



BirdLasser

DATA SUPPLY AGREEMENT

between

YOUR ORGANISATION
(duly represented by *THIS ENTITY*)

and

LEJINT PROPRIETARY LIMITED

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DATA SUPPLY AGREEMENT

between

Your organisation's name

(duly represented by *This entity*)

and

LEJINT PROPRIETARY LIMITED

1 **INTERPRETATION**

In this Agreement, clause headings are for convenience and shall not be used in its interpretation and, unless the context clearly indicates a contrary intention, -

1.1 a word or an expression which denotes -

1.1.1 any gender includes the other genders;

1.1.2 a natural person includes an artificial or juristic person and *vice versa*;

1.1.3 the singular includes the plural and *vice versa*;

1.2 the following words and expressions shall bear the meanings assigned to them below and cognate words and expressions bear corresponding meanings -

1.2.1 "**ABC**" - the *Your organisation*, duly represented by *this entity*;



- 1.2.2 **"Affiliate"** - of a specific Entity ("**Specified Entity**") means -
- 1.2.2.1 each Entity which is directly or indirectly Controlled by the Specified Entity; and
- 1.2.2.2 each Entity which directly or indirectly Controls the Specified Entity; and
- 1.2.2.3 each Entity which is directly or indirectly Controlled by an Entity referred to in 1.2.2.2;
- 1.2.3 **"Agreement"** - this agreement, together with its annexures, as amended from time to time;
- 1.2.4 **"App"** - will bear the meaning given to it in 2.1.1;
- 1.2.5 **"BirdLasser"** - Lejint Proprietary Limited (registration number 2013/210222/07), trading as "BirdLasser", a private company with limited liability duly incorporated in South Africa;
- 1.2.6 **"Business Day"** - any day which is not a Saturday, a Sunday or an official public holiday in South Africa;
- 1.2.7 **"Commercial Activities"** - shall include, -
- 1.2.7.1 any for-profit co-ventures;
- 1.2.7.2 any services rendered to third parties for which such services have a financial value, and for which such services are directly or indirectly compensated for by third parties;
- 1.2.7.3 fundraising activities which can be directly attributed to the Data provided by BirdLasser; and



- 1.2.7.4 activities other than those outlined in 2.1.2, which create quantifiable cost savings or operational efficiencies for the other Party;
- 1.2.8 "**Control**" - shall be construed in accordance with section 2(2) (as read with section 3(2)) of the Companies Act No 71 of 2008 as amended from time to time, and "**Controls**" and "**Controlled**" shall be construed accordingly;
- 1.2.9 "**Data**" - specialised conservation data acquired and curated by BirdLasser;
- 1.2.10 "**Intellectual Property**" - all intellectual property rights, howsoever arising and in whatever tangible or intangible media, whether or not registered, including (without limitation) copyright, database rights, patents, trademarks, registered designs, unregistered design rights, domain names, Confidential Information, business processes and any applications for the protection or registration of those rights and all renewals and extensions thereof throughout the world;
- 1.2.11 "**MOU**" - the memorandum of understanding concluded or to be concluded between ABC and BirdLasser in terms of which, among other things, the relationship between the Parties is regulated in respect of any Commercial Activities conducted by ABC in respect of their use of the Data;
- 1.2.12 "**Parties**" - collectively, BirdLasser and ABC and "**Party**" shall mean either of them, as the context may require;
- 1.2.13 "**Person**" or "**Entity**" - includes any natural or juristic person, association, business, close corporation, company, concern, enterprise, firm, partnership, joint venture, trust, undertaking, voluntary association, body corporate, and any similar entity;
- 1.2.14 "**Signature Date**" - when this Agreement has been signed by both Parties (whether or not in counterpart), the latest of the dates on which this Agreement (or a counterpart) was signed by a Party;
- 1.2.15 "**South Africa**" - the Republic of South Africa;



- 1.2.16 **"Trade Secrets"** - knowledge of an influence of any nature over service providers, customers and shareholders of such Party; the contractual arrangements between the Party and its service providers and customers; the financial details of the Party's relationships with its service providers, customers and business associates; details of the financial structure, revenue streams, operating results, shareholding and profit margins of the Party or its service providers and customers; the Party's partnerships and strategic alliances, the names and addresses of those entities, the geographic concentration and locality of those entities, as well as the demographic particulars of such entities and the details of such relationships; the Party's customer base, the names and addresses of those customers, the geographic concentration and locality of such customers, as well as the demographic particulars of such customers; the products and services offered to the Party's customers; all know-how of the Party; and all information which by its nature or content is identifiable as confidential to such Party;
- 1.3 any reference to any statute, regulation or other legislation shall be a reference to that statute, regulation or other legislation as at the Signature Date, and as amended or substituted from time to time;
- 1.4 if any provision in a definition is a substantive provision conferring a right or imposing an obligation on either Party then, notwithstanding that it is only in a definition, effect shall be given to that provision as if it were a substantive provision in the body of this Agreement;
- 1.5 where any term is defined within a particular clause other than this **Error! Reference source not found.**, that term shall bear the meaning ascribed to it in that clause wherever it is used in this Agreement;
- 1.6 where any number of days is to be calculated from a particular day, such number shall be calculated as excluding such particular day and commencing on the next day. If the last day of such number so calculated falls on a day which is not a Business Day, the last day shall be deemed to be the next succeeding day which is a Business Day;
- 1.7 any reference to days (other than a reference to Business Days), months or years shall be a reference to calendar days, calendar months or calendar years, respectively;



- 1.8 any term which refers to a South African legal concept or process (for example, without limiting the foregoing, winding-up or curatorship) shall be deemed to include a reference to the equivalent or analogous concept or process in any other jurisdiction in which this Agreement may apply or to the laws of which a Party or Birdlasser may be or become subject; and
- 1.9 the use of the word "**including**", "**includes**" or "**include**" followed by a specific example/s shall not be construed as limiting the meaning of the general wording preceding it and the *eiusdem generis* rule shall not be applied in the interpretation of such general wording or such specific example/s.

The terms of this Agreement having been negotiated, the rule of interpretation which prescribes that, in the event of ambiguity, a contract should be interpreted against the Party responsible for its drafting shall not be applied in the interpretation of this Agreement.

2 INTRODUCTION

- 2.1 It is recorded that -
- 2.1.1 BirdLasser has developed an application which is capable of being downloaded by users to their mobile devices ("**App**"), which App was designed to collect Data related to birding;
- 2.1.2 BirdLasser has given ABC the right to, *inter alia*, utilise the Data collected by BirdLasser for non-profit research and related activities; and
- 2.1.3 ABC wishes to utilise the Data provided by BirdLasser for the purpose set out in 2.1.2.
- 2.2 Accordingly, the Parties are concluding this Agreement in order to formalise their arrangement in respect of the supply of the Data by BirdLasser to ABC and all matters ancillary thereto.



3 THE SUPPLY OF DATA

- 3.1 BirdLasser shall supply the Data to ABC on a non-exclusive and non-transferable basis, and ABC shall acquire the right to utilise same, on the terms set out in this Agreement and the MOU (if applicable).
- 3.2 Unless ABC has obtained the prior written consent of BirdLasser, it shall only be entitled to make use of the Data for the purpose set out in 2.1.2.
- 3.3 No other person may use the Data provided to ABC by BirdLasser without the prior written consent of BirdLasser. In the event that the prior written consent of BirdLasser is obtained, the Parties undertake to conclude a supply of data agreement in order to formalise their arrangement in respect of the supply of BirdLasser's Data by ABC to such third party.

4 COMMENCEMENT AND DURATION

This Agreement will commence on the Signature Date and will endure thereafter until the earlier of -

- 4.1 the date on which this Agreement is terminated by BirdLasser for any reason whatsoever on one months' prior written notice to that effect to ABC; or
- 4.2 the date on which this Agreement is cancelled in accordance with the provisions of 17.

5 CONSIDERATION

Subject to the provision of 14.1, no consideration shall be payable by ABC to BirdLasser for the supply of the Data.

6 PARTIES OBJECTIVES

- 6.1 The Parties agree to uphold the objectives in this 6 in the discharge of their obligations set out in this Agreement.



- 6.2 The Parties record that, -
 - 6.2.1 the core objectives of BirdLasser are to, -
 - 6.2.1.1 amplify efforts of nature conservation bodies through technology;
 - 6.2.1.2 increase human global connectedness by using technology to create and grow nature-focused communities;
 - 6.2.1.3 bring people back to and closer to nature through technology;
 - 6.2.1.4 mainstream nature and birding; and
 - 6.2.1.5 solve the intractable problem of "sustainable good";
 - 6.2.2 BirdLasser is, -
 - 6.2.2.1 a platform for data collection and dissemination;
 - 6.2.2.2 a tech facilitator of conservation data;
 - 6.2.2.3 an eliminator of waste and inefficiency for conservation bodies arising from duplicated work and functions deterring from its core competencies; or
 - 6.2.2.4 an aggregator of mobile features in one space;
 - 6.2.3 for the avoidance of doubt, BirdLasser is not a data analyser for purposes of conservation, a formulator of policies, an on-the-ground conservation executer or a program manager;



- 6.2.4 the core objectives of ABC are to, -
 - 6.2.4.1 inform, influence and motivate biodiversity policy development based on sound quantitative and scientific evidence through its commitment to long-term monitoring and analysis;
 - 6.2.4.2 nurture partnerships with people, organizations and governments on the African continent to benefit biodiversity conservation and mutual growth;
 - 6.2.4.3 enable and empower people to play a meaningful and living role in the science conversation by transforming Citizen Scientists into ambassadors for biodiversity;
 - 6.2.4.4 adopt an "open access" data sharing paradigm that maximizes the benefit derived from data collectively gathered, and thus advancing interdisciplinary scholarly research and informing conservation needs;
 - 6.2.4.5 continue with the pioneering work that has made it leaders in citizen science;
 - 6.2.4.6 provide training and research opportunities to the next generation of scientists, leaders and environmentalists;
- 6.2.5 ABC is, -
 - 6.2.5.1 a citizen science project management;
 - 6.2.5.2 a data analyser of biodiversity data;
 - 6.2.5.3 a biodiversity information management specialist; or
 - 6.2.5.4 an education, training, research and development institution; and



6.2.6 for the avoidance of doubt, ABC is not a conservation policy formulator, an on-the-ground protected area manager, a membership-based institution or a mobile application developer.

7 **BIRDLASSER'S OBLIGATIONS**

In supplying the Data, BirdLasser shall use its reasonable commercial endeavours to -

- 7.1 service and maintain the App;
- 7.2 collate the Data derived from the App;
- 7.3 serve batch Data to the ABC, the format, content and frequency of such data will be agreed to in writing between the Parties from time to time;
- 7.4 build and test new features related to the acquisition of additional Data;
- 7.5 acknowledge ABC as a recipient of the Data supplied by BirdLasser in any media piece that BirdLasser may in its sole and absolute discretion elect from time to time, the source of which media piece is derived from or attributable to, in whole or part, the Data supplied to ABC by BirdLasser; and
- 7.6 market the App and/or the Data, the causes to which it relates and the progress made in relation thereto by way of social media at least once every two months.

8 **ABC'S OBLIGATIONS**

In receiving the Data, ABC shall to the satisfaction of BirdLasser -

- 8.1 credit BirdLasser for all the Data supplied to ABC in any media piece that BirdLasser may in its sole and absolute discretion elect from time to time, the source of which media piece is derived from or attributable to, in whole or part, the Data supplied to ABC by BirdLasser;



- 8.2 create and distribute media of a quality to BirdLasser's satisfaction, acting reasonably, containing both images and words that are consistent with ABC's corporate identity as follows, -
- 8.2.1 Facebook: at least four dedicated pieces, six BirdLasser mentions, and six shares of BirdLasser posts per annum;
 - 8.2.2 Twitter: tweets referencing the three dedicated media pieces, and at least six retweets of BirdLasser tweets per annum;
 - 8.2.3 YouTube: in the event that the ABC creates a YouTube page, create at least one video of at least 90 seconds per annum;
 - 8.2.4 Email: to its mailing list, reasonable content to be provided by BirdLasser, no more than three times per annum;
 - 8.2.5 Print: demonstrate effort to BirdLasser's satisfaction, acting reasonably, to create articles, together with reputable publishers, to market the results achieved by both the ABC and BirdLasser; and
 - 8.2.6 Webpage: at minimum maintain or update a Search Engine Optimization friendly web page (on the ABC website) indicating support of BirdLasser, and maintaining a web page listing ABC and BirdLasser collaborations;
- 8.3 credit and actively promote BirdLasser in all advertising campaigns, conventions and events;
- 8.4 provide, on each anniversary of this Agreement, an annual report to BirdLasser indicating compliance or non-compliance with 8.2, referencing such media interventions either via screengrab or link and indicating the reach of such media intervention;
- 8.5 market BirdLasser as a tech-enabler of conservation and facilitator of nature-driven communities;



- 8.6 introduce BirdLasser to all of its Affiliates and its direct and indirect subsidiaries from time to time with the purpose of setting up a meeting to explore collaboration opportunities;
- 8.7 procure prospective Data recipients and promptly enquire as to whether these recipients align with the objectives of the unincorporated joint venture as outlined in the MOU (if applicable);
- 8.8 provide BirdLasser with a written report setting out -
 - 8.8.1 all details on the manner in which the Data is being utilised by ABC; and
 - 8.8.2 any other information that BirdLasser may require from time to time;
- 8.9 the report contemplated in 8.8 will be provided to BirdLasser by ABC within 10 Business Days of receipt of a request from BirdLasser and will be in the form that BirdLasser may from time to time direct in BirdLasser's sole and absolute discretion; and
- 8.10 ensure that it fully understands the needs and objectives of BirdLasser and offers BirdLasser its assistance where possible from time to time.

9 **FORCE MAJEURE**

- 9.1 If any Party (the "**Affected Party**") is prevented directly or indirectly from carrying out all or any of its obligations under this Agreement from any cause beyond its reasonable control (including, without limiting the generality of the foregoing, war, civil commotion, riot, insurrection, strikes, lock-outs, fire, explosion, floods, acts of God), the Affected Party shall be relieved of its obligations under this Agreement during the period that such event and its consequences continue (excluding payment obligations which have already accrued) but only to the extent so prevented and shall not be liable for any delay or failure in performance of any obligations under this Agreement or loss or damages either general, special or consequential which any other of them may suffer due to or resulting from such delay or failure; provided always that written notice shall within 24 hours of the occurrence constituting *force majeure* be given of any inability to perform by the Affected Party, and provided further that the obligation to give such notice shall be suspended to the extent necessitated by such *force majeure*.



- 9.2 Notwithstanding anything to the contrary contained in this 9, a lack of funds and/or economic hardship shall not constitute a *force majeure* event.
- 9.3 The Affected Party invoking *force majeure* shall use its best endeavours to terminate the circumstances giving rise to *force majeure* and upon termination of the circumstances giving rise thereto, shall forthwith give written notice thereof to the others of them.
- 9.4 In the event that *force majeure* occurs as contemplated in this 9, and such *force majeure* lasts for more than 120 days, the other Party may terminate this Agreement on written notice to the Affected Party.

10 REFERRAL OF OPPORTUNITIES

- 10.1 Each Party undertakes in favour of the other Party that if it or any of its Affiliates or any of its personnel, for the subsistence of this Agreement, is offered, finds, solicits, invents or otherwise comes across any opportunity (unilaterally or in conjunction with the other Party) to enter into a transaction involving the Parties' competencies as detailed in 6, then that Party ("**Notifying Party**") shall forthwith notify the other Party in writing ("**Opportunity Notice**") of that opportunity ("**Subject Opportunity**") which Opportunity Notice will set out all information known by it in relation thereto (subject, to the extent reasonably required by the Notifying Party, to signature of confidentiality undertakings and subject also to compliance with all regulatory restrictions on disclosure).
- 10.2 It is agreed that the Notifying Party shall, for the purposes of 10.3, be deemed to have approved of the pursuit by the Parties of the Subject Opportunity and shall vote in favour of such pursuit (to the extent that such vote is required).
- 10.3 If -
- 10.3.1 the Parties approve the pursuit of the Subject Opportunity then, subject to 10.4, neither Party shall directly or indirectly pursue the Subject Opportunity in their individual capacity; or



- 10.3.2 the Parties fail to approve the pursuit of the Subject Opportunity, then the Notifying Party (but not the other Party) shall be entitled to pursue the Subject Opportunity, and any such pursuit by the Notifying Party shall, notwithstanding anything else to the contrary contained in this Agreement, not amount to a breach of any provision of this Agreement by the Notifying Party, including (for the avoidance of doubt) 17; provided that -
- 10.3.2.1 if the Parties fails to approve the pursuit by it of the Subject Opportunity as a result of any authorised person nominated by the Notifying Party failing to approve such pursuit by BirdLasser, or as a result of the Notifying Party failing to vote in favour of such pursuit (to the extent that such vote is required) then neither the Notifying Party nor any of its Affiliates shall be entitled to pursue the Subject Opportunity;
- 10.3.2.2 even after this 10.3.2 has become applicable, neither the Notifying Party nor any of its Affiliates shall conclude any transaction relating to the Subject Opportunity on better terms than the Parties were able to conclude such transaction unless it has first offered in writing to the Parties the opportunity to conclude that transaction on those better terms.
- 10.4 Any decision by the Parties to pursue a Subject Opportunity shall not be deemed to constitute a binding undertaking of any nature by the Parties in relation to any aspect of such Subject Opportunity and shall not give any Person any right against the Parties in terms thereof.
- 10.5 If the Notifying Party complies with this 10 but the Parties are subsequently unable to implement the Subject Opportunity or abandons the Subject Opportunity, then the Notifying Party shall be entitled to pursue the Subject Opportunity, and any such pursuit by the Notifying Party shall, notwithstanding anything else to the contrary contained in this Agreement, not amount to a breach of any provision of this Agreement by the Notifying Party, including (for the avoidance of doubt) 17; provided that, even after this 10.5 has become applicable, the Notifying Party shall not conclude any transaction relating to the Subject Opportunity on better terms than the Parties were able to conclude such transaction unless it has first offered in writing to the Parties the opportunity to conclude that transaction on those better terms.



11 RESTRAINT

11.1 For the purposes of this **Error! Reference source not found.** -

11.1.1 **"Prescribed Business Associate"** means an actual or prospective client or customer with whom BirdLasser has had any communication or dealings during the Restraint Period; provided that, if BirdLasser has had no such communication or dealings with any such actual or prospective client or customer for a period of more than 24 months, then that client or customer shall cease to be a Prescribed Business Associate;

11.1.2 **"Restrained Area"** means every country in the *TBC*;

11.1.3 **"Restrained Business"** means any business which is involved in the development or utilisation of conservation data, the development or creation of any application (whether downloadable on mobile devices or any other technology) and any other business which competes with the business of BirdLasser during the Restraint Period;

11.1.4 **"Restraint Period"** means three years;

11.1.5 **"Successors-in-title and Assigns"** includes any Person who acquires –

11.1.5.1 all or some of the issued shares, or the goodwill, of BirdLasser;

11.1.5.2 by cession, the right to enforce any restraint contained in this **Error! Reference source not found..**

11.2 ABC irrevocably undertakes in favour of BirdLasser and their respective Successors-in-title and Assigns that, unless otherwise agreed in writing by the Parties



that ABC shall not (and shall procure that its Affiliates do not), for the duration of the Restraint Period, whether for reward or otherwise, -

11.2.1 and whether as proprietor, partner, director, shareholder, member, employee, consultant, contractor, financier, principal, agent, representative, manager, assistant, advisor, administrator, trustee or in any other capacity whatever, be directly or indirectly interested, engaged, employed or otherwise involved in, or concerned or associated with, any Restrained Business within the Restrained Area;

11.2.2 and whether for itself or as the agent of any other Person, directly or indirectly persuade, induce, solicit, encourage or procure any -

11.2.2.1 employee of BirdLasser to terminate such employment;

11.2.2.2 Prescribed Business Associate to terminate, or to reduce or limit the extent of his or its business with BirdLasser.

11.3 ABC acknowledges and agrees that -

11.3.1 having regard (amongst others) to the direct and indirect benefits derived by it in terms of this Agreement, the restraints imposed upon it in terms of 11.2 are reasonable as to subject matter, area and duration, and are reasonably necessary to protect the proprietary interests of BirdLasser and their respective Successors-in-title and Assigns;

11.3.2 notwithstanding the manner in which the restraints in 11.2 have been grouped together or linked grammatically, each of them constitutes a separate and independent restraint severable from and independent of each of the other restraints in 11.2 in regard to all aspects thereof including in respect of -

11.3.2.1 ABC and its Affiliates referred to in 11.2;

11.3.2.2 BirdLasser and its Successors-in-title and Assigns;



- 11.3.2.3 each of the months falling within the Restraint Period;
 - 11.3.2.4 each country, province and magisterial district in the Restrained Area;
 - 11.3.2.5 every capacity in which ABC is prohibited from acting in terms of 11.2;
 - 11.3.2.6 every activity referred to in 11.2 in respect of which ABC is restrained;
 - 11.3.2.7 each aspect of the Restrained Business; and
 - 11.3.2.8 each Prescribed Business Associate.
- 11.4 Should any of the provisions of 11.2 or part thereof be found by any competent court to be defective or unenforceable for any reason whatever, the remaining provisions of 11.2 shall continue to be of full force and effect.
- 11.5 The provisions of 11.2 shall continue to ABC for the full extent of its Restraint Period, that is, even after it ceases to be involved in the affairs of BirdLasser.
- 11.6 The provisions of this **Error! Reference source not found.** constitute a *stipulatio alteri* in favour of BirdLasser (and their respective Successors-in-title and Assigns) which is not a Party to this Agreement and each such Person may accept the benefits conferred on it by this **Error! Reference source not found.** by giving written notice to that effect to the Parties at any time.

12 INTELLECTUAL PROPERTY

- 12.1 The Intellectual Property of each Party shall be and remain the property of that Party and no rights are granted hereunder in or to any such Intellectual Property other than the rights expressly granted in this Agreement.
- 12.2 Each Party acknowledges that they may come into possession or obtain knowledge of the other Party's Intellectual Property and that the disclosure thereof to third parties may be damaging for that Party. Accordingly, each Party agrees to hold such



Intellectual Property confidential, and agrees not to use or to disclose the Intellectual Property to any third party, except to the extent provided in clause 12.1.

13 CO-OPERATION AND GOOD FAITH

13.1 The Parties shall co-operate to the fullest extent in order to procure the implementation of the provisions of this Agreement and to give effect to the terms of this Agreement.

13.2 The Parties further undertake to exercise good faith towards each other in respect of this Agreement and use their reasonable commercial endeavours to, -

13.2.1 uphold the principle that nature comes first;

13.2.2 make all decisions as quickly as practically possible;

13.2.3 make all decisions without regard to politics;

13.2.4 deliver tangible and significant results that are to the benefit of nature;

13.2.5 assist the other Party in an effort to support the delivery of a positive impact to nature in a manner that is financially sustainable;

13.2.6 reduce costs per result in favour of nature; and

13.2.7 continuously endeavour to create a better user experience for citizen scientists and contributors to the environment in an effort to remain competitive.

14 REVENUE SHARING

14.1 In the event that ABC conducts Commercial Activities or otherwise generates revenue directly or indirectly from the use of the Data, the Parties agree that, -

14.1.1 ABC shall provide BirdLasser with details relating to the amount of revenue generated, the party from whom the revenue was generated and any other



information that BirdLasser may in its sole discretion deem necessary in the circumstances; and

14.1.2 they will enter into a written revenue sharing agreement in order to regulate the manner in which the revenue generated by ABC are shared between the Parties, or such other commercial agreement that is appropriate in the circumstances.

14.2 ABC undertakes to display and exercise the utmost good faith to BirdLasser in giving effect to 14.1, and hereby undertake to do and procure the doing of all such acts as are necessary to give effect to 14.1.

15 **PUBLICITY AND MARKETING**

15.1 No Party shall, subject to 15.2, issue any press release or any public document or make any public statement relating to, or connected with, or arising out of, this Agreement which may intentionally or otherwise, result in damage to the reputation of the other Party.

15.2 If any Party is required by law (including for the purposes of this clause, pursuant to an order, rule, regulation or policy of any authority or any stock exchange) to disclose or divulge any information regarding this Agreement to any third party or to make any press release or other public document or public statement relating to, or connected with, or arising out of, this Agreement, that Party shall, if at all reasonably practicable, give the other Party an opportunity to comment on its content and form prior to disclosing, divulging, releasing or making public that information or document.

15.3 In the event that either Party issues any press release or any public document or make any public statement as contemplated in 15.1, that Party shall immediately notify the other Party and furnish the other Party with a full apology.

15.4 The Parties record that BirdLasser may at any time, in its sole discretion, amend the reciprocal publicity obligations in 6 and ABC hereby undertakes to vote in favour and sign any such document that amends these obligations.



16 CONFIDENTIALITY

Notwithstanding the cancellation, expiration or termination of this Agreement, no Party ("**Receiving Party**") shall, at any time after the Signature Date, disclose to any person or use in any manner whatsoever any of the other Party's Confidential Information or Trade Secrets or the existence and contents of this Agreement, provided that -

- 16.1 the Receiving Party may disclose the other Party's Confidential Information or Trade Secrets and the existence and contents of this Agreement -
 - 16.1.1 to the extent required by law (other than in terms of a contractual obligation of the Receiving Party); and
 - 16.1.2 to, and permit the use thereof by, its Affiliates and their respective employees, representatives and professional advisors to the extent strictly necessary for the purpose of implementing or enforcing this Agreement or obtaining professional advice, it being specifically agreed that any disclosure or use by any such Affiliate, employee, representative or professional advisor of such confidential or other information for any other purpose will constitute a breach by the Receiving Party of this 16; and
- 16.2 the provisions of this 16 will cease to apply to any Confidential Information or Trade Secrets of a Party that -
 - 16.2.1 is or becomes generally available to the public, other than as a result of a breach by the Receiving Party of its obligations in this 16;
 - 16.2.2 is also received by the Receiving Party from a third party who did not acquire such Confidential Information or Trade Secrets subject to any duty of confidentiality in favour of another Party; or



16.2.3 was known to the Receiving Party prior to receiving it from another Party.

"**Confidential Information**" of any Party will mean any information disclosed by that Party to the Receiving Party prior to the conclusion of this Agreement, in terms of this Agreement or otherwise in connection with this Agreement.

17 **BREACH**

Should either Party materially breach any essential provision of this Agreement and fail to remedy such breach within seven days after receiving written notice requiring such remedy, then the other Party shall be entitled, without prejudice to its other rights in terms of this Agreement or in law, including any right to claim damages, to claim immediate specific performance of all of the defaulting Party's obligations then due for performance or to cancel this Agreement.

18 **DISPUTES**

18.1 Should any dispute of whatever nature arise in regard to the interpretation or effect of, the validity, enforceability or rectification (whether in whole or in part) of, the respective rights or obligations of the Parties under a breach or the termination or cancellation of, this Agreement, either Party shall be entitled, by delivering written notice to the other Party, to require that the dispute be referred to and be determined by arbitration.

18.2 The Parties hereby consent to the arbitration being -

18.2.1 governed by the Uniform Rules of Court; and

18.2.2 dealt with on an urgent basis.

18.3 This 18 shall not preclude either Party from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrator.



- 18.4 The arbitrator shall be, if the matter in dispute is principally -
- 18.4.1 a legal matter, a practising advocate or attorney of at least 15 years' standing;
 - 18.4.2 an accounting matter, a practising chartered accountant of at least 15 years' standing; or
 - 18.4.3 any other matter, an independent person regarded as an expert in the appropriate field of the dispute,
- as agreed upon between the Parties to the dispute.
- 18.5 Should the Parties to the dispute fail to agree whether the dispute is principally a legal, accounting or other matter within seven days after the arbitration was demanded, the matter shall be deemed to be a legal matter.
- 18.6 Should the Parties fail to agree on an arbitrator within 14 days after the giving of notice in terms of clause 18.1, the arbitrator shall be appointed by the President for the time being of the Law Society of the Northern Provinces at the request of the Parties to the dispute.
- 18.7 The decision of the arbitrator shall be final and binding on the Parties to the dispute and may be made an order of the court at the instance of either of the parties to the dispute.
- 18.8 The Parties agree to keep the arbitration including the subject matter of the arbitration and the evidence heard during the arbitration confidential and not to disclose it to anyone except for purposes of an order to be made in terms of 18.7.
- 18.9 The provisions of this 18, -
- 18.9.1 constitute an irrevocable consent by the Parties to any proceedings in terms hereof and no Party shall be entitled to withdraw therefrom or claim at any such proceedings that it is not bound by such provisions;



18.9.2 are severable from the rest of this Agreement and shall remain in effect despite the termination of or invalidity for any reason of this Agreement.

19 DOMICILIUM AND NOTICES

19.1 The Parties choose *domicilium citandi et executandi* ("**Domicilium**") for all purposes relating to this Agreement, including the giving of any notice, the payment of any sum, the serving of any process, as follows -

19.1.1	BirdLasser	physical	-	[•] [•] [•] [•]
		facsimile	-	[•]
		email	-	[•]
		attention	-	[•]

19.1.2	ABC	physical	-	[•] [•] [•] [•]
		facsimile	-	[•]
		email	-	[•]
		attention	-	[•]

19.2 Either Party shall be entitled from time to time, by giving written notice to the other, to vary its physical *Domicilium* to any other physical address (not being a post office box or *poste restante*) in South Africa and to vary its facsimile and/or email *Domicilium* to any other facsimile number and/or email address.



- 19.3 Any notice given or payment made by either Party to the other ("**Addressee**") which is delivered by hand between the hours of 09:00 and 17:00 on any Business Day to the Addressee's physical *Domicilium* for the time being shall be deemed to have been received by the Addressee at the time of delivery.
- 19.4 Any notice given by either Party to the other which is successfully transmitted by email or facsimile to the Addressee's email or facsimile *Domicilium* for the time being shall be deemed (unless the contrary is proved by the Addressee) to have been received by the Addressee at the time of successful transmission thereof or, if such date is not a Business Day, on the next day which is a Business Day.
- 19.5 This 19 shall not operate so as to invalidate the giving or receipt of any written notice which is actually received by the Addressee other than by a method referred to in this 19.
- 19.6 Any notice in terms of or in connection with this Agreement shall be valid and effective only if in writing and if received or deemed to be received by the Addressee.

20 **CESSION, DELEGATION AND ASSIGNMENT**

Each Party will only be entitled to cede, delegate or otherwise assign or transfer any of its rights, obligations or interest in, under or in terms of this Agreement to any third party ("**Assignee**") with the prior written consent of the other Party, which may not be unreasonably withheld or delayed, provided that the Assignee shall be bound by the Provisions of this Agreement and the MOU (if applicable).

21 **GENERAL**

- 21.1 This Agreement constitutes the sole record of the agreement between the Parties in relation to the subject matter hereof. Neither Party shall be bound by any express, tacit or implied term, representation, warranty, promise or the like not recorded herein. This Agreement supersedes and replaces all prior commitments, undertakings or representations, whether oral or written, between the Parties in respect of the subject matter hereof.



- 21.2 No addition to, variation, novation or agreed cancellation of any provision of this Agreement shall be binding upon the Parties unless reduced to writing and signed by or on behalf of the Parties.
- 21.3 No waiver, indulgence or extension of time which either Party ("**Grantor**") may grant to the other, nor any delay or failure by the Grantor to enforce, whether completely or partially, any of its rights, shall constitute a waiver of or, whether by estoppel or otherwise, limit any of the existing or future rights of the Grantor in terms hereof, save in the event and to the extent that the Grantor has signed a written document expressly waiving or limiting such right.
- 21.4 Save as expressly provided in this Agreement, neither Party shall be entitled to cede, delegate, encumber, assign or otherwise transfer any of its rights and/or obligations in terms of, and/or interest in, this Agreement to any third party without the prior written consent of the other Party.
- 21.5 No consent or approval in terms of or in connection with this Agreement shall be valid or effective unless in writing and signed by or on behalf of the Party giving such consent or approval.
- 21.6 For the purposes of this Agreement –
- 21.6.1 no data message, as defined in the Electronic Communications and Transactions Act No 25 of 2002 ("**ECTA**"), other than an email or facsimile, shall constitute writing;
- 21.6.2 no electronic signature or advanced electronic signature, as defined in ECTA, shall constitute a signature, except for the purposes of varying any date referred to in this Agreement or giving any consent or approval in terms of this Agreement.
- 21.7 Without prejudice to any other provision of this Agreement, any successor-in-title, including any executor, heir, liquidator, business rescue practitioner, curator or trustee, of either Party shall be bound by this Agreement.



21.8 The signature by either Party of a counterpart of this Agreement shall be as effective as if that Party had signed the same document as the other Party.

21.9 The Parties warrant to each other that they have the legal capacity and authority required to conclude and implement this Agreement and that such conclusion and implementation do not conflict with any obligation or restriction applicable to either Party, whether in terms of any law, its constitution or otherwise.

22 **GOVERNING LAW**

This Agreement shall in all respects (including its existence, validity, interpretation, implementation, termination and enforcement) be governed by the law of South Africa which is applicable to agreements executed and wholly performed within South Africa.

23 **COSTS**

BirdLasser shall bear and pay the costs in relation to the negotiation, drafting, finalisation, signing and implementation of this Agreement.

24 **SIGNATURE**

On the Signature Date -

24.1 BirdLasser shall deliver to ABC a resolution of the board of directors of BirdLasser approving the conclusion and implementation of this Agreement; and

24.2 ABC shall deliver to BirdLasser a resolution of the board of directors of ABC approving the conclusion and implementation of this Agreement.



Signed at _____ on _____ 2017

for

Your organisation

who warrants that he is duly
authorised hereto

Signed at _____ on _____ 2017

for Lejint Proprietary Limited

who warrants that he is duly
authorised hereto