

SUBSCRIPTION AGREEMENT

NAME OF SUBSCRIBER:

Attn:

Terms & Conditions:

NOTICE: THE FOLLOWING GENERAL TERMS & CONDITIONS APPLY TO YOUR USE OF THE WBFI RESEARCH FOUNDATION PROJECT WILDBIRD DATABASE CD'S.

GENERAL TERMS & CONDITIONS FOR USE OF THE PROJECT WILDBIRD DATABASE CD'S:

The terms and conditions listed below govern use of the Project Wildbird Database CD's (the "PWD CD's") and materials available therein ("Materials") provided by WBFI Research Foundation, an Illinois not-for-profit corporation (the "WBFI RF"). The terms "you" and "your" in upper or lowercase shall mean the entity (e.g., company, corporation, not-for-profit corporation, foundation, partnership, sole proprietor, individual, etc.) or government agency entering into a Subscription Agreement with WBFI RF. The "Subscription Agreement" shall consist of these General Terms and Conditions, and the standard, transactional rates applicable to you (the "Price Schedule").

1. GRANT OF RIGHTS; RESTRICTIONS ON USE

1.1 For so long as You are a member in good standing of Wild Bird Feeding Industry, and except as otherwise provided herein, You and the Authorized Users (defined below in Section 2.1) are granted a nonexclusive, nontransferable, limited right to access and use for research purposes the PWD CD's and Materials made available to you. The rights granted to each Authorized User are as follows:

(a) The right to electronically display Materials retrieved from the PWD CD's for the Authorized User's individual use (e.g., no Authorized User may network others via LANs, WANs, intranets or the internet). Notwithstanding the foregoing, an Authorized User may display a *de minimis* amount of the Materials on an incidental, infrequent basis for non-commercial purposes to other Authorized Users so long as the Authorized Users are in the same physical location and the means of display is not through the internet, an intranet or other types of networking communication like LANs, WANs;

(b) The right to email, fax, download or make printouts using the commands of the PWD CD's and the right to create a single printout of Materials accessed or downloaded by any other means (collectively, "Authorized Printouts");

(c) Notwithstanding anything to the contrary herein, the right to (1) excerpt or quote insubstantial portions of Materials in documents prepared in the ordinary course of your business to the extent permitted by applicable copyright law; and (2) store Materials for periods in excess of the periods set forth above to the extent required for legal or regulatory compliance.

For the avoidance of doubt, downloading and storing Materials in an archival database is prohibited. The PWD CD's and the Materials are protected by copyright, intellectual property laws, and other laws that prevent unauthorized access and use. If you are not an Authorized User, you are not permitted to access or use the PWD CD's for any purpose whatsoever. If you nevertheless access and use the PWD CD's without authorization, your access and use will be governed by these General Terms and Conditions and you will be liable to WBFI RF for any breach of the General Terms and Conditions as well as for unauthorized access and payment for use at the rates in any applicable Price Schedule.

1.2 To the extent permitted by applicable copyright law, you and the Authorized Users may make copies of Authorized Printouts and distribute Authorized Printouts and copies so long as WBFI RF's ownership is acknowledged.

1.3 Except as specifically provided in Sections 1.1 and 1.2, you and the Authorized Users are prohibited from downloading, emailing, faxing, storing, reproducing, transmitting, displaying, copying, distributing, or using Materials retrieved from the PWD CD's. You may not exploit the goodwill of WBFI RF or its affiliates, including its trademarks, service marks, or logos without the express written consent or prior authorization of WBFI RF. Additionally, under no circumstances may you or any Authorized User offer any part of the PWD CD's or Materials for commercial resale or commercial redistribution in any medium or use the PWD CD's or the Materials to compete with the business of WBFI RF.

1.4 All right, title, and interest (including all copyrights, trademarks and other intellectual property rights) in the PWD CD's and Materials in any medium belongs to WBFI RF and/or its affiliates. Neither you nor the Authorized Users acquire any proprietary interest in the PWD CD's, Materials, or copies thereof except the limited license set forth herein.

1.5 You and the Authorized Users may not use the PWD CD's or Materials in any fashion that infringes the intellectual property rights or proprietary interests of WBFI RF, its affiliates or any third party.

1.6 You and the Authorized Users may not remove or obscure the copyright notice or other notices contained in Materials.

1.7 Other provisions that govern use of the Materials are set forth in any applicable Price Schedule, online descriptions of files, online notices following source selection, and individual documents retrieved from the PWD CD's, all of which are incorporated by

reference into the Subscription Agreement.

2. ACCESS TO SERVICES

2.1 Only your employees, temporary employees, students, partners/members, and contractors dedicated to performing work exclusively for you (to the extent those categories of persons are appropriate to your situation) are eligible to access and use the PWD CD's and Materials ("Eligible Persons"). Without limitation, external professional service providers such as attorneys, accountants, outsourcers, advertising agencies and public relations firms are specifically excluded from being Eligible Persons. The term "Authorized User" means an Eligible Person whom you have identified to WBFi RF for such purposes.

2.2 Use of the PWD CD's via mechanical, programmatic, robotic, scripted or any other automated means is strictly prohibited. Unless otherwise agreed to by WBFi RF in writing, use of the PWD CD's is permitted only via manually conducted, discrete, individual search and retrieval activities.

2.4 The PWD CD's, Materials, and feature functionality within the PWD CD's may be enhanced, added to, withdrawn, or otherwise changed by WBFi RF without notice.

3. LIMITED WARRANTY

3.1 WBFi RF represents and warrants that it has the right and authority to make the PWD CD's and Materials available to you and the Authorized Users as authorized expressly by the Subscription Agreement.

3.2 EXCEPT AS OTHERWISE PROVIDED IN SECTION 3.1, THE PWD CD'S AND MATERIALS ARE PROVIDED ON AN "AS IS", "AS AVAILABLE" BASIS AND WBFi RF AND EACH THIRD PARTY SUPPLIER OF MATERIALS EXPRESSLY DISCLAIM ALL OTHER WARRANTIES, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

4. LIMITATION OF LIABILITY

4.1 A Covered Party (as defined below) shall not be liable for any loss, injury, claim, liability, or damage of any kind resulting in any way from (a) any errors in or omissions from the PWD CD's or any Materials available or not included therein, (b) the unavailability or interruption of any features thereof or any Materials, (c) your or an Authorized User's use of the PWD CD's or Materials, (d) the loss or corruption of any data or equipment in connection with the PWD CD's, (e) the content, accuracy, or completeness of Materials, all regardless of whether you received assistance in the use of the PWD CD's or any Materials from a Covered Party, or (f) any delay or failure in performance beyond the reasonable control of a Covered Party.

4.2 “Covered Party” means (a) WBFI RF and any officer, director, employee, subcontractor, agent, affiliate, successor, or assign of WBFI RF; and (b) each third party supplier of Materials, their affiliates, and any officer, director, employee, subcontractor, agent, successor, or assign of any third party supplier of Materials or any of their affiliates.

4.3 TO THE FULLEST EXTENT PERMISSIBLE BY APPLICABLE LAW, UNDER NO CIRCUMSTANCES WILL THE AGGREGATE LIABILITY OF THE COVERED PARTIES IN CONNECTION WITH ANY CLAIM ARISING OUT OF OR RELATING TO THE PWD CD’S OR MATERIALS OR THE SUBSCRIPTION AGREEMENT EXCEED THE LESSER OF YOUR ACTUAL DIRECT DAMAGES OR THE AMOUNT YOU PAID FOR THE PWD CD’S IN THE TWELVE MONTH PERIOD IMMEDIATELY PRECEDING THE DATE THE CLAIM AROSE. YOUR RIGHT TO MONETARY DAMAGES IN THAT AMOUNT SHALL BE IN LIEU OF ALL OTHER REMEDIES WHICH YOU MAY HAVE AGAINST ANY COVERED PARTY.

4.4 TO THE FULLEST EXTENT PERMISSIBLE BY APPLICABLE LAW, NEITHER YOU NOR THE COVERED PARTIES WILL BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER (INCLUDING, WITHOUT LIMITATION, ATTORNEYS’ FEES) IN ANY WAY DUE TO, RESULTING FROM, OR ARISING IN CONNECTION WITH THE PWD CD’S, MATERIALS, OR THE FAILURE OF ANY COVERED PARTY TO PERFORM ITS OBLIGATIONS. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO YOUR (AND YOUR AUTHORIZED USERS) INFRINGEMENT OF INTELLECTUAL PROPERTY OR MISAPPROPRIATION OF PROPRIETARY DATA BELONGING TO WBFI RF OR ITS THIRD PARTY SUPPLIERS.

4.5 Notwithstanding anything to the contrary in this Section 4: (a) if there is a breach of the warranty in Section 3.1 above, then WBFI RF at its option and expense, shall either defend or settle any action and hold you harmless against proceedings or damages of any kind or description based on a third party’s claim of patent, trademark, service mark, copyright or trade secret infringement related to use of the PWD CD’s or Materials, asserted against you by such third party provided: (i) all use of the PWD CD’s and Materials was in accordance with the Subscription Agreement; (ii) the claim, cause of action or infringement was not caused by you modifying or combining the PWD CD’s or Materials with or into other products or applications not approved by WBFI RF; (iii) you give WBFI RF prompt notice of any such claim; and (iv) you give WBFI RF the right to control and direct the investigation, defense and settlement of each such claim. You, at WBFI RF’s expense, shall reasonably cooperate with WBFI RF in connection with the foregoing.

(b) In addition to Section 4.5(a), if the PWD CD’s or the operation thereof become, or in the opinion of WBFI RF are likely to become, the subject of a claim of infringement, WBFI RF may, at its option and expense, either: (i) procure for you the

right to continue using the PWD CD's, (ii) replace or modify the PWD CD's so that they become non-infringing; or (iii) terminate the Subscription Agreement on notice to you and grant you a pro-rata refund or credit (whichever is applicable) for any pre-paid fees or fixed charges.

(c) The provisions of Sections 4.5(a) and (b) shall constitute your sole and exclusive remedy for the respective matters specified therein.

5. MISCELLANEOUS

5.1 These General Terms and Conditions may be changed from time to time as described below or by written agreement. Charges and payment terms may be changed in accordance with the terms of any applicable Price Schedule; all other provisions of these General Terms and Conditions may be changed by WBFi RF immediately upon notice to you. If any changes are made to these General Terms and Conditions, such changes will: (a) only be applied prospectively; and (b) not be specifically directed against you or the Authorized Users but will apply to all similarly situated WBFi RF customers using the PWD CD's. You may terminate the Subscription Agreement upon written notice to WBFi RF if any change to these General Terms and Conditions is unacceptable to you. For termination to be effective under this Section 5.1, written notice of termination must be provided to WBFi RF within 90 days of the effective date of the change. Continued use of the PWD CD's following the effective date of any change to these General Terms and Conditions constitutes acceptance of the change but does not affect the foregoing termination right. Except as provided above, the Subscription Agreement may not be supplemented, modified or otherwise revised unless signed by duly authorized representatives of both parties. Furthermore, the Subscription Agreement may not be supplemented, modified or otherwise revised by email exchange even if the email contains a printed name or signature line bearing signature-like font. The foregoing does not prohibit the execution of electronic contracts bearing electronic signatures of authorized representatives of both parties, provided such signatures include digital certifications or are otherwise authenticated.

5.2 WBFi RF may temporarily suspend or discontinue providing the PWD CD's to any Authorized User without affecting other Authorized Users without notice and pursue any other legal remedies if you or any Authorized User fails to comply with any obligations under the Subscription Agreement.

5.3 All notices and other communications hereunder shall be in writing or made electronically. Notices shall be deemed to have been properly given on the date deposited in the mail, if mailed; on the date first made and sent electronically, if sent electronically; or on the date received, if delivered in any other manner. Legal notices to WBFi RF should be sent to Executive Director, c/o WBFi Research Foundation, 1305 N. Tahoe Trail, Sioux Falls, SD 57110, or call us at (888)839-1237.

5.4 The failure of you, WBFi RF or its affiliates, or any third party supplier of Materials to enforce any provision hereof shall not constitute or be construed as a waiver

of such provision or of the right to enforce it at a later time.

5.5 Neither you nor any Authorized User may assign your rights or delegate your duties under the Subscription Agreement to access and use the PWD CD's and Materials without the prior written consent of WBFI RF, which consent shall not be unreasonably withheld. The Subscription Agreement and any amendment thereto shall be binding on, and will inure to the benefit of the parties and their respective successors and permitted assigns.

5.6 WBFI RF's ability to provide information to its customers is regulated by a variety of privacy, data protection, and other laws in a variety of jurisdictions. You acknowledge and agree that WBFI RF will perform a due diligence review of you and that the due diligence review will be heightened if you desire access to sensitive information. You agree to reasonably cooperate with WBFI RF to provide all information reasonably necessary for WBFI RF to comply with applicable laws. You further acknowledge and agree that if you fail to cooperate with WBFI RF's due diligence review, WBFI RF may decline to provide you with access to the PWD CD's or to certain types of information. Finally, you also agree that during the term of the Subscription Agreement, WBFI RF may perform periodic reviews of your use of regulated data in order to comply with regulatory, data security, privacy and license restrictions, and that the reviews may include, but are not necessarily limited to, asking you to verify your permissible purpose for accessing such data. You agree to cooperate with WBFI RF in any such review and to promptly produce all records and documentation reasonably requested by WBFI RF for this purpose.

5.7 If you, any of your Authorized Users, or any person you or your Authorized Users permits to use the WBFI RF PWD CD's or who gains access through an Authorized User's (a "User") should access or use regulated data in an unauthorized manner (a "Security Event"), then the following provisions will apply: (a) if required by applicable law, you will notify the individuals whose information has potentially been accessed or used that a Security Event has occurred; (b) you will notify any other parties (including but not limited to regulatory entities and credit reporting agencies) as may be required by law; (c) the notification will not reference WBFI RF or the product through which the regulated data was provided, nor will WBFI RF be otherwise identified or referenced in connection with the Security Event, without the express written consent of WBFI RF; (d) you will be solely liable for all claims that may arise from a Security Event caused by you, your Authorized Users or a User and you will indemnify WBFI RF for any third party claims directed against WBFI RF that arise from such Security Event; and (e) all such notifications and indemnity claims related to your Security Event will be solely at your expense.

5.8 The Subscription Agreement shall be governed by and construed in accordance with the laws of the State of Illinois regardless of the law that might otherwise apply under applicable principles of conflicts of law.

5.9 The Subscription Agreement will be enforced to the fullest extent permitted by

applicable law. If any provision of the Subscription Agreement is held to be invalid or unenforceable to any extent, then (a) such provision will be interpreted, construed and reformed to the extent reasonably required to render it valid, enforceable and consistent with its original intent and (b) such invalidity or unenforceability will not affect any other provision of the Subscription Agreement.

5.10 The Subscription Agreement constitutes the entire agreement of the parties with respect to its subject matter and replaces and supersedes any prior written or verbal communications, representations, proposals or quotations on that subject matter.

DATED: _____

SUBSCRIBER:

By: _____

Its: _____