**LICENCE OF OCCUPATION**

**THIS AGREEMENT** made in triplicate this \_\_\_\_\_\_\_\_\_\_\_\_\_ day of , 20\_\_\_.

**BETWEEN: XXXXXXXXXXXXXXXXXXXXXXXXXXXX**

(hereinafter referred to as the “Licensor”)

**AND BIRD STUDIES CANADA**

(hereinafter referred to as the “Licensee”)

**WHEREAS** the Licensor ownsa certain parcel of land located at XXXXXXXXXXXXXXXXXXXXXX (hereinafter referred toas “Lands”);

**AND WHEREAS** the Licensee wishes to erect a temporary antennastructure, along with associated infrastructure and equipment, (hereinafter referred to as “the Antenna”), described in Schedule “B”,on the Lands for the purpose establishinga network of automated radio telemetry arrays throughout the Americas that will allow the real-time tracking of radio-tagged flying migratory animals throughout the land and seascape;

**AND WHEREAS** the Licensee and the Licensor have agreed upon a locationfor the Antenna to be installed on the Lands, UTM coordinates being to be confirmed in the field with park staff, (hereinafter referred to as the “Site”);

**AND WHEREAS** the Licensor has agreed to permit the Licensee to access un-leased portions of the Lands, shown in Schedule “D” (hereinafter referred to as the “Access Areas”) for the purpose of accessing the Site for installation and maintenance of the Antenna;

**NOW THEREFORE,** in consideration of the mutual covenants herein contained and the sum of Two Dollars ($2.00) paid by each party hereto to the other party hereto, the receipt and sufficiency whereof is hereby acknowledged by each of the Parties hereto, the Parties hereto acknowledge, covenant and agree as follows:

**TERM**

1. This agreement is for a term of five (5) years commencing on the 1st day of May, 2014 and terminating on the 30tht day of April, 2019 or the date of any earlier termination as provided in this agreement.
2. Provided that the Licensee performs and observes the covenants, provisos and agreements on the Licensee’s part herein contained, the Licensor hereby grants to the Licensee the option to renew this agreement for one (1) additional term of five (5) years upon the same terms and conditions as herein contained save and except that there shall be no additional right of renewal, provided that in order to exercise the option granted herein the Licensee shall give the Licensor not less than one (1) year’s prior written notice of its intention to exercise the aforesaid option and provided always that the Site licensed hereunder for use by the Licensee are, at the time of such renewal and at the Licensor’s sole discretion, determined to be acceptable for continued use.

**ANNUAL REPORTING**

1. In consideration of the licence herein granted and without prior demand, the Licensee shall provide an annual written reporton or before January 31 each year covering operations and activities which include raw data and an explanation of equipment used. This does not include nor require an analysis of the data. Copies of any scientific papers including, but not limited to abstracts, theses and conference abstracts generated as a result of research carried out on NPCA property shall be included in the annual report and summary data.

Annual reports shall be delivered to the Licensor at the following address:

XXXXX

XXXXX

XXXXX

**LICENSE**

1. The Licensor hereby grants to the Licensee a licence to install the Antenna at the Site. The Licensee’s use of the Site under this licence is restricted to the equipment and frequencies listed in Schedule “B”.
2. The exercise of this licence herein by the Licensee and all installation effected by the Licensee shall be at the sole and exclusive risk of the Licensee. The Licensor shall not be liable to the Licensee for any loss, damage, costs and/or disbursements relating to property or trade of the Licensee save in the event that such loss, damage, cost and/or disbursement is directly caused by the negligence of the Licensor, its officers, employees and/or agents.
3. The Licensee shall not assign, transfer or otherwise dispose of, or encumber the licence granted herein in whole or in part without obtaining the prior written consent of the Licensor, which consent may be arbitrarily withheld.

**ACCESS**

1. The Licensor shall make available to the Licensee, its officers, employees and/or agents reasonable access to the Sitefor the purposes necessary for the reasonable exercise by the Licensee of the licence granted herein.
2. When accessing the Site, the Licensee shall be granted access to the Site using onlythe Access Areas. The Licensee shall not access lands outside of the Access Areas.
3. Motorized vehicles will not be permitted on the Site or the Access Areas.
4. The Licensor is not and will not be under any obligation to repair or improve access or clear paths of snow or other obstruction to the Sites or Access Areas beyond the Licensor’s own requirements.
5. The aforesaid right of access shall be exercised at the sole risk of the Licensee herein, the Licensor bearing no responsibility or liability for loss or damage to person or property of the Licensee relating to use of or access to the Site or Access Areas.
6. At the commencement of the term the Licensee shall provide the Licensor with a list of names of persons who will be attending the Siteand Access Areas on its behalf, whether as officer, employee, agent and/or invitee, and shall advise the Licensor in writing of any amendments that should, from time to time, be made to the said list.
7. The Licensee shall provide notice to the Conservation Area Superintendent when accessing the site.
8. The Licensee shall comply with any reasonable rules and regulations that may, from time to time, be drawn up and promulgated by the Licensor to govern the use of the Site.

**OBLIGATIONS OF THE LICENSEE**

1. Save as otherwise provided in this agreement, the Licensee shall bear all costs related to its installations and use of the Site including any studies or certifications required to install the Licensee’s Antenna. Any modifications required by the Licensee’s installations and/or use of the Site shall be carried out at the Licensee’s expense and in a manner acceptable to the Licensor.
2. Any costs resulting from any increase in property taxes or any other tax or levy assessed against the Licensor occurring after the commencement date which is directly attributable to the equipment located on the Site or to the operation of the Licensee’s Antenna, including any increase in a grant paid or payable in lieu of taxes, shall be paid directly by the Licensee or reimbursed to the Licensor on demand if such increase is paid by the Licensor.
3. Where the Licensor incurs an expense as a result of the installation, maintenance or testing of the Licensee’s Antenna, such expense shall be paid by the Licensee to the Licensor, together with an administration charge of fifteen percent (15%) of the amount payable.
4. The Licensee shall maintain its Antenna and any other property which it may have upon the Site in a good and safe state of repair and in a clean and orderly condition.
5. The Licensee shall notify the Licensor promptly of and shall repair and make good at its own expense promptly upon demand by the Licensor, any damage whatsoever caused to the Licensor’s property or that of any other licensee of the Lands if caused by the Licensee’s act or omission or that of any of its officers, employees, or agents, contractors or invitees or reasonably attributable to the equipment or installations owned or operated by the Licensee.
6. The Licensee shall promptly pay for all materials supplied and work done in respect of the Antenna so as to ensure that no lien or claim of lien is registered against any portion of Lands or against the Licensor’s interest therein. If a lien or claim of lien is registered or filed, the Licensee shall discharge it at its expense within twenty (20) days after notice from the Licensor, failing which the Licensor may, in its option, discharge the lien or claim of lien by paying the amount claimed to be due into court and the amount so paid and all expenses of the Licensor, including without limitation legal fees, shall be paid by the Licensee to the Licensor;
7. The Licensee shall use the Site in compliance with all applicable laws, bylaws, rules and regulations of the appropriate jurisdictions pertaining to the environment, health and welfare and occupational safety.
8. The Licensee shall not bring or permit to be brought onto the Site or Access Areas, any substance in a toxic or otherwise hazardous form, or any substance which, if it were to remain on or escape from the Site, may contaminate and/or pollute the Site or any other property with which it may come in contact.
9. In the event that the Siteis contaminated and/or polluted by any action or omission of the Licensee, its employees, agents, contractors or invitees, the Licensee shall immediately notify the Licensor and any government department or agency as may be required by law, of such pollution and/or contamination. The Licensee shall immediately conduct or have conducted at its own expense an environmental audit as may be required by the Licensor and any appropriate government department or agency, which shall include an estimate of the scope of work required to eliminate the contamination and/or pollution caused by the Licensee, its employees, agents, contractors or invitees. Upon acceptance of the said environmental audit by the Licensor and any appropriate government department or agency, the Licensee shall undertake the work necessary to eliminate the said contamination and/or pollution, at its own expense, to the satisfaction of the Licensor and the appropriate government department or agency.
10. The Licensee and its staff shall disinfect (clean and disinfect) all equipment and footwear (using a 5% bleach solution) prior to entering NPCA lands to prevent the potential transfer of pathogens/ disease/ invasive seeds/ species between sites.

**INDEMNIFICATION**

1. The Licensee agrees with the Licensor that the Licensor shall not be responsible for any injury to any person (including death) or for any loss of or damage to any property or equipment belonging to or used by the Licensee or employees or invitees of the Licensee while such property is on or about the Lands, unless such loss or damage is caused by the negligence of the Licensor, its employees, or agents. The Licensee shall make good immediately upon demand by the Licensor any damage whatsoever caused to the Lands by the negligence of the Licensee or of any of its officers, employees, agents, contractors, or invitees or reasonably attributable to the equipment of the Licensee.
2. The Licensee shall indemnify and save harmless the Licensor and also, in the case of subclauses (b) (c) and (d) below, any other user of the Lands, forthwith upon demand therefore from any and all liabilities, damages, costs, claims, suits or actions arising out of:
3. Any breach, violation or non-performance of any covenant, condition or agreement in this agreement set forth and contained on the part of the Licensee to be fulfilled, kept, observed and performed;
4. Any damage to the Landsoccasioned by the Licensee’s use thereof as permitted herein;
5. Any injury to any person or persons, including death, resulting at any time from the negligence of the Licensee, its servants or agents, occurring in or about the Lands and/or areas adjacent to the same;
6. Any damage to property or injury to any person or persons, including death, occasioned by the Licensee doing or suffering to be done on the said Lands and anything under its control that may be a nuisance at law, provided that nothing herein contained shall be construed, interpreted and/or deemed to be authorization by the Licensor for the Licensee doing or suffering to be done on the said lands anything that may be a nuisance at law.
7. Any pollution and/or contamination of the Lands caused by any act or omission of the Licensee, ifs officers, employees, agents, contractors or invitees, during the term of this agreement and this indemnity shall survive the termination of this agreement.

**PROTECTION OF WORKERS**

1. The Licensee expressly agrees that at the demand of the Licensor, it shall forthwith comply with a request to turn off or reduce its transmitter output power in the event that work of whatever nature must be carried out. Should the Licensee fail to comply with such a request or in case of emergency or hazard to person or property, the Licensor may at its discretion and without penalty or liability turn off or reduce such power and shall advise the Licensee of the action taken. This clause relates to Safety Code 6 issued by the Radio Protection Bureau of Health and Welfare Canada in 1991, as may be amended from time to time.
2. The Licensee expressly agrees to comply forthwith with a reasonable request by the Licensor to turn off or reduce its use of any other equipment at the Site which in the Licensor’s opinion could create a hazard or impediment to workers and/or work of whatever nature that in the Licensor’s opinion must be carried out on the Lands. Should the Licensee fail to comply with such a request, the Licensor may at is discretion and without penalty or liability turn off or reduce the Licensee’s use of such equipment and shall advise the Licensee of the action taken.

**MUTUAL COVENANTS**

The Licensor and the Licensee further agree as follows:

1. Pursuant to the terms of this agreement, the installation, maintenance, repair and/or modification, addition or deletion of equipment, as the case may be, owned or used by the Licensee, must meet the requirements and prior written approval of the Licensor, provided always that any subsequent substantial change to this installation or the replacement by the Licensee of any major component with another not identical thereto shall be subject to the prior written approval of the Licensor.
2. The Licensee and the Licensor shall cooperate with each other and with any and all other licensees of the Lands, if applicable, in testing and carrying out any modification that may be necessary to insure proper functioning of all services using the Lands and the covenant of the Licensee hereunder shall be deemed to ensure not only to the benefit of the Licensor but also to the benefit of all other present and/or future licensees of Lands, from time to time. The Licensor in contracting with any other party who seeks to participate in the use of the Lands shall exact from such party substantially the same covenant as is contained in this clause, which covenant shall be expressly stated to be for the benefit of all the other licensees of the Lands at such time and from time to time thereafter.
3. In the event that any of the installations of the Licensee at the Site, including its Antenna and equipment and/or any modifications thereof from time to time, shall cause interference in any way with the facilities of any prior licensee of the Lands, the Licensee shall take steps at its own expense to eliminate such interference. If the Licensee does not take timely and appropriate steps to eliminate the interference, the Licensor may, in its sole discretion terminate the agreement.

**INSURANCE**

1. The Licensee shall at all times throughout the term of this agreement maintain insurance coverage for:
2. All-Risk Property loss covering the full insurable replacement cost of the Antenna and associated equipment without deduction for depreciation and with reasonable deductibles;
3. Commercial General Liability in an amount not less than Five Million Dollars ($5,000,000) per occurrence for bodily injury and property damage;
4. The Licensor shall be included as an additional insured in all such policies, but solely with respect to liability arising out of the operations of the Licensee on the Lands;
5. At the Licensor’s reasonable request, the Licensee shall provide a memorandum of insurance confirming that policies as required herein are in force, and shall notify the Licensor of the cancellation of any such policy.

**FORCE MAJEURE**

1. Failure by either party to perform or observe any covenant, undertaking, obligation or condition herein stipulated on such party’s part to be performed or observed shall not give the other party any claim against such party, or be deemed a breach of this agreement, insofar as such failure arises from force majeure. “Force majeure” means any act of God; inevitable accident; fire; lockout, strike or other labour dispute; riot or civil commotion; political controversy; act of public enemy; law enactment, regulation, rule, order or act of government or governmental instrumentality (whether federal, provincial, local, foreign or other); failure of technical facilities; or other cause of similar or different nature beyond the Licensee’s or the Licensor’s control or that of any major supplier of facilities or services to either party.

**DESTRUCTION**

1. Should any of the Lands and associated facilities licensed herewith for use by the Licensee becomein whole or in part become either partially or totally unusable in the opinion of the Licensor by whatever cause, the Licensor shall be under no obligation to restore the Lands or associated facilities in whole or in part.

**TERMINATION**

1. Upon the expiry or sooner termination of this agreement the Licensee shall remove all its installations and equipment from the Site. The Licensee shall conduct such removal without damaging the Licensor’s property or the property of other licensees or if any such property should be damaged by the Licensee, the Licensee shall be responsible for the cost of repairing any such damage as reasonably determined by the Licensor, and shall leave the Site in a condition acceptable to the Licensor. Any property of the Licensee remaining on the Site ten (10) days after the expiry or sooner termination of this agreement shall be deemed to have been abandoned by the Licensee, and shall become the property of the Licensor or, at the Licensor’s discretion, shall be removed from the Site at the Licensee’s expense.
2. In the event that during the period in which this license agreement is in force the Licensee ceases to hold any required licence or other certification necessary to operate the equipment at the Site, the Licensee shall cease transmitting forthwith and remove its equipment immediately from the Site and this agreement shall terminate as of the date of removal of the last of the Licensee’s installations and equipment from the Site.
3. In the event that during the period in which this license agreement is in force,either the Licensee ceases it owns operations or the Licensor determines, in its sole discretion that the operations at the Siteare incompatible with the use of the Lands, at least six (6) months written notice shall be given.

**DEFAULT**

1. In the event that the Licensee shall fail to perform any of the covenants or its obligations under or in respect of this licence agreement, having been given written notice of such default, then the Licensor may:
2. Terminate this agreement without further notice; and/or
3. Prevent the Licensee from transmitting and receiving; and/or
4. Perform or cause to be performed any such covenants and/or obligations or any part thereof at the Licensee’s expense, the amount of which expense shall be deemed to be the cost incurred by the Licensor plus an administrative charge of fifteen percent (15%) of that cost.

**NO TENANCY, AGENCY OR PARTNERSHIP CREATED**

1. Nothing contained herein shall be deemed or construed by the parties as creating the relationship of principal and agent, Lessor and Lessee, or of partnership or of joint venture between the parties, it being understood and agreed that none of the provisions contained herein, nor any acts of the parties, shall create any relationship between the parties other than that of licensor and licensee.

**NOTICE**

1. It is mutually agreed between the Parties that all notices or other documents required or which may be given under this Agreement shall be in writing, duly signed by the party giving such notice and delivered/sent/transmitted in person, by mail or by nationally/internationally-recognized courier, with a copy by telefax (if available), addressed as follows:

To the Licensor,

**X**

And to the Licensee,

**Bird Studies Canada**

PO Box 160, 115 Front Road

Port Rowan, Ontario N0E 1M0

Attention: Motus Wildlife Tracking System Manager

Facsimile: (519) 586-3532

Telephone: (519) 586-3531 X 162

Emergency: (519) 820-6040

or to any solicitor or firm of solicitors for the time being acting for the Licensee or the Licensor, as known to the others by reason of a notice given pursuant to this Section. Any notice or document so given shall be deemed to have been received on the third business day following the date of mailing. Any party may from time to time, by notice given as provided above, change its address for the purpose of this clause.

**SUCCESSORS**

1. This agreement and the covenants and obligations herein contained shall enure to the benefit of and be binding upon the Licensor, its successors and assigns and shall be binding upon the Licensee, its successors and assigns.

**GENERAL PROVISIONS**

1. This agreement may only be amended in writing executed by both parties hereto and attached as an Addendum to an executed original of this agreement.
2. Any condoning, excusing or overlooking by the Licensor of any default, breach or non-observance of any covenant, proviso or condition of this agreement does not operate as a waiver of the Licensor’s rights hereunder in respect of any subsequent defaults, breaches or non-observances and does not defeat or affect in any way the rights of the Licensor herein in respect of any subsequent defaults, breaches or non-observances.
3. The Licensee agrees that it shall not register this Agreement.
4. The parties acknowledge that this agreement does not grant any interest, whether legal or equitable, to the Licensee in or to any real property of the Licensor.
5. The parties acknowledge that the headings throughout this agreement form no part of the agreement itself, and are wholly without legal significance.
6. This agreement shall be interpreted in accordance with the laws of the Province of Ontario.

**IN WITNESS WHEREOF** the parties have duly caused this agreement to be executed.

XXXXXX

Per:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

XXX

(I have authority to bind the Corporation)

**BIRD STUDIES CANADA**

Per:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name

(I have authority to bind the Corporation)

**SCHEDULE “A”**

**SCHEDULE “B”**

**Telemetry Equipment (the “Antenna”)**

* 20-30’ pop-up tower
* 2-4, 6’ yagi antenna
* Guy lines (14’ – 20’ from tripod, depending upon height of tower or approximately 98 – 220 ft2)  
  (guy lines will be marked with reflective tape and yellow wire covers)
* SensorGnome receiver and hardware
* Power supply and solar panels (footprint 3’x3’)
* Frequency: 166.380 MHz

**SCHEDULE “C”**

**The “Site”**

**SCHEDULE “D”**

**“Access Areas”**