

Annex 4

BRIEFING - GENESIS LICENCE AGREEMENT

Background

A paper (NEB PU14 03) updating the Board on the progress on the transfer of the management and operational control of Genesis to Natural England from Defra was presented to the Board at their meeting on 10 December 2008. The paper included as an appendix a draft licence agreement between Defra and Natural England. It was only possible to circulate a draft licence agreement as the final wording of the agreement was still being negotiated with Defra's commercial and legal teams.

The Board agreed in principle to Natural England taking over the control and management of the Genesis system via the licence from Defra.

Licence Agreement

The final document was very similar to the draft document submitted with the Board paper in terms of the key clauses. However there have been a few clauses added to the licence agreement in the course of negotiations. These clauses do not materially affect the nature of the transfer and do not create an additional burden on Natural England.

The key provisions in the licence agreement from Natural England's perspective are:

- The historic liabilities will remain with Defra to ensure that Natural England cannot be held responsible for illegal actions or activities that occurred prior to it taking formal control of the Genesis system;
- The transfer to Natural England of the Genesis operational budget, making the transfer cost neutral for us;
- Natural England is accountable for IPR infringements occurring after the date of the licence agreement;
- Natural England will have day to day control and management of the running of Genesis and will only need to involve Defra in line with our normal governance procedures as set out in the Financial Scheme of Delegation or if an activity is likely to materially change or affect the use of the Software such that it has an impact on the Genesis Book Value.

The key differences between the draft licence agreement submitted to the Board and the final version included with this briefing are:

- The financial wording has been amended and now sets out a 3 year financial settlement that includes indexation. We are satisfied that this wording now reflects Natural England's requirements and is acceptable to Defra finance. The provisions have been signed off by both Defra's and Natural England's Finance Directors.
- A new clause has been added setting out how Freedom of Information requests will be handled. This clause has been added for completeness rather than it creating any additional or new burdens.

- A provision has been added to the governance section which requires Natural England to notify Defra if an activity is likely to materially change or affect the use of the Software as this will have an impact on the Book Value. This clause acknowledges that Genesis remains a Defra asset and is not seen as particularly burdensome for Natural England.
- The limitation of liability clauses have been slightly amended but the changes are for clarity rather than affecting Natural England's liabilities.
- Intellectual Property Rights – it has been agreed that Defra and the licence agreement provides that Defra will be accountable for all historic liabilities and infringements and Natural England will be responsible for all infringements post the date of the licence agreement. Defra will continue to handle any infringement claims.
- The force majeure clause has been expanded to include a provision whereby if a force majeure event prevents either party from performing under the licence agreement for a period of 6 months then either party shall have the right to terminate the licence agreement.
- The schedules of assets have been finalised and added to the licence agreement.

In all other respects the licence remains unchanged.

The Board is asked to note that approval was given by the Chair on 22 December 2008, under delegation from the Board to agree Natural England taking over the control and management of the Genesis system via a licence from Defra