



**BirdLasser**

**MEMORANDUM OF UNDERSTANDING**

**between**

***YOUR ORGANISATION***  
**(duly represented by *THIS ENTITY*)**

**and**

**LEJINT PROPRIETARY LIMITED**

## TABLE OF CONTENTS

1	INTERPRETATION .....	3
2	INTRODUCTION .....	7
3	ESTABLISHMENT OF THE JOINT VENTURE .....	8
4	COMMENCEMENT AND DURATION .....	10
5	PARTICIPATION INTERESTS .....	10
6	CONTRIBUTIONS TO THE JOINT VENTURE .....	10
7	ADMINISTRATION FEE .....	13
8	MAINTENANCE FEE .....	13
9	MANAGEMENT BOARD .....	14
10	FINANCING OF THE JOINT VENTURE .....	18
11	TERMINATION OF THE JOINT VENTURE .....	18
12	REFERRAL OF OPPORTUNITIES .....	18
13	RESTRAINT .....	20
14	INTELLECTUAL PROPERTY .....	23
15	CO-OPERATION AND GOOD FAITH .....	23
16	PUBLICITY .....	24
17	CONFIDENTIALITY .....	24
18	BREACH .....	25
19	DISPUTES .....	26
20	DOMICILIUM AND NOTICES .....	28
21	CESSION, DELEGATION AND ASSIGNMENT .....	29
22	GENERAL .....	30
23	GOVERNING LAW .....	31
24	COSTS .....	31
25	SIGNATURE .....	32

**MEMORANDUM OF UNDERSTANDING**

between

***Your organisation's name***

(duly represented by *This entity*)

and

**LEJINT PROPRIETARY LIMITED**



## 1 INTERPRETATION

In this MOU, 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 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 "**App**" - the application created, developed and maintained by BirdLasser, which application is capable of being downloaded by users to their mobile devices to collect Data related to nature conservation;



- 1.2.4        "**BirdLasser**" - Lejint Proprietary Limited (registration number 2013/210222/07), trading as "BirdLasser", a private company with limited liability duly incorporated in South Africa;
- 1.2.5        "**Business Day**" - any day which is not a Saturday, a Sunday or an official public holiday in South Africa;
- 1.2.6        "**Data**" - specialised conservation data acquired and curated by BirdLasser;
- 1.2.7        "**Data Supply Agreement**" – the data supply agreement entered into or to be entered into between the Parties in terms of which, among other things, the Parties' arrangement in respect of the supply of the Data by BirdLasser to ABC for non-profit research and related activities is formalised;
- 1.2.8        "**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;
- 1.2.9        "**Joint Venture**" - the unincorporated joint venture formed by the Parties in terms of this MOU;
- 1.2.10       "**Management Board**" - the management board of the Joint Venture, constituted in accordance with the provisions of 9;
- 1.2.11       "**Member**" - any member of the Management Board;
- 1.2.12       "**MOU**" - this memorandum of understanding as amended from time to time;



- 1.2.13        "**Parties**" - collectively, BirdLasser and ABC and "**Party**" shall mean either of them, as the context may require;
- 1.2.14        "**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;
- 1.2.15        "**Prime**" - the variable interest rate quoted from time to time by the Standard Bank of South Africa as its prime rate, which shall be a nominal annual compounded monthly rate, as calculated and charged by that bank and as certified by any manager or director of that bank, whose appointment need not be proved and whose certificate shall, in the absence of manifest error, be final and binding on the Parties;
- 1.2.16        "**Services**" - the services related to the supply of the Data by BirdLasser to ABC;
- 1.2.17        "**Signature Date**" - when this MOU has been signed by both Parties (whether or not in counterpart), the latest of the dates on which this MOU (or a counterpart) was signed by a Party;
- 1.2.18        "**South Africa**" - the Republic of South Africa;
- 1.2.19        "**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;

- 1.2.20 "XYZ" – *your organisation name*;
- 1.2.21 "VAT" - value added tax levied in terms of the Value Added Tax Act No 89 of 1991;
- 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 MOU;
- 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 MOU;
- 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 MOU 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 MOU 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 MOU.

## 2 INTRODUCTION

- 2.1 The Parties hereby record that, -
- 2.1.1 ABC is an organisation primarily focused on biodiversity informatics, from data collection to data analysis, in support of policy formulation and advocacy;
- 2.1.2 BirdLasser is a mobile app that facilitates Data capture by users, and provides this Data to conservation bodies around the world; and
- 2.1.3 conservation policies and action rely on the accurate collection and interpretation of the Data. The Parties collectively have the necessary skills and resources to collect and process this Data, prepare summaries, maps, tables, read data assessments and research papers that interpret this data and accrue financial benefits for these said services. This can be further utilised to develop and refine conservation management policies, field projects, conservation activities and other priority action areas.



2.2 The Parties wish to apply their respective skills and resources on a for profit basis in an effort to improve the conservation and understanding of biodiversity in Africa ("**Conservation Activities**"). The Parties acknowledge that their respective skills and resources are required to improve the impact that each Party will have on conservation and the development of their respective products and services.

2.3 Accordingly, the Parties have agreed to conclude this MOU whereby the Parties will co-operate with the utmost good faith in order to form the Joint Venture and conduct the Conservation Activities.

### 3 **ESTABLISHMENT OF THE JOINT VENTURE**

3.1 With effect from the Signature Date, the Parties establish the Joint Venture and on the terms and conditions of this MOU, solely for the purpose of efficiently conducting the Conservation Activities.

3.2 Save as may be expressly provided for in this MOU, neither Party shall be entitled to represent or hold itself out as being the partner or agent of the other Party or as being able to bind the credit of such other Party.

3.3 The Parties undertake -

3.3.1 to act with the utmost good faith towards each other in the establishment and continued effective administration of the Joint Venture in accordance with the provisions of this MOU and to procure that the Members appointed by them to the Management Board also comply with this 3.3.1;

3.3.2 that they shall take all such steps, do all such things and sign all such documents as may be necessary from time to time to achieve the purpose of the Joint Venture.



- 3.4 Each Party undertakes to make a full disclosure of all information in its possession or under its control which is in any way relevant to this MOU or to the Joint Venture to the other Party, including the furnishing of accounts and explanations of any such matters to the other Party, when reasonably requested to do so.
- 3.5 The Parties agree to pursue the following outcomes in respect of the Conservation Activities of the Joint Venture, -
- 3.5.1 share biodiversity record data and observer data, excluding non-project or observation data, and data derived from biodiversity monitoring collection activities via mobile and other application technologies;
  - 3.5.2 subject to the provisions of the Data Supply Agreement (if applicable) commercialise and monetise Data and relationships;
  - 3.5.3 facilitate, focus and enhance improved conservation management implementation;
  - 3.5.4 pursue joint funding, project and related opportunities across the academic, private sector and institutional funding landscape;
  - 3.5.5 collaborate on joint conservation messaging, including marketing-related campaigns, reputational activities and communicating to the broader community on biodiversity conservation issues without negatively impacting the political neutrality required for both Parties to be impactful; and
  - 3.5.6 promote an understanding of biodiversity conservation issues through environmental education.



## 4 COMMENCEMENT AND DURATION

- 4.1 This MOU shall commence on the Signature Date and shall endure for a fixed period of three years.
- 4.2 The Parties shall review the terms of this MOU on each anniversary of the Signature Date. If the Parties are unable to reach a consensus as to the amendments to be made to this MOU, then this MOU will automatically terminate.
- 4.3 Without derogating from 4.2, the Parties shall conduct a final review of the MOU six months prior to the termination of the MOU.

## 5 PARTICIPATION INTERESTS

The Parties shall share the profit and bear the costs and expenses of the Joint Venture as follows, -

- 5.1 ABC - [●]%; and
- 5.2 BirdLasser - [●]%.

## 6 CONTRIBUTIONS TO THE JOINT VENTURE

- 6.1 BirdLasser shall, with effect from the Signature Date, and on the terms of this MOU -
- 6.1.1 service and maintain the App;
- 6.1.2 collate the Data derived from the App;
- 6.1.3 serve batch Data to the ABC, the format, content and frequency of such data will be agreed to in writing between the Parties;



- 6.1.4 build and test new features related to the acquisition of additional Data;
- 6.1.5 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;
- 6.1.6 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
- 6.1.7 [insert specific SMART/KPI-able BirdLasser requirement/s].
- 6.2 ABC shall, with effect from the Signature Date, and on the terms of this MOU -
  - 6.2.1 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, source of which media piece is derived from or attributable to, in whole or part, the Data supplied to ABC by BirdLasser;
  - 6.2.2 create and distribute media of a quality to BirdLasser's satisfaction containing both images and words that are consistent with ABC's corporate identity as follows -
    - 6.2.2.1 Facebook: four dedicated pieces, six BirdLasser mentions, and six shares of BirdLasser posts per annum;
    - 6.2.2.2 Twitter: tweets referencing the three dedicated media pieces, and six retweets of BirdLasser tweets per annum;
    - 6.2.2.3 YouTube: in the event that the ABC creates a YouTube page, create one video of at least 90 seconds per annum;



- 6.2.2.4 Email: to its mailing list, reasonable content to be provided by BirdLasser, no more than three times per annum;
- 6.2.2.5 Print: demonstrate reasonable effort to create articles, together with reputable publishers, to market the results achieved by both the ABC and BirdLasser; and
- 6.2.2.6 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;
- 6.2.3 share at least one BirdLasser related video or post on Facebook on a monthly basis;
- 6.2.4 share at least one BirdLasser related post on Twitter on a monthly basis;
- 6.2.5 share at least one BirdLasser related video on YouTube on a monthly basis;
- 6.2.6 credit and actively promote BirdLasser in all advertising campaigns, conventions and events;
- 6.2.7 provide, on each anniversary of this MOU, an annual report to BirdLasser indicating compliance or non-compliance with 6.2.2, referencing such media interventions either via screengrab or link, and indicating the reach of such media intervention;
- 6.2.8 market BirdLasser as a tech-enabler of conservation and facilitator of nature-driven communities;
- 6.2.9 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;



- 6.2.10 procure prospective Data recipients and promptly enquire as to whether these recipients align with the objectives of the unincorporated joint venture as outlined in this MOU;
  - 6.2.11 provide BirdLasser with a written report setting out -
    - 6.2.11.1 all details on the manner in which the Data is being utilised by ABC; and
    - 6.2.11.2 any other information that BirdLasser may require from time to time;
  - 6.2.12 the report contemplated in 6.2.11 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;
  - 6.2.13 ensure that it fully understands the needs and objectives of BirdLasser and offers BirdLasser its assistance where possible from time to time; and
  - 6.2.14 [insert specific SMART/KPI-able ABC requirement/s].
- 6.3 As a result of the contributions to be made by the Parties, the Joint Venture shall not employ any employees of its own.

## **7 ADMINISTRATION FEE**

No consideration shall be payable by the Joint Venture for the administration services pertaining to the Joint Venture to be rendered by either Party. Accordingly, each Party shall be liable for the payment of the administration fees incurred by it.

## **8 MAINTENANCE FEE**

- 8.1 In consideration for the maintenance services rendered by BirdLasser for the servicing and maintenance of the App, the Joint Venture shall pay to BirdLasser



such monthly maintenance fee as may have been agreed in writing between the Parties from time to time. For this purpose -

8.1.1 BirdLasser shall provide ABC with a quote of the maintenance fee to be charged by BirdLasser to the Joint Venture for the maintenance services to be performed in respect of the App; and

8.1.2 ABC shall in writing accept or reject the quotation referred to in 8.1.1. If ABC rejects the quotation, then the Parties shall endeavour to reach agreement in writing on the applicable maintenance fee as soon as possible thereafter.

8.2 The aggregate of all maintenance fees payable in terms of 8.1 shall be payable within 30 days after receipt by the Joint Venture of a monthly invoice from BirdLasser for such aggregate maintenance fee.

8.3 For the avoidance of doubt it is recorded that BirdLasser shall be entitled to receive the maintenance fee agreed in terms of 8.1 throughout the duration of this MOU, even if the actual maintenance costs to BirdLasser are less than ABC had anticipated and that BirdLasser shall not be entitled to any increase thereof if the actual maintenance costs to BirdLasser are more than BirdLasser had anticipated.

## 9 **MANAGEMENT BOARD**

9.1 Save as provided for elsewhere in this MOU, the Management Board shall, for the duration of the Joint Venture, be responsible for the conduct and management of all activities of the Joint Venture, which shall include exercising all powers which the Parties themselves have to do all such things as may be necessary or desirable for, or incidental to, the conduct of the Conservation Activities. Accordingly, -

9.1.1 the Management Board shall be the sole representative of the Joint Venture. No Person shall in any manner whatsoever represent the Joint





Venture, save to the extent that such Person may be authorised to do so in terms of this MOU or by a resolution of the Management Board;

9.1.2 in the event that the Joint Venture is dissolved for any reason whatsoever, the existence of the Management Board shall continue but only for so long as is necessary for the purpose of giving effect to the provisions of this MOU and to administer the discharge by the Parties of any obligations or liabilities of the Joint Venture which may survive its dissolution.

9.2 The Management Board shall be constituted and shall conduct its proceedings as follows -

9.2.1 each Party shall, by giving written notice to the other Party, be entitled to appoint, remove and replace two Members to the Management Board, who shall be duly authorised to represent that Party in respect of all matters relating to the Joint Venture; provided that neither Party shall be entitled to appoint as a Member any Person other than a director of that Party and such appointment shall terminate automatically if that Member ceases to be a director of the Party who nominated him. Accordingly -

9.2.1.1 BirdLasser has nominated, and ABC has agreed to the appointment of William Howard Harris (identity number 801020 5068 084) [and [insert name of member] (identity number [•])] as its initial member[s]]; and

9.2.1.2 ABC has nominated, and BirdLasser has agreed to the appointment of [insert name of member] (identity number [•]) [and [insert name of member] (identity number [•])] as its initial member[s]]; and

9.2.2 subject to the provisions of 9.2.1, each Party shall, by giving written notice to the other Party, be entitled to appoint one alternate to any Member appointed by that Party to the Management Board. An alternate shall be entitled to attend, speak and vote at any meeting of the Management Board if a Member appointed by the Party that appointed him is not present;



- 9.2.3 at any meeting of the Management Board, each Member shall have that percentage of the total votes of all Members which is equal to the participation interest held by the Party which nominated such Member, divided by the number of Members (including any alternate/s) nominated by that Party who are present at the meeting;
- 9.2.4 the chairman of the Management Board ("**Chairman**") shall be appointed by each Party in turns on each succeeding anniversary of the Signature Date. The first Chairman shall be appointed by BirdLasser at or before the first meeting of the Management Board. The Chairman shall not have a casting vote in addition to his deliberative vote;
- 9.2.5 a quorum at meetings of the Management Board, shall be one Member representing each of the Parties; provided that if either Party's participation interest is diluted to less than 50% then the quorum at such meetings shall only be a Member representing the other Party;
- 9.2.6 all decisions of the Management Board shall be by majority vote and such decisions shall bind the Parties;
- 9.2.7 meetings of the Management Board shall take place in accordance with the requirements of the business of the Joint Venture from time to time; provided that at least one meeting shall take place every year for the duration of the Joint Venture. Any Member shall be entitled to call a meeting of the Management Board by giving not less than three days written notice to the other Members, which notice shall set out the time, agenda and place for such meeting; provided that notice may be given orally and of a shorter period if reasonably justified by the circumstances;
- 9.2.8 a written resolution which has been signed by both Parties shall be valid and effective as if it had been adopted by a duly convened meeting of the Management Board. Unless the contrary is stated therein, any such resolution shall be deemed to be a resolution of the Management Board which was passed on the day on which it was signed by or on behalf of the



Party who signed it last. The resolution may consist of one or more documents each signed by one Party;

9.2.9 without limiting the discretion of the Members to regulate their meetings, Members may participate in and act at any meeting of the Management Board through the use of a conference telephone or other communications equipment by means of which all Persons participating in the meeting can at least hear each other at approximately the same time. A resolution passed at such a meeting shall, notwithstanding that the Members are not present together in one place at the time of the meeting, be deemed to have been passed at a meeting duly called and constituted on the day on which and at the time at which the meeting was so held. For the avoidance of doubt it is recorded that all the provisions of this 9.2 shall apply to such meetings;

9.2.10 the resolutions of the Management Board shall be recorded in minutes, which shall be circulated to each Member within 21 days of any meeting and confirmed at the next meeting. Receipt of the minutes shall be acknowledged in writing;

9.2.11 no remuneration shall be payable by the Joint Venture to the Members of the Management Board. Each Party shall be responsible for the remuneration and costs of the Members of the Management Board nominated by it; and

9.2.12 the administrative and secretarial functions of the Management Board shall be carried out by ABC;

9.2.13 all costs incurred by the Management Board and which are approved by it, shall be considered to be ABC costs; and

9.2.14 the individual Members of the Management Board shall not be entitled to exercise any authority of the Management Board unless, and to the extent that, they have been authorised by the Management Board to do so.



## 10 FINANCING OF THE JOINT VENTURE

All funding required by the Joint Venture in respect of its Conservation Activities or for purposes of developing its Conservation Activities shall be obtained as follows, -

10.1 [●]% of the funding required shall be provided by ABC; and

10.2 [●]% of the funding required shall be provided by BirdLasser.

## 11 TERMINATION OF THE JOINT VENTURE

Notwithstanding anything to the contrary in this MOU, the Joint Venture and this MOU shall only terminate -

11.1 by dissolution of the Joint Venture in accordance with 18, which shall only occur pursuant to -

11.1.1 a written notice being given by one Party to the other Party stating its intention to terminate the Joint Venture; or

11.1.2 a deadlock in regard to any decision of the Management Board which materially affects the Conservation Activities of the Joint Venture.

## 12 REFERRAL OF OPPORTUNITIES

12.1 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 MOU, 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).



12.2 It is agreed that the Notifying Party shall, for the purposes of 12.3, 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).

12.3 If -

12.3.1 the Parties approve the pursuit of the Subject Opportunity then, subject to 12.4, neither Party shall directly or indirectly pursue the Subject Opportunity in their individual capacity; or

12.3.2 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 MOU, not amount to a breach of any provision of this MOU by the Notifying Party, including (for the avoidance of doubt) 18; provided that -

12.3.2.1 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;

12.3.2.2 even after this 12.3.2 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.

12.4 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.

- 12.5 If the Notifying Party complies with this 12 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 MOU, not amount to a breach of any provision of this MOU by the Notifying Party, including (for the avoidance of doubt) 18; provided that, even after this 12.5 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.

### 13 RESTRAINT

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

13.1.1 "**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;

13.1.2 "**Restrained Area**" means every country in the African continent;

13.1.3 "**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;

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



- 13.1.5            **"Successors-in-title and Assigns"** includes any Person who acquires –
- 13.1.5.1            all or some of the issued shares, or the goodwill, of BirdLasser;
- 13.1.5.2            by cession, the right to enforce any restraint contained in this **Error!  
Reference source not found..**
- 13.2            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, -
- 13.2.1            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;
- 13.2.2            and whether for itself or as the agent of any other Person, directly or indirectly persuade, induce, solicit, encourage or procure any -
- 13.2.2.1            employee of BirdLasser to terminate such employment;
- 13.2.2.2            Prescribed Business Associate to terminate, or to reduce or limit the extent of his or its business with BirdLasser.
- 13.3            ABC acknowledges and agrees that -
- 13.3.1            having regard (amongst others) to the direct and indirect benefits derived by it in terms of this MOU, the restraints imposed upon it in terms of 13.2 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;

13.3.2 notwithstanding the manner in which the restraints in 13.2 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 13.2 in regard to all aspects thereof including in respect of -

13.3.2.1 ABC and its Affiliates referred to in 13.2;

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

13.3.2.3 each of the months falling within the Restraint Period;

13.3.2.4 each country, province and magisterial district in the Restrained Area;

13.3.2.5 every capacity in which ABC is prohibited from acting in terms of 13.2;

13.3.2.6 every activity referred to in 13.2 in respect of which ABC is restrained;

13.3.2.7 each aspect of the Restrained Business; and

13.3.2.8 each Prescribed Business Associate.

13.4 Should any of the provisions of 13.2 or part thereof be found by any competent court to be defective or unenforceable for any reason whatever, the remaining provisions of 13.2 shall continue to be of full force and effect.





13.5 The provisions of 13.2 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.

13.6 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 MOU 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.

## 14 INTELLECTUAL PROPERTY

14.1 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 MOU.

14.2 The Parties acknowledge 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 the Party concerned. The Party coming into the possession or obtaining knowledge of the other Party's Intellectual Property, 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 14.1.

## 15 CO-OPERATION AND GOOD FAITH

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

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

15.2.1 uphold the principle that nature comes first;

15.2.2 make all decisions as quickly as practically possible;



- 15.2.3 make all decisions without regard to politics;
- 15.2.4 deliver tangible and significant results that are to the benefit of nature;
- 15.2.5 assist the other Party in an effort to support the delivery of a positive impact to nature in a manner that is financially sustainable;
- 15.2.6 reduce costs per result in favour of nature; and
- 15.2.7 continuously endeavour to create a better user experience for citizen scientists and contributors to the environment in an effort to remain competitive.

## 16 **PUBLICITY**

- 16.1 No Party shall, subject to 16.2, issue any press release or any public document or make any public statement relating to, or connected with, or arising out of, this MOU which may intentionally or otherwise, result in damage to the reputation of the other Party.
- 16.2 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 MOU 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 MOU, 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.

## 17 **CONFIDENTIALITY**

Notwithstanding the cancellation, expiration or termination of this MOU, 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 MOU, provided that -

17.1 the Receiving Party may disclose the other Party's Confidential Information or Trade Secrets and the existence and contents of this MOU -

17.1.1 to the extent required by law (other than in terms of a contractual obligation of the Receiving Party); and

17.1.2 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 MOU 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 17; and

17.2 the provisions of this 17 will cease to apply to any Confidential Information or Trade Secrets of a Party that -

17.2.1 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 17;

17.2.2 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

17.2.3 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 MOU, in terms of this MOU or otherwise in connection with this MOU.

## 18 **BREACH**



- 18.1 Should either Party materially breach any essential provision of this MOU 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 MOU 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 MOU.
- 18.2 Any amount falling due for payment by either Party in connection with this MOU shall bear interest, which shall accrue daily from the due date for payment thereof or, in the case of amounts due by way of an indemnity or damages (whether liquidated or not), from the date upon which the relevant indemnified loss or damage is sustained. Any damage and/or indemnified loss arising from any breach of any warranty or representation as to a stipulated state of affairs as at any date shall be deemed to have been sustained on the date to which such stipulation relates. Such interest shall accrue at a rate equal to the sum of 5% and Prime.
- 18.3 Notwithstanding anything contained in this MOU, BirdLasser may unilaterally terminate this MOU by giving ABC 30 days written notice of its intention to do so.

## 19 **DISPUTES**

- 19.1 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 MOU, 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.
- 19.2 The Parties hereby consent to the arbitration being -
- 19.2.1 governed by the Uniform Rules of Court; and



- 19.2.2            dealt with on an urgent basis.
- 19.3            This 19 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.
- 19.4            The arbitrator shall be, if the matter in dispute is principally -
- 19.4.1            a legal matter, a practising advocate or attorney of at least 15 years' standing;
- 19.4.2            an accounting matter, a practising chartered accountant of at least 15 years' standing; or
- 19.4.3            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.
- 19.5            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.
- 19.6            Should the Parties fail to agree on an arbitrator within 14 days after the giving of notice in terms of clause 19.1, 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.
- 19.7            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.



19.8 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 19.7.

19.9 The provisions of this 19, -

19.9.1 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;

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

## 20 DOMICILIUM AND NOTICES

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

20.1.1 BirdLasser physical - [•]

facsimile - [•]

email - [•]

attention - [•]

20.1.2 ABC physical - [•]

[•]

[•]

[•]

facsimile - [•]



email - [•]

attention - [•]

- 20.2 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.
- 20.3 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.
- 20.4 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.
- 20.5 This 20 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 20.
- 20.6 Any notice in terms of or in connection with this MOU shall be valid and effective only if in writing and if received or deemed to be received by the Addressee.

## 21 **CESSION, DELEGATION AND ASSIGNMENT**

Each Party will be entitled to cede, delegate or otherwise assign or transfer any of its rights, obligations or interest in, under or in terms of this MOU 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 MOU and the Data Supply Agreement (if applicable).

## 22 GENERAL

- 22.1 This MOU 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 MOU supersedes and replaces all prior commitments, undertakings or representations, whether oral or written, between the Parties in respect of the subject matter hereof.
- 22.2 No addition to, variation, novation or agreed cancellation of any provision of this MOU shall be binding upon the Parties unless reduced to writing and signed by or on behalf of the Parties.
- 22.3 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.
- 22.4 Save as expressly provided in this MOU, 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 MOU to any third party without the prior written consent of the other Party.
- 22.5 No consent or approval in terms of or in connection with this MOU shall be valid or effective unless in writing and signed by or on behalf of the Party giving such consent or approval.





- 22.6 For the purposes of this MOU –
- 22.6.1 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;
- 22.6.2 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 MOU or giving any consent or approval in terms of this MOU.
- 22.7 Without prejudice to any other provision of this MOU, any successor-in-title, including any executor, heir, liquidator, business rescue practitioner, curator or trustee, of either Party shall be bound by this MOU.
- 22.8 The signature by either Party of a counterpart of this MOU shall be as effective as if that Party had signed the same document as the other Party.
- 22.9 The Parties warrant to each other that they have the legal capacity and authority required to conclude and implement this MOU 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.

## 23 **GOVERNING LAW**

This MOU 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.

## 24 **COSTS**



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

**25 SIGNATURE**

On the Signature Date -

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

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

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