[Dispute Resolution]**: This section should give details of how the parties will resolve disputes. It can recommend a mediation route and even a specific person to mediate. It could also recommend the method by which either party should raise an issue throughout the tenancy.

**[Notices]**: This clause specifies the formal rules for communication between the landlord and tenant, including how to send written notices, the correct addresses, and when the notice is considered legally received. This clause is crucial for ensuring that formal communications, such as those for ending the lease, exercising a break option, or addressing a breach of contract, are legally valid and properly executed.

**[End of Lease / Break Clause]**: This clause allows either the landlord or the tenant to end the lease early under specific conditions, without penalty. To use an End of Lease / Break clause, you must carefully check your agreement for the exact wording, required notice period, conditions to be met (such as no rent arrears and compliance with other obligations within the Lease), and the method for serving notice. Adhering strictly to the clause's terms is crucial, as missing deadlines or failing to meet strict conditions can render the notice to break/end the lease ineffective, such that the objective of ending the lease at that time is not achieved.

**[Miscellaneous Matters]**: Including this clause allows for any matters that have not been touched on already and are specific to the circumstances of the parties or the land, to be dealt with formally.


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