

## Lease Agreement template – Guidance Notes

### General Comments

This Lease Agreement template will not be suitable for every type of lease arrangement, depending whether the lessor is the owner of the horse or not and depending whether the lessor and the lessee are (i) a single person, company or syndicate or (ii) two or more persons. This Agreement also draws certain lines in respect of rights, obligations and liabilities as between the lessor and the lessee. These may be adapted (i.e. the wording changed) if the parties wish to agree anything different. These Guidance Notes seek to clarify the intended use/scope of this template as well as highlighting certain requirements and the way certain provisions are drafted. It is always recommended that you obtain legal advice before entering into this or any other form of lease agreement.

- A. The Agreement is drafted on the basis that the lessor is the owner of the Horse (hence being termed the “Owner”).
- B. The Agreement is drafted on the basis of the Owner being a single person, company or syndicate. Whilst it could be used as a basis for a lease agreement involving two or more owners (e.g. a Partnership) - by including the names of each owner in row 1 (and in the signature block) - there are considerations (including, for example, the liabilities and responsibilities of each owner, and whether in certain clauses reference to “Owner” should mean all the owners or a majority of the owners or something else) that this Agreement does not seek to cover. As such, it is strongly recommended that you obtain legal advice before using this template if there will be multiple (two or more) owners.
- C. Likewise, this Agreement is drafted on the basis of the Lessee being a single person, company or syndicate. Whilst it could be used as a basis for a lease agreement to multiple (two or more) lessees, either by:
  - (1) including the names of each lessee in row 2 (and in the signature block) and specifying in row 7 what Lease Share each lessee will hold; or
  - (2) by getting each lessee to sign a separate contract and specifying in row 7 what Lease Share each signing lessee will hold,it is strongly recommended that you obtain legal advice before using this template if there will be multiple (two or more) lessees.

By way of example, this Lease Agreement does not cover what should happen if, for example, one or more of the lessees’ defaults on payment (or otherwise fails to comply with an obligation under the Lease Agreement) while the others do comply. It also doesn’t expressly deal with what should happen if there are multiple lessees and one of them dies. This Agreement also does not seek to cover what each lessee is responsible for, nor whether (if there was a breach or other event giving rise to a liability) each lessee is (a) jointly liable with the other lessees, perhaps in proportion to their lease shares, or (b) only liable for liability he/she causes or (c) jointly and severally liable such that any individual lessee could potentially be liable for the whole liability whether or not caused by him/her, or (d) something else.

- D. Clause 1 - Lessee is responsible for the registration of the lease with Weatherbys and for notifying Weatherbys at the end of the lease (clause 13.6b).
- E. Clause 5.1 of the Agreement entitles the Lessee to keep (in proportion to his or her Lease Share) all prize money, appearance money and other income earned by the Horse during the Lease Period, except for:
  - a. any Breeders’ Prizes or other income which is due to the breeder of the Horse;
  - b. any stud fees or income relating to any breeding arrangement involving the Horse;

- c. any income or interest in any progeny of the Horse;
- d. any proceeds arising from the sale of the Horse;
- e. any income arising after the termination or expiry of the Lease Period.

This wording should be changed if the Owner and Lessee wish to agree anything different. In some instances, for instance, the Owner might wish to retain a certain percentage of prize money/income over a certain amount or retain income from specific incentive/bonus schemes. Alternatively, the Owner might wish to retain a share in the Horse and so retain rights to prize money/income in proportion to the Owner's retained share – in this instance the Owner would grant a Lease Share (or aggregate Lease Shares) of less than 100% to the other lessees; with the balance being retained by the Owner. In such event, the Owner should either amend this Agreement (legal advice recommended) or complete this Lease Agreement also for himself/herself – i.e. to document that the Owner is a lessee during the Lease Period with the corresponding rights and obligations: please just note General Comment C.

- F. Clause 6 sets out the costs for which Lessee will become liable, as well as certain costs (“Excluded Costs”) for which the Owner will remain liable. This wording should be changed if the Owner and Lessee wish to agree anything different re the apportionment of costs, especially in respect of vet costs and who is liable for what and when.
- G. Clause 7 - Lessee must enter into a separate training agreement with the Trainer to cover the Lease Period. It is contemplated that decisions relating to the running and riding etc of the Horse will be taken by the Trainer (clause 7.3), subject to the restriction on running in selling or claiming races under clause 5.3. This wording (on decision-making) can be changed if the Owner and Lessee wish to agree something different (and if the Trainer agrees).
- H. Horses can of course get injured or ill. Clauses 9.2 and 9.3 seek to provide a reasonable balance of risk between Owner and Lessee – but this wording can be changed if the Owner and Lessee wish to agree something different. The drafted wording does mean a horse could be ill or injured for most of the lease period (and perhaps never run) and Lessee would just have to accept that as part of racing; Lessee would remain liable for all fees during that period. Equally that is what owners have to accept where they haven't leased their horse.
- I. Clause 10 – Each party is responsible for obtaining their own insurance. Lessee must obtain third party liability insurance (clause 10.2) with a minimum cover of £5m figure. This is included as part of ROA membership or can be obtained independently.
- J. Clause 11 – The Owner is not prevented from selling the Horse during the Lease Period if the Owner receives an offer he or she would like to accept, but the Owner must first notify Lessee and give Lessee the chance to buy the Horse at such offer price. As with everything, this wording can be changed if the Owner and Lessee wish to agree something different.
- K. Clause 12 – If Lessee wishes to transfer any of Lessee's obligations, Lessee must get the prior agreement of the Owner. This would apply if, for example, Lessee (perhaps a syndicate) took on a 100% lease but wanted to sell on lease shares to others. In such circumstances, Lessee would typically remain liable under the Lease Agreement but would then enter into a sub-lease agreement with those to whom Lessee sold the lease shares.
- L. Clause 13 – additional termination rights may be included if so desired. Note that the Agreement is drafted to terminate on the death of the Lessee (where the Lessee is one individual). Where there will be multiple (two or more) lessees, it may be desired that the Agreement only terminates in respect of the Lease Share of the lessee who dies (with their share reverting to the Owner). This would require additional wording – it is recommended that you obtain legal advice in such event.
- M. Clause 14 – except for any liability caused by the Owner's negligence or wilful misconduct, Lessee shall take on all liability in connection with the Horse during the Lease Period.

Completing the “Agreement Information” on the front page

1. Owner:	<p>Name of Owner (and their address) to be inserted.</p> <p>The Agreement is drafted on the basis of the Owner being a single person, company or syndicate.</p> <p>It could potentially be used as a starting point for an agreement involving two or more owners (including, for example, a Partnership) but please note General Comment B.</p>
2. Lessee:	<p>Name of Lessee (and their address) to be inserted.</p> <p>The Agreement is drafted on the basis of the Lessee being a single person, company or syndicate (or, if there is more than one Lessee, on the basis that each Lessee would sign a separate agreement – each in respect of their relevant Lease Share).</p> <p>It could potentially be used as a starting point for a single lease agreement involving two or more lessees (including, for example, a Partnership) but please note General Comment C.</p>
3. Trainer:	Name of appointed trainer (who will train the Horse) to be inserted.
4. Background:	Leave as is.
5. Horse:	Insert the required details of the Horse.
6. Lease Period:	Insert the start date and end date of the lease.
7. Lease Share:	<p>The Agreement is drafted on the assumption that the Owner will lease 100% of the Horse to Lessee and that Lessee will take on all 100% – in other words, Lessee will take on 100% of the costs during the Lease Period and will be entitled to 100% of prize money and other relevant income.</p> <p>If less than 100% is to be leased (for example because the Owner wishes to maintain an interest, or because there is more than one lessee and it is decided to have a separate agreement with each lessee), the lease share figure should be amended here accordingly.</p>
8. Costs	<p>Other than non-routine veterinary costs (see clause 6 of the Terms and Conditions), this Agreement is drafted on the basis that Lessee is responsible for all costs arising during the Lease Period. It assumes Lessee will not be responsible for contributing towards any mortality risk insurance (or other Horse-related insurance) obtained by the Owner.</p> <p>If it is agreed that Lessee will contribute towards the cost of the mortality risk insurance taken out by the Owner, the following words could be added to the end of this row 8:  “including a contribution of [insert amount] towards the cost of the mortality risk insurance set forth in clause 10 of the Terms and Conditions attached”</p>

9. Excluded Activities:	List any specific activities in which the Owner requests that the Horse does not participate. If there are none (or at least none beyond those set forth in clause 8.1 of the Terms and Conditions), specify "None beyond those set forth in clause 8.1".
Signature block:	<p>All parties (Owner, Lessee and Trainer) to sign, print their name, and date.</p> <p>If "Owner" is more than 1 person (e.g. a Partnership), each owner should sign – the signature block would therefore need to be expanded.</p> <p>Likewise if "Lessee" is more than one person (i.e. if all lessees are included as a party to one Lease Agreement rather than having one Lease Agreement per lessee).</p> <p>If "Owner" is a company, the authorised signatory(ies) of the company should sign on the company's behalf.</p> <p>If "Owner" is a syndicate, the appointed registered Syndicators should sign on the syndicate's behalf.</p>