

Department for Environment, Food and Rural Affairs

July 2011

Annex F:

Example of a TB Management Agreement

Please Note: This is a working draft of an example TB Management Agreement, which will be used if a policy of badger control is adopted. It is provided for consultation purposes only.

TB Management Agreement

Date of Agreement: []

Between:

(1) Natural England of 1 East Parade, Sheffield S1 2ET

(2) the Land Holders listed in Schedule 1

(3) Licence Holder [insert name and address]

(4) Secretary of State for
Environment Food and
Rural Affairs

Background

- 1.1 The purpose of this Agreement, in conjunction with any Licences issued under the Protection of Badgers Act 1992 and the Wildlife and Countryside Act 1981, is to ensure that an effective cull of badgers can be undertaken to help prevent the spread of bovine TB. Such a cull is one that delivers a reduction in confirmed new incidents of TB in cattle within a Control Area comparable to the average benefit achieved in proactively culled areas of the Randomised Badger Culling Trial (RBCT), without being detrimental to the survival of the badger population concerned.
- 1.2 This Agreement is made by Natural England with the Land Holders listed in Schedule 1 pursuant to section 7 of the Natural Environment and Rural Communities Act 2006.

Interpretation

2.1 In this Agreement:

Accessible Land	means the Land to which access is permitted by the Land Holder to carry out the Annual Intensive Cull pursuant to this Agreement
Annual Intensive Cull	means the killing of no less than the Minimum Cull carried out on the Land in a single period of six weeks in the Open Season
Control Area	means the land comprising *** km ² (within which the Land is located) more particularly described in Annex A to the Licence
Defra	means the Department for Environment, Food and Rural Affairs
Disposal	means the disposal of any interest in the Land except by way of mortgage or charge.
Event of Default	is defined in clause 5

Interest (in relation to land)	includes any estate in land and any right over land (whether the right is exercisable by virtue of the ownership of an interest in land or by virtue of a licence or agreement, including sporting rights). It does not include an interest which arises solely by virtue of a charge or mortgage, or by virtue of any equitable interest arising under a contract of sale, unless (in either case) the holder of the interest is in possession of the land
Land:	means that part of the Control Area which is land specified in Annex A to the Licence the initial extent of which is more particularly shown on the plan attached at Schedule 5 (including all buildings, fixtures and fittings on the Land and all water on, or covering the Land, whether now or at any time after the date of the Agreement)
Land Holder	means any person listed in Schedule 1 having an interest in the Land and any person deriving any such interest under or from such a person
Landholding	any of the Land in which a Land Holder has an interest
Licence	means the licence to be granted on completion of this Agreement [PoBA Licence No. xxxx], a copy of which is annexed hereto
Licence Holder	[insert name and address]
Licensed Activities	all those activities authorised by the Licence
Maximum Number (of badgers)	such number of badgers as may be specified by Natural England in respect of any year during the Licence period as the number of badgers that may be killed on the Land for that year (including the period between January 1 st and January 31 st in the following year)
Minimum Cull	such number of badgers as may be specified by Natural England in respect of any year during the Licence period
Natural England	includes any body entitled at any future date to exercise all or any of Natural England's rights under the Agreement
Open Season	1 June to 30 November for cage-trapping and shooting badgers; and 1 June to 31 January for shooting free-ranging badgers
Party	any party to this Agreement including persons deriving an interest in any Landholding under or from a Land Holder
Relevant Authority	means Defra and Natural England or either of them
Secretary of State	Secretary of State for Environment Food and Rural Affairs.

- 2.2 If any person having an interest in land within the Control Area enters into an agreement with the Licence Holder (acting on behalf of all the other Parties to this Agreement) in the form set out in Schedule 4 to this Agreement, that person shall be treated as being a person listed in Schedule 1, and as a Land Holder and a Party for the purpose of this Agreement, as from the date on which that agreement is made with the Licence Holder.
- 2.3 In this Agreement:
- (i) the headings are used for guidance only;
 - (ii) any reference to a person includes a body corporate;
 - (iii) any reference to an enactment is a reference to that enactment as amended, applied or re-enacted from time to time;
 - (iv) words in the singular include the plural and vice versa.

Licence holder's obligations

3. The Licence Holder hereby agrees:
- (1) to take and kill badgers on the Land on an annual basis in accordance with this Agreement and the Licence for a period of no less than 4 years beginning with the Open Season in 2012 and for such further period (if any) as may be specified by Natural England from time to time in order to achieve an effective cull;
 - (2) no later than 30th April in 2012 and not later than 30th April in every subsequent year in each year during the period covered by the licence to submit to Natural England its written proposals for:
 - (a) the date on which operations will begin in the Open Seasons in that year;
 - (b) the number of badgers it proposes that Natural England should specify as the Minimum Cull in that year in order to achieve an effective cull;
 - (c) the Maximum Number of badgers;
 - (3) to undertake the Annual Intensive Cull on the Land beginning on the date in the Open Season each year which Natural England has specified;
 - (4) in the event that the Minimum Cull is not achieved within 6 weeks after the date on which the Annual Intensive Cull is begun, to submit to Natural England as soon as reasonably practicable thereafter written proposals for achieving that number in that year and to implement those proposals if Natural England agrees to them, or such other proposals as Natural England may specify for that purpose, within such period as Natural England may specify;
 - (5) if it appears that the area of Accessible Land may be, or may become, less than 70% of the Land within the Control Area, to take all reasonably practicable steps to increase that area so that it is never less than 70% of the land within the Control Area including (without prejudice to the generality of the foregoing) steps to add further parties as Land Holders to this Agreement pursuant to clause 2.2 above and to obtain all relevant authorities which may be required to enable culling to occur on their Landholdings (including applying for Natural England's agreement under Annex A to the Licence to add their Landholdings to the land on which action authorised by the Licence may be undertaken);

- (6) to inform Natural England forthwith if an Event of Default occurs or if the Licence Holder has reason to believe it is likely to occur;
- (7) to comply with the conditions imposed by the Licence and not to cause or to permit any non-compliance with them;
- (8) to take the measures listed in Schedule 2 to mitigate the risk of incidence of TB in cattle on land within 2km of the Land;
- (9) not to exercise any authority granted by the Licence to take or kill badgers (or to cause or permit it to be exercised) after any such date as Natural England may specify [if Natural England is of the opinion that –
 - (a) an effective cull has been carried out;
 - (b) the further taking or killing of badgers would be unlikely to result in an effective cull or to provide any further material benefit in preventing the spread (or in reducing the incidence) of bovine TB in the Control Area; or
 - (c) the Maximum Number of badgers would be exceeded.

Land holder's obligations

4. Each Land Holder hereby agrees (so as to bind any person deriving any interest in the Land under or from him, her or it):
 - (1) to permit the Licence Holder, Natural England [and the Secretary of State], their representatives, servants or agents and anyone authorised on their behalf to enter the Landholding at all reasonable times having given reasonable prior notice to carry out any Licensed Activities, to secure compliance with the conditions of the Licence, to monitor or do anything permitted or required to be done by this Agreement or to achieve an effective cull within the Control Area and in particular (without prejudice to the generality of the forgoing) to allow access to the Land and activities on it for the following purposes:
 - (a) taking from the Land, free of charge, anything required by Natural England [or the Secretary of State] for the purposes of the exercise of their statutory powers; and
 - (b) placing on the Land anything required by Natural England to facilitate the exercise of its statutory powers;
 - (2) to inform Natural England forthwith in writing if an Event of Default occurs or if there is reason to believe it is likely to occur;
 - (3) not to grant any tenancy of the Land or licence over it without securing that the person to whom the tenancy or licence is granted has entered into an agreement in the form set out in Schedule 4, and to take all reasonably practicable steps to ensure that any other persons who may have or who are seeking to be granted any rights in relation to the Landholding will enable or permit conditions of the Licence to be complied with or the obligations of the Parties to this Agreement to be performed, and, in the case of any person who is in possession of the Land under a tenancy or licence, to take all reasonably practicable steps to ensure that any other person to whom, on termination of that tenancy or licence, a new

tenancy or licence is to be granted in succession enters into an agreement in the form set out in Schedule 4;

- (4) to comply with any appropriate measures specified in Schedule 3 hereto;
- (5) to notify the Licence Holder and Natural England as soon as possible of any disposal of any interest in the land to which a person specified in Schedule 1 is entitled specifying the interest the subject of the disposal and identifying the person to whom the disposal was made and to give Natural England such further details thereof as Natural England may reasonably require for the purpose of this Agreement .

Event of Default

5.1 An Event of Default occurs where:

- (a) a Relevant Authority has notified the Licence Holder that in the opinion of that authority the Licence Holder is in breach of any of its obligations under the Licence, and has asked the Licence Holder to remedy the breach, but the Licence Holder has failed to do so within a reasonable period;
- (b) the Licence Holder fails to comply with clause 3(8) or 3(9);
- (c) any Land Holder refuses to allow access to the Landholding or impedes activities which the Land Holder is required to permit under this Agreement;
- (d) a Land Holder has provided any false or misleading information to a Relevant Authority or has made any misrepresentation in relation to the Agreement on which that authority has relied;
- (e) there is a delay in completing the cull in any year which in the opinion of a relevant authority is unreasonable;
- (f) the area of Accessible Land comprises less than 70% of the Control Area;
- (g) the Minimum Cull is not attained in any year in which culling is required to be carried out; or
- (h) the Licence Holder becomes insolvent, bankrupt, enters into liquidation, enters into a voluntary arrangement, appoints a Receiver in any jurisdiction (and however described in the law of that jurisdiction) save for the purposes of a solvent reconstruction or amalgamation [or is dissolved].

5.2 Where there is an Event of Default a Relevant Authority may do all or any of the following things for the purpose of securing an effective cull or remedying the breach:

- (a) enter the Land, or authorise third parties to enter the Land; and
- (b) when on the Land carry out any activities or works including:
 - (i) surveys and monitoring;
 - (ii) trapping and killing; and
 - (iii) disposing of badger carcasses.

Cost Recovery

- 6.1 A Relevant Authority shall be entitled to recover from the Licence Holder and all or any of the Land Holders all costs which it reasonably incurs if it undertakes any activities in connection with this Agreement as a result of an Event of Default occurring during the subsistence of the Land Holder's interest in the Land, including the costs of carrying out any Licensed Activities that are required to be permitted under clause 4(1), however carried out, and whether or not those activities could have been carried out at a lower cost.
- 6.2 For the avoidance of doubt the Licence Holder and the Land Holders will be jointly and severally liable for any costs incurred as a result of an Event of Default.
- 6.3 Where the land is subject to a tenancy or licence a landlord will not be liable in respect of any costs resulting from an Event of Default occurring after the grant of a tenancy (or licence) unless the tenancy (or licence) is granted by the landlord after the date of this Agreement and the landlord, being also the Land Holder for the purposes of this Agreement, has failed to ensure that the tenant (or licensee) becomes a party to the Agreement in accordance with clause 4(3). For the avoidance of doubt the landlord will not be required to comply with the requirements of clause 4(3) in the case of a tenancy under the Agricultural Holdings Act 1986 granted by virtue of a direction of the agricultural lands tribunal and deemed to be granted by the landlord under section 45(1) or 55(1) of that Act.

Liability and indemnity

7. The Licence Holder and the Land Holders shall be jointly and severally liable for all claims relating to any cull authorised by the Licence or conducted pursuant to this Agreement howsoever arising, and shall fully indemnify any Relevant Authority and keep it indemnified against all claims, proceedings, actions, damages, legal costs, expenses and any other liabilities whatsoever arising out of or in connection with the Licence or this Agreement, including any costs mentioned in clause 6.1.

Information

- 8.1 A Relevant Authority may disclose to the public any information about the Agreement to the extent necessary to enable that authority to comply with its statutory obligations under the Freedom of Information Act 2000 and/or the Environmental Information Regulations 2004.
- 8.2 The Relevant Authority acknowledges that any statutory and other constraints on the exchange of information will be fully respected, including the requirements of the Data Protection Act 1998 and the Human Rights Act 1998.

Notices

- 9.1 Any notice or other communication required to be given under this Agreement shall be in writing and shall be delivered personally, or sent by pre-paid first-class post or recorded delivery or by commercial courier, to each Party required to receive the notice or communication at the addresses set out below or in Schedule 1 or as otherwise specified by notice in writing to each other Party:

Natural England: [insert address details]

Defra: [insert address details]

Licence Holder: [insert address details]

- 9.2 Any notice or other communication shall be deemed to have been duly received:
- (a) if delivered personally, the day it is delivered;
 - (b) if sent by pre-paid first-class post or recorded delivery, at 11.00 am on the second Business Day after posting; or
 - (c) if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.
- 9.3 A notice or other communication required to be given under this Agreement shall not be valid if sent by e-mail.
- 9.4 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

Third Party Contracts

10. It is not intended that any third party should have the right to enforce a provision of this Agreement solely by virtue of the Contracts (Rights of Third Parties) Act 1999.

Entire Agreement

11. This Agreement and any documents referred to in it constitute the whole agreement between the Parties and supersede any previous arrangement, understanding or agreement to which all the Parties are a party relating to the subject matter of this Agreement.

Scope of Agreement

12. Nothing in the Agreement is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between the parties.

Jurisdiction

13. This Agreement shall be governed by and construed in accordance with the laws of England and Wales.

Authority to sign

14. The Licence Holder and the Land Holders confirm to Natural England that they have full power to enter into the Agreement on the terms set out in it and without needing to obtain anyone else's consent before the date of the Agreement.

Signed as below:

[Insert signature provisions]

SCHEDULE 1

Details of Land Holders and their interest in the Land

1. Land Holders details: [Insert name, address, and business name]

Land Holder's Interest in the Land

<input type="checkbox"/>	Freehold ownership
<input type="checkbox"/>	Tenancy (Lease)
<input type="checkbox"/>	Contractual Licence
<input type="checkbox"/>	Common Land Rights
<input type="checkbox"/>	Other (please specify):

Remaining term of Lease or Contractual Licence from Agreement start date (if applicable) [

2. Land Holders details: [Insert name, address, and business name]

Land Holder's Interest in the Land

<input type="checkbox"/>	Freehold ownership
<input type="checkbox"/>	Tenancy (Lease)
<input type="checkbox"/>	Contractual Licence
<input type="checkbox"/>	Common Land Rights
<input type="checkbox"/>	Other (please specify):

Remaining term of Lease or Contractual Licence from Agreement start date (if applicable)

SCHEDULE 2:

Measures to mitigate the risk of TB in cattle on land within 2km of the land

[Information specific to each licence to be inserted]

SCHEDULE 3:

Relevant disease control and testing and biosecurity measures

[Information specific to each licence to be inserted]

SCHEDULE 4

TB Management Agreement: Additional Party

Date of Agreement:

Whereas:

(1) on *** day of *** 201*, a TB Management Agreement was made between Natural England, the Secretary of State for Environment Food and Rural Affairs, the Land Holders listed in Schedule 1 to that Agreement and [*****] (referred to therein as the Licence Holder)

(2) in accordance with Clause 2.2 of that Agreement any person having an interest in land within the Control Area (as defined in that Agreement) who enters into an agreement with the Licence Holder (acting on behalf of all the other Parties to that Agreement) in this form, is to be treated as being a person listed in Schedule 1 to that Agreement, and as a Land Holder and as a Party for the purpose of it, as from the date on which this agreement is made with the Licence Holder.

[Name / address] (who has an interest in the land specified in the Annex and shown on the plan also annexed hereto within the Control Area) and the Licence Holder (acting on behalf of all the other Parties to the TB Management Agreement) hereby agree that:

[Name] may and shall be treated as being a person listed in Schedule 1 to that Agreement, and as a Land Holder and as a Party for the purpose of it, as from the date of this agreement and shall accordingly be subject to the obligations, and entitled to the rights, of such a person under the TB Management Agreement.

Signed:

on behalf of the Licensee

on behalf of [name]

Annex:

[description of the nature and extent of the interest in land]

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