

## Policy for Commercial Use of IUCN Biodiversity Data

### Background and Context

In recent months, the Global Species Programme and Species Survival Commission have noticed an increase in interest from the private sector in species data available on the IUCN Red List of Threatened Species™. This interest has served to highlight a policy vacuum within IUCN on the issue of private sector use of biodiversity data collated and managed under the auspices, authority and responsibility of IUCN. Additionally, there is currently no formal guidance regarding the opportunity to recover (significant) costs associated with IUCN's development and management of its knowledge products by legitimizing and encouraging private sector use through a data sharing mechanism<sup>1</sup>.

This Policy for Commercial Use of IUCN Data (the “document” or “Commercial Use of Data Policy” or “Policy”) establishes the IUCN policy on these questions and in doing so it addresses the policy gap that currently exists. It does not seek to fully explore the possible uses of these data by the private sector except as this pertains to potential risk and to identify specific circumstances that are to be avoided. To date, interest has been expressed by companies in the extractives industries, logistics, biotechnology, defence, and research and policy development.

It should be noted at the outset that in the case of the IUCN Red List, all data not covered by the ‘*Sensitive Data Access Restrictions Policy*’ (see **Annex 1**) as adopted by the SSC Steering Committee in 2008 (and as it may be amended from time to time), are readily available for download on-line in accordance with the current Terms of Use. Data that are covered by the ‘*Sensitive Data Access Restrictions Policy*’ are not displayed online, as their public availability could jeopardize the survival of species. The current document therefore does not allow for the provision of the aforesaid sensitive data to the corporate sector.

Currently the data on the IUCN Red List are governed by a Terms and Conditions of Use (“User Agreement,” see **Annex 2**), which itself is currently in the process of revision. This essentially renders these data accessible to any users willing to abide by these terms. This Policy makes the necessary provisions for the private sector to secure legitimate use of these data for commercial purposes<sup>2</sup> in line with the conservation purpose (see below) under standardized terms. In doing so, it provides the opportunity for IUCN to ensure that users: i) have a good understanding of what the data mean and represent; ii) are aware of any caveats associated with their use for any given purposes; and iii) are using the most current data. It also outlines the mechanism by which IUCN and its networks may benefit from this use, consistent with the endorsement by Council as part of ‘*A Framework of Principles for Managing Biodiversity Conservation Data and Information*’ (see **Annex 3**).

‘*A Framework of Principles for Managing Biodiversity Conservation Data and Information*’, as adopted by Council in 2010, provides the general framework for this Policy. The Framework also relates to the overarching knowledge management policy and strategy that is currently in development. Additionally, it complements IUCN's new and evolving thinking on business models.

Similarly to the Framework, this Policy is developed in the context of, and to address, in part, actions called for in several World Conservation Congress (WCC) Resolutions, including the following:

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<sup>1</sup> It is already agreed that monies raised by sharing IUCN data are to be used exclusively to support the further development of these data products and the volunteer networks responsible for their generation.

<sup>2</sup> Commercial purposes = Commercial purposes” means a) any use by, on behalf of, or to inform or assist the activities of, a commercial entity (an entity that operates ‘for profit’) or b) use by any individual or non-profit entity for the purposes of revenue generation..

Resolution 2.23 *Improving IUCN capacity for strategic information management/information technology* - confirmed that IUCN must make a serious and sustained commitment to build an information technology and information management infrastructure and requested the Director General to identify resources to develop and implement a strategic plan for information technology which is adapted to the organization's international mission.

Resolution 3.085 *Principles of knowledge sharing of the Conservation Commons* - called upon IUCN members, and all sectors of the international community, to endorse the Principles of, and participate in, the *Conservation Commons*

Resolution 4.012 *IUCN policy and strategy for the management of biodiversity data and information* - urged the Director General to develop a clear policy and strategy for the management of biodiversity data and information in line with the *Principles of the Conservation Commons*, and called for IUCN to play an active leadership role in biodiversity data-sharing initiatives, and to ensure that all non-sensitive biodiversity data be made freely and openly available through these processes

Resolution 4.102 *Advancing knowledge management in conservation* - invited all IUCN members to collaborate in improving knowledge management practices across the Union, requested Council to give urgent consideration to knowledge management within the Union's overall Programme, and called on IUCN to formulate standards and guidelines for better knowledge management across the Union.

For the purposes of this document, biodiversity conservation data and information includes data<sup>3</sup> that concerns the status, distribution, trends, conservation measures, drivers of change and impacts relating to the components of biodiversity (genes, species and ecosystems) and which are the product either of IUCN's sole action or of partnerships that IUCN has with other organizations, including the IUCN Red List Partnership. It can encompass, without limitation, media, electronic files and other information in digital form. For purposes of this document, the term "biodiversity data" or "data" will include the full scope described in this paragraph.

It bears noting at the outset that this document has also been written consistent with the Joint Statements from the Global Biodiversity Information Facility (GBIF) and the Conservation Commons to the 8<sup>th</sup> Meeting of the Conference of the Parties to the CBD (Curitiba, 2006), which called on all Parties to ensure, wherever possible, open access to biodiversity data for all publicly funded initiatives and research and acknowledged that open access to, and effective use of, conservation data, information and knowledge resources by all sectors of society is essential both to enable sound decision making and to empower those concerned with the conservation of biodiversity and the natural world. Notwithstanding this, the recovery of costs through a mechanism that standardizes the use of IUCN knowledge products for commercial purposes is wholly consistent with the *Principles of the Conservation Commons* which call only for a 'fair and responsible' use of these assets.

In no way does this document restrict or unreasonably control access to biodiversity data. Rather, it seeks to standardize protocols and procedures surrounding the use of data by commercial enterprises that wish to be informed by them. In doing so, this document provides a fair and responsible mechanism by which IUCN, its Commissions and Partners may recover a portion of the costs associated with the generation, processing and management of the data. In doing so, IUCN is responding to the recommendation of the 2007 (and subsequent) external reviews that "*IUCN should make diversifying the funding base... a central priority*". It should be noted that under this Policy, IUCN will make available biodiversity data already displayed on its websites to all non-commercial entities (including but not limited to non-governmental organizations, governments, government agencies and academia) free of charge, providing they are not using it for financial gain or to the benefit of a commercial company. Under this Policy, commercial entities, and other entities

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<sup>3</sup> Data = raw data, aggregated data and metadata

using the data for financial gain or for the benefit of a commercial company, are required to enter into a negotiation with IUCN prior to receiving data. This is partly to ensure that the intended use of the data is in line with the *conservation purpose* outlined below, and partly to explore options for obtaining cost recovery for the generation, processing and management of the data from the commercial entity in question, or from any other entity using the data for financial gain or for the benefit of a related commercial company. In the implementation of this Policy, it must be noted that in those instances in which IUCN holds data from another organization, IUCN is bound by any conditions on data use set by that organization.

### **Data Use Agreements**

Providing access to data for use by commercial enterprises by way of an agreement developed solely for this purpose is akin to providing a product for consumption, and neither constitutes nor is to be regarded as a partnership of any kind. Monies provided under these agreements shall not be subject to any restrictions that the user of the data might wish to provide for in the agreement. This ensures that the integrity of IUCN's data remains above reproach and clear of any accusation of bias or inappropriate influence by third parties. All IUCN *Data Use Agreements* must state this clearly and must adopt substantially the text of the *Template Data Use Agreement (Annex 4)*. IUCN may use these agreements, *inter alia*, to garner information relating to the private sector's use of conservation data. Although Data Use Agreements constitute a new form of engagement with the private sector for IUCN, the *Template Data Use Agreement* has been developed in accordance with the relevant sections of the existing *Operational Guidelines for Private Sector Engagement* that were approved by Council in 2009.

Data Use Agreements provide companies with a legitimate means of accessing and using biodiversity data for the following *conservation purpose*: **to inform their operations so as to minimize or avoid negative impact on the environment, and/or to guide direct investments in support of conservation**. They also provide IUCN with the opportunity to ensure that users have a good understanding of what the data mean and represent and that they are using the most current data in an appropriate and intelligent manner. For the commercial entity, the benefits are those of risk mitigation in terms of both the reputational risks associated with causing harm to threatened species, as well as helping them comply with the increasing number of legislative restrictions surrounding the impacts that their operations have on biodiversity.

Each new agreement must be based on the *Template Data Use Agreement* (attached here as **Annex 4**). Agreements will be negotiated by IUCN Secretariat staff (with the support of the Office of the Legal Adviser (OLA) on any material issues that might arise), and reviewed and signed-off by the relevant IUCN Programme Directors/Heads, subject to the terms of the delegation of authority by the Director General. If material changes to the template agreement are requested by the other party, then these changes must be approved by the IUCN Office of Legal Affairs (OLA) in negotiation with the legal department of the other party, as necessary and appropriate. I

### **Risks**

The risk that companies, or indeed individuals, may use data to exploit biodiversity is largely addressed prior to the release of biodiversity information on the IUCN Red List website. This is achieved through the implementation of the '*Sensitive Data Access Restrictions Policy*', as mentioned above (See **Annex 1**). As a matter of policy and practice, IUCN may refuse to provide data to a commercial entity, at the discretion of Programme Directors/Heads and/or Commission Chairs and without the need to justify any such refusal.

Given that a Data Use Agreement does not constitute a contractual relationship of any kind between IUCN and the user beyond the grant of access to data, there should be no need for an individual risk

assessment or due diligence to be carried out for each agreement. In developing this policy, and through its approval by Council, IUCN has given careful consideration to any risks associated with Data Use Agreements as a mechanism for recovering costs associated with data development and management.

Broader reputational risk to IUCN is reasonable given the prohibition of use of IUCN's name and logo by third parties (see below). Consequently, establishing a mechanism by which a private sector entity may be given the right to use IUCN data to the mutual benefit of the parties, and ultimately of biodiversity, presents a level of risk that is either acceptable or otherwise manageable through contractual provisions.

The greatest risk may arise in connection with the use of the revenue generated by IUCN under these agreements. It is essential that IUCN operate with the highest degree of transparency in respect of funds raised by granting access to data largely provided by voluntary networks. The funds raised through Data Use Agreements must be reinvested substantially in the networks responsible for gathering, processing and/or managing the data, directly for the improvement of the data themselves, or their delivery. This will not only avoid the serious relational damage that could come if IUCN were perceived to be benefiting financially from the voluntary work of others but will serve to further develop the core knowledge products. In this context, it is understood that IUCN shall be entitled to recover fair, reasonable and transparent overhead/costs associated with the negotiation, finalization and administration of any Data Use Agreement.

### **Mandatory Legal Clauses**

While the *Template Data Use Agreement (Annex 4)* is intended to provide a starting basis for all Data Use Agreements, it is understood that certain companies will have specific legal requirements that may require negotiation of changes to the template. In any such case, the text of the *Template Data Use Agreement (Annex 4)* is substantially non-negotiable in all Data Use Agreements, and that may be deleted or materially altered only upon review and advice by OLA. This is intended to protect IUCN, its Commissions and Members.

Among such clauses, as is clear from **Annex 4**, Data Use Agreements must explicitly and totally prohibit any use of IUCN's name, logo or trademarks by the other party for external communications of any kind or promotion of the company or its affiliates. Appropriate citation may be permitted for internal reporting subject to prior approval by IUCN. Companies wishing to garner public support through association or collaboration with IUCN other than in the context of a Data Use Agreement must negotiate separate agreements and will be subject to applicable, full due-diligence and risk assessment procedures specific to the engagement and the company.

Consistent with the revised '*Operational Guidelines for Private Sector Engagement*' (version 2) that were adopted by IUCN Council in February 2009, all agreements with the private sector must also include a provision for termination without cause. This clause grants either party the right to terminate the Data Use Agreement, under other applicable terms, for no reason, provided the terminating party gives the other party advance written notice of the number of days as agreed by the parties. This clause should also make provisions for the removal of data in case of termination.

Data Use Agreements must also include all appropriate intellectual property rights terms and conditions for the protection of IUCN's interests, including appropriate conditions applicable to derivative works that may be based on or incorporate the data to which access has been granted.

## **Annex 1. Sensitive Data Access Restrictions Policy for the IUCN Red List**

1. Under normal circumstances, all data will be displayed on the web site. For species that are sensitive to location data being displayed:
2. The burden of proof to justify the case for withholding data from the site lies with the IUCN SSC Red List Authority.
3. In general, the withholding of data policy should apply to Endangered (EN) and Critically Endangered (CR) species that:
  - (a) are listed under criteria C and D (but species assessed as CR under criteria A or B, but qualifying for EN under criteria C or D should also be highlighted);
  - (b) have high economic value;
  - (c) are threatened by trade; and
  - (d) have important sites that are generally not well known (i.e., an internet search engine such as Google cannot find these sites).
4. For species with sensitive sites (e.g., fish, migratory turtles, etc.), maps should be prepared at a minimum size appropriate to that species.

## Annex 2

### **The IUCN Red List Terms and Conditions of Use (version 2.1)**

*Use of this site constitutes your acceptance of these Terms and Conditions which take effect on the date from which you first use the site.*

#### **1. General**

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This User Agreement sets forth the terms and conditions of a license for you to use The IUCN Red List of Threatened Species™ website (hereafter referred to as "The IUCN Red List") and the data contained within it ("IUCN Red List Data"). For the purposes of this Agreement, IUCN Red List Data comprise all tabular, and all spatial and associated attribute, data contained within The IUCN Red List. By accessing and/or using The IUCN Red List, you have read, consent and agree to comply with all of the Terms and Conditions of this User Agreement. The rights and obligations concerning use of The IUCN Red List in accordance with this User Agreement are personal to you or to members of your household and are not transferable to any other person or entity. From time to time, these terms and conditions of use of The IUCN Red List may be modified. Accordingly, please continue to review the terms and conditions whenever accessing or using The IUCN Red List, since any use by you after any such changes, modifications, or additions shall be governed by this User Agreement.

#### **2. Copyrights and ownership**

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The IUCN Red List contains copyrighted material and/or other proprietary information and thus, IUCN Red List Data are protected by intellectual property agreements and copyright laws and regulations worldwide. IUCN and/or their collaborators are the sole and exclusive owners of all right, title and interest, including trademarks, copyrights, trade names, trade secrets and other intellectual property rights, contained in the data and software of The IUCN Red List.

You agree to not alter or remove any copyright symbol or other identification concerning authorship of any of the materials contained on or otherwise made available to you in The IUCN Red List.

#### **3. No commercial use**

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Neither (a) IUCN Red List Data nor (b) any work derived from or based upon IUCN Red List Data (i.e., "Derivative Works") may be put to Commercial Use without the prior written permission of IUCN. For the purposes of these Terms and Conditions, "Commercial Use" means a) any use by, on behalf of, or to inform or assist the activities of, a commercial entity (an entity that operates 'for profit') or b) use by any individual or non-profit entity for the purposes of revenue generation. If you wish to use the information obtained from The IUCN Red List for such commercial purposes, please contact IUCN directly using the contact details below in section [16](#). However, IUCN warrants that you are free to view and query The IUCN Red List, and places no restrictions on use of the IUCN Red List Categories associated with each named taxonomic entity.

#### **4. No reposting and/or redistribution**

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All forms of reposting, and any sub-licensing, reselling, or other forms of redistribution of the IUCN Red List Data in their original format, either whole or in part, alone or combined with other data, are strictly prohibited without the prior written permission of IUCN. You may not

repost, or redistribute to any third party, the IUCN Red List Data in whole, or in part, by any means, including (but not limited to) electronic formats such as internet postings, web downloads, through web services, through interactive web maps that grant users download access, KML files or through file transfer protocols, electronic mailing, faxing, archiving in a public data, redistributing via a computer network, digital storage, memory stick or other electronic media or device, except as may otherwise be expressly permitted by IUCN in writing.

If you wish to provide a service through which IUCN Red List Data are otherwise made available for reposting or otherwise made available for redistribution, please contact IUCN directly using the contact details below in section [16](#).

You agree to direct all requests from third parties for access to the data you obtained from the IUCN Red List to the IUCN Red List unit at the address stated in section [16](#).

## **5. Derivative works**

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Derivative works based on IUCN Red List Data may be distributed, including electronically or in print form, without prior written permission by IUCN, provided that Derivative works are made available with a non-commercial restriction on use and that appropriate acknowledgement and citation to source is included. IUCN retains the right to use/reuse any Derivative work based on IUCN Red List Data in accordance with the same Terms and Conditions of Use. For the purposes of these Terms and Conditions, a “Derivative work” is a new work that is based upon all, or part, of the IUCN Red List Data. To be considered a Derivative work, the new work must be transformative and include originality on the part of the creator, otherwise it may simply be considered reposting or redistribution, depending on the way the new work is made available.

Use of IUCN Red List Data in the creation of Derivative works does not constitute endorsement by IUCN or its partners of any derived products, reports or analyses. The IUCN and IUCN Red List of Threatened Species logos must not be used on any derived products, reports or analyses, or supporting materials, without express (written) permission.

## **6. Usage**

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Provided that any use is otherwise in accordance with the Terms and Conditions of this User Agreement, you are hereby granted a non-transferable license to use, download and print the materials contained in The IUCN Red List, without requesting prior permission, solely for conservation or education purposes, scientific analyses, and research. Either an electronic copy or two paper copies of all products published using IUCN Red List Data must be sent, free of charge, to IUCN using the contact details below in section [16](#).

## **7. Acknowledgements and citation**

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The recipient of the data will provide full acknowledgement and citation (which includes reference to the version of the IUCN Red List Data used) in any materials or publications derived in part or in whole from the data; relevant citation (including version) details are provided with each dataset. For any publications making significant use of the data, IUCN and its partners welcome the opportunity for collaboration, and possible co-authorship, and to comment prior to publication. Expressions of interest can be sent directly to IUCN using the contact details below in section [16](#).

## **8. IUCN Red List updates**

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Unless required to do so for specific analyses, you should not use any version of the IUCN Red List Data after it has been superseded by a subsequent version. It is your responsibility to check if an update of The IUCN Red List is available.

## **9. Feedback and revised information**

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In order to keep the IUCN Red List Data up to date, IUCN, the Species Survival Commission and IUCN Red List Partner organizations would welcome feedback on the quality, reliability and accuracy of the data. Such contributions should be free of restrictions, and IUCN commits to provide appropriate acknowledgement and credit for any such contributions. The objective is to improve the IUCN Red List Data for the benefit of the global conservation community. For information on providing data to IUCN for updating the IUCN Red List Data, please contact IUCN directly using the contact details below in section [16](#).

## **10. Disclaimer on frontiers and national boundaries**

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The designation of geographical entities on The IUCN Red List do not imply the expression of, or represent, any opinion by IUCN, the Species Survival Commission, or its Partners concerning the legal status of any country, territory or area, or concerning the delimitation of its frontiers or boundaries.

## **11. Disclaimer of Warranty; Limitations on Liability**

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NEITHER IUCN OR THEIR AFFILIATES, OR ANY OF THEIR RESPECTIVE EMPLOYEES, AGENTS, THIRD-PARTY CONTENT PROVIDERS, OR LICENSORS WARRANT THAT ACCESS TO AND USE OF THE IUCN RED LIST WILL BE FREE FROM INTERRUPTIONS OR FREE FROM ERRORS, NOR THAT ANY INFORMATION ACCESSIBLE FROM OR RELATED TO THE DATA IS FREE OF VIRUSES, WORMS, OR OTHER HARMFUL COMPONENTS; NO WARRANTY IS MADE AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE IUCN RED LIST, OR AS TO THE ACCURACY, RELIABILITY, OR CONTENT OF ANY INFORMATION OR SERVICE PROVIDED THROUGH THE IUCN RED LIST.

THE IUCN RED LIST IS PROVIDED "AS IS" WITHOUT ANY WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL IUCN BE LIABLE TO YOU OR ANY OTHER PERSON FOR ANY LOSS OF BUSINESS OR PROFITS, OR FOR ANY INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF ANY USE OF, OR INABILITY TO USE, THE IUCN RED LIST EVEN IF IUCN WERE PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY OTHER CLAIM BY YOU OR ANY OTHER PERSON.

You further expressly acknowledge and agree that information, text, graphics, and hyperlinks provided to you through The IUCN Red List and located on other sites throughout the combined global electronic networks known as the Internet and the World-Wide-Web are provided solely as a resource and a convenience to you. Such hyperlinks to other sites are not an endorsement by IUCN of those sites. IUCN makes no warranty, either express or implied, as to the accuracy, reliability, or content of such information, text, graphics, and hyperlinks. IUCN has not tested any software located on other sites and it makes no representation as to the quality, safety, reliability or suitability of such software.

Under no circumstances shall IUCN or their affiliates or licensors be liable for any direct, indirect, incidental, special, punitive, or consequential damages that result in any way from

your use, non-use or reliance upon the IUCN Red List Data, or that result from mistakes, omissions, interruptions, deletions, errors, or defects in the Data, or delays in their operation, transmission or failure of performance.

## **12. Indemnification**

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You agree to defend, indemnify and hold IUCN and their affiliates harmless from any and all damages, liabilities, costs and expenses, including attorneys' fees, related to any violation of this Agreement by you or any authorized users of your account.

## **13. Termination**

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Either you or IUCN may terminate this User Agreement at any time, effective immediately, with or without prior notice to the other party. Termination of this Agreement automatically terminates your license to use The IUCN Red List and any content or other material contained therein. The provisions of Section [3](#), [4](#), [5](#), [6](#), and [7](#) shall survive any termination of this User Agreement.

## **14. Governing Law; Disputes**

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This User Agreement shall be governed by general principles of law, to the exclusion of any single national system of law. Any dispute, controversy or claim arising under or pursuant to this User Agreement shall be settled by mutual agreement. If the Parties are unable to reach agreement on any question in dispute, either party shall have the right to request arbitration in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law. The Parties agree to be bound by any arbitration ruling rendered in accordance with the above, as the final adjudication of any such dispute. Nothing contained in or related to this User Agreement shall be deemed a waiver, express or implied, of the privileges and immunities of IUCN.

## **15. Miscellaneous**

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The provisions of this User Agreement shall inure to the benefit of IUCN and its third-party content providers and licensors. No waiver by any party hereto of any of the provisions hereof or of any breach or other default hereunder shall be deemed to be a waiver of any preceding or subsequent breach or default.

## **16. Contact information**

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If you have any questions about any of these terms or how they may apply to your intended use of The IUCN Red List and the IUCN Red List Data, please contact the IUCN Global Species Programme Red List Unit at:

### **IUCN Global Species Programme Red List Unit**

IUCN UK Office, 219c Huntingdon Road

Cambridge CB3 0DL, United Kingdom

**Tel:** +44 (0)1223 277966

**Fax:** +44 (0)1223 277845

**E-mail:** [redlist@iucn.org](mailto:redlist@iucn.org)

## Annex 3

### IUCN, International Union for Conservation of Nature

#### A Framework of Principles for Managing Biodiversity Conservation Data and Information

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IUCN, its Members, Commissions and Secretariat play a significant role globally in managing biodiversity data and information in support of the Union's mission. IUCN advocates for access to biodiversity knowledge and data, free access to biodiversity information for non-commercial purposes, respect for cultural and intellectual property rights, mutual exchange of knowledge, accuracy in scientific data, honesty in its interpretation, and adequate resourcing for data development and maintenance. This Framework of principles guides IUCN's actions in fulfilling these values.

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#### Background

Responding to the global biodiversity crisis depends on mobilization of current, accurate and relevant biodiversity data and information. However, in many cases Society's need for this knowledge has to be balanced against the rights and interests of those who generate, compile, synthesize and distribute biodiversity information

IUCN is the world's largest global environmental network. Its mission is to influence, encourage and assist societies throughout the world to conserve the integrity and diversity of nature and to ensure any use of natural resources is equitable and ecologically sustainable. Making the highest quality knowledge, information and data freely and publicly available, with full attribution to its sources, is essential to achieving IUCN's mission.

This document (the "Framework") outlines the overarching principles that will govern IUCN's actions with respect to managing or participating in management of biodiversity conservation data and information. This Framework is intended to address, in part, actions included in World Conservation Congress (WCC) Resolution 2.33 *Improving IUCN capacity for strategic information management/information technology*, WCC Resolution 3.085 *Principles of knowledge sharing of the Conservation Commons*, WCC Resolution 4.012 *IUCN policy and strategy for the management of biodiversity data and information* and WCC Resolution 4.102 *Advancing knowledge management in conservation*.

For the purposes of this Framework, biodiversity conservation data and information includes data [\(1\)](#) which concerns the status, distribution, trends, drivers of change and impacts relating to the components of biodiversity (genes, species and ecosystems) and which is the product either of IUCN's sole action or of partnerships that IUCN has with other organizations. It can encompass, without limitation, hard copy documentation, media, and electronic files and other information in digital form. For purposes of this Framework, the term "biodiversity data" will include the full scope described in this paragraph.

IUCN recognizes that other entities also have relevant biodiversity data and information and this Framework is intended to also guide IUCN interactions with those entities' data and information managers. In many cases, IUCN will enter into separate and more specific agreements regarding biodiversity data and information management with key partners and those agreements should be, as far as possible, consistent with this Framework.

IUCN has knowledge management needs beyond biodiversity data, and an overarching knowledge management policy and strategy is needed and is in development. This Framework will form part of the overall approach towards IUCN's relationship with knowledge. It is expected that such policy and strategy, when completed, will incorporate/supersede this Framework.

This Framework does not supersede existing IUCN policies and does not override existing Terms of Use relating to IUCN biodiversity data and information products. This Framework should also be used as the basis for the development of new Terms of Use when needed and should guide the development of specific bilateral data agreements between IUCN and data providers and between IUCN and data users.

## **IUCN's and Biodiversity Data Management**

IUCN mobilizes biodiversity knowledge through its Members, its six expert Commissions, its Secretariat and its many institutional partnerships, to support global conservation efforts. It both convenes and facilitates data and information partnerships and actively generates, compiles, synthesizes and distributes (hereafter referred to as processes) biodiversity data, and strives to make these accessible and usable through products, services, and partnerships. IUCN supports efforts to strengthen biodiversity information sharing, through the development and promotion of standards and best practices for information management.

IUCN believes that relevant, accurate, usable, timely biodiversity information is essential for sound decision-making. IUCN demonstrates its commitment to this belief through:

- being a signatory to the Principles of the Conservation Commons, supporting open access, conscious, effective, and equitable sharing of data, information and knowledge for all conservation purposes;
- supporting Principle 10 of the *Rio Declaration on Environment and Development*, which underscores that environmental issues are best handled with participation of all concerned citizens, at the relevant level, and that at the national level each individual shall have appropriate access to information concerning the environment that is held by public authorities, along with the opportunity to participate in decision-making processes; and.
- following the principles of the Aarhus Convention <sup>(2)</sup> regarding access to information and public participation and access to justice
- supporting the Convention on Biological Diversity, whose text, especially Articles 16,17, and 18, explicitly promote information exchange as an important means of achieving the Convention's objectives.
- supporting the UN's Declaration on the Rights of Indigenous Peoples <sup>(3)</sup> text, especially articles 27 and 31 and to a lesser extent 19 and 32, recognises the proper measures to ensure that information about indigenous peoples is collected and distributed appropriately.

As with many other conservation organizations, IUCN may play many roles in biodiversity data management including, without limitation, data generation, processing and marketing. In addition, there are some unique roles that IUCN plays as a global membership organization encompassing both the public sector and civil society. These roles include those of convening, facilitating, brokering, and standard setting. IUCN is poised to carry out and strengthen its leadership role in supporting management of biodiversity data for the achievement of its mission. It is hoped that through application and promotion of the principles in this Framework, IUCN can both ensure effective and ethical use of biodiversity data in pursuit of biodiversity conservation as well as provide leadership in the conservation community through development and use of best practice standards and application of lessons learned.

## **IUCN Principles for Use of Biodiversity Data**

### **Access to and use of biodiversity data**

- IUCN promotes access to biodiversity data for non-commercial purposes and applies as few restrictions as possible on use of biodiversity data. IUCN believes that biodiversity data and information should be available with minimal, reasonable restrictions on who can access the data and how the data can be used.
- IUCN recognizes the rights of partners and data providers through ensuring, as far as reasonably possible in each case, appropriate attribution and acknowledgement of data sources and maintenance of the integrity of the data provided.
- Use for commercial purposes [\(4\)](#), for reposting [\(5\)](#), for derivative products [\(6\)](#), or for re-distribution/sub-licencing [\(7\)](#), shall require express written permission and may be subject to conditions set by IUCN.
- IUCN recognizes that generating and processing biodiversity data and supporting the maintenance of systems that underpin ongoing data management and improvement of data quality require considerable resources, and therefore IUCN supports the use of mechanisms, as appropriate, to achieve cost recovery in support of those efforts.
- IUCN recognises and appreciates the contributions made to biodiversity data holdings by developing countries and will prioritise the repatriation of biodiversity data back to them. IUCN will proactively support, as possible within available resources, the preparation and delivery of data to be repatriated or otherwise supplied to developing country users

### **Respect of Intellectual property rights [\(8\)](#) (IPR), including Copyright [\(9\)](#), and traditional knowledge systems**

- IUCN respects IPR and expects users of biodiversity data to respect such rights. In many cases the IPR in the data obtained through IUCN remains with the creator or provider of the original data. Any request for use of data not covered within IUCN terms of use shall be addressed to the copyright holder.
- IUCN shall not assert any IPR in the data made available to it by data providers unless such IPR have been validly transferred by the rightful owner to IUCN in writing. IUCN will, as far as reasonably possible record the ownership and any other IPR associated with each of the biodiversity data sets it holds or draws upon, and will endeavour to ensure the necessary licenses or permissions are in place for its use. Where ownership and IPR are unclear, IUCN will endeavour, as far as reasonably possible, to make fair and equitable arrangements with key stakeholders to facilitate deployment of the data to the benefit of conservation.
- IUCN will respect and will not share, without permission, traditional knowledge and data associated with the rights of indigenous peoples unless such traditional knowledge and data, is provided with prior informed consent and/or is already publicly available in ways that respect the rights of such knowledge holders.
- IUCN will operate a 'take-down' policy such that in the event of any reasonable claim of a potential breach of IPR, or other reasonable notice of a possible violation of rights or rules, regarding the content of an online service, the contested item will be removed from the service as quickly as possible pending further investigation and decision by IUCN.

### **Conditions for accepting data from data providers**

IUCN strives to ensure that high-quality, updated and accurate biodiversity data are available to inform decision-making. Therefore, IUCN will require data providers to meet the following conditions:

1. **Data quality and currency** - Individuals or institutions that provide IUCN with their biodiversity data on a voluntary basis have a responsibility for ensuring that the data are accurate, up-to-date and complete.
2. **Rights to provide IUCN with the data** – Data providers will ensure that they have secured from the rightful owners all the necessary IPR in the data permitting them to transfer the data to IUCN.
3. **No undue restrictions are placed on use of the data.** IUCN will request that biodiversity data be provided free of restrictions on use, unless otherwise negotiated. In the case of sensitive data <sup>(10)</sup>, IUCN reserves the right to request regular reviews of the need to continue to treat the data as sensitive and to have sunset clauses inserted in specific data agreements relating to sensitive data.

## Governance of biodiversity data management

At an institutional level, IUCN will manage implementation of this framework of principles through the senior management of the IUCN Secretariat. Specifically, the Director General's office will be responsible to ensure that these principles are applied appropriately and consistently.

In turn, the governance systems in place to manage development and delivery of individual biodiversity data products with which IUCN is associated, will seek to achieve the proper and consistent application of these principles for those products.

When IUCN is part of biodiversity data partnerships, IUCN will seek to standardize the principles of management for products relating to those partnerships in line with this Framework. IUCN will participate in and promote efforts to harmonize data standards and share policies across the biodiversity sector.

(1) Data = raw data, aggregated data, metadata, synthesis and analysis [\(back\)](#)

(2) <sup>1</sup> Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, Aarhus, Denmark, 25 June 1998, <http://www.unece.org/env/pp/> [\(back\)](#)

(3) <sup>1</sup> <http://www.un.org/esa/socdev/unpfii/en/drip.html> [\(back\)](#)

(4) **Commercial purposes** = "Commercial purposes" means a) any use by, on behalf of, or to inform or assist the activities of, a commercial entity (an entity that operates 'for profit') or b) use by any individual or non-profit entity for the purposes of revenue generation.

[\(back\)](#)

(5) **Reposting** = publication in full or in part of data in a largely unmodified form [\(back\)](#)

(6) **Derivative products** = data or information that is combined with, analysed or re-packaged with other data/ information to create substantively new products [\(back\)](#)

(7) **Re-distribution / sub-licencing** = enabling a wider distribution, in full or in part, of a copy of the original data [\(back\)](#)

(8) **Intellectual property rights** = property rights for intellectual creations; can include copyright, design rights, trademarks, patents and trade secrets [\(back\)](#)

(9) **Copyright** = a legal concept giving the creator of an original work exclusive right, usually for a limited time. It gives the copyright holder the right to be credited for the work, to determine who may adapt the work to other forms, who may perform the work, who may financially benefit from it, and other related rights. [\(back\)](#)

(10) Sensitive data = 1) data that, if released, could compromise effective biodiversity conservation; 2) time-sensitive data that can be released following a specific event (e.g. Publication of a peer-reviewed paper); or 3) proprietary information that is commercially sensitive. [\(back\)](#)

## **Annex 4 – Template Data Use Agreement**

**(the “Agreement”)**

**between**

**IUCN, International Union for Conservation of Nature and Natural Resources** (hereinafter referred to as "IUCN"), an association and quasi-governmental international organization established and existing under the laws of Switzerland, with headquarters at:

Rue Mauverney 28, 1196 Gland,  
Switzerland

and

[Full Company Name, Type of Legal Entity]  
with headquarters at:  
[Full Company Address]

Jointly and severally referred to herein as the “Parties” and “Party”, as the context may reasonably indicate or require.

### **A. Purpose of the Agreement/Preamble**

- a. IUCN has developed and owns, or has the right to grant to [COMPANY NAME] the use of, certain Data (as this term is defined below) for the purposes set forth in paragraph A(e) below.
- b. IUCN desires to grant use of the Data to [INSERT COMPANY NAME], and [COMPANY NAME] desires to use the Data under the terms and conditions provided herein.
- c. This Agreement establishes the terms and conditions under which IUCN shall grant to [COMPANY NAME], and [COMPANY NAME] shall accept, the nonexclusive, nontransferable, revocable right to use the Data.
- d. Providing access to data for use by commercial enterprises pursuant to this Agreement is akin to providing a product for consumption and does not constitute nor purport to be a partnership of any kind. Monies provided to IUCN under this Agreement are free from any restrictions on the use thereof by [COMPANY NAME]. This ensures that IUCN will be able to preserve the integrity of the Data and steer free of any bias or inappropriate influence, or of any appearance thereof. IUCN may from time to time request information pertaining to the use of the Data by [COMPANY NAME] and [COMPANY NAME] shall provide to IUCN such information in order to ensure that [COMPANY NAME'S] use of the data complies with the purposes set forth in. Any information provided may be treated as confidential in accordance with section B, paragraph 3.4 below.
- e. IUCN shall provide [COMPANY NAME] with a pre-approved legitimate and agreed means of accessing and using the Data, which [COMPANY NAME] shall use for the following conservation purpose: (i) to inform their and their relevant affiliates' operations and policies so as to avoid or minimize any negative impact of those operations or policies on the environment, and/or (ii) to provide points of reference for their investments in support of conservation (the “Purposes”). This Agreement also provides IUCN with the opportunity to provide training so as to educate [COMPANY

NAME] on what the data mean and represent and on the importance of using the most current Data in for then Purposes for which they are provided hereunder.

## **B. Data**

[DESCRIBE ACCURATELY AND COMPLETELY THE DATA TO BE PROVIDED BY IUCN UNDER THE AGREEMENT]

### **1. GRANT, TERM AND TERMINATION.**

- 1.1. IUCN hereby grants to [COMPANY NAME], and [COMPANY NAME] accepts, a non-exclusive, non-transferable right to use the Data as described herein, which right is subject to automatic revocation upon expiration or termination of the Agreement.
- 1.2. This Agreement shall become effective on the date it is signed by the second-and-last Party (the "Effective Date"), and shall remain in effect until [DD/Month/YYYY (the "Expiration Date")] unless terminated sooner by either Party in accordance with Clauses 1.2.2 or 1.2.3 below.
  - 1.2.1. If, after the Expiration Date, [COMPANY NAME] desires to continue using the Data previously provided under this Agreement, a new Agreement may be negotiated and executed by the Parties.
  - 1.2.2. Either Party may terminate the Agreement any time prior to the Expiration Date for convenience and without cause by providing at least [Thirty (30) Sixty (60) Ninety (90) One Hundred and Twenty (120)] days written notice of termination to the other Party.
  - 1.2.3. Either Party may terminate the Agreement at any time for material breach by the other Party, but only after providing a notice of breach in writing to the other Party, together with a reasonably detailed written description of the breach, and the steps that may be taken in order to cure the breach, and a reasonable time period within which such steps shall be taken. If the Party alleged to be in breach has not cured the breach within the reasonable time period stated in the said notice, then the complaining Party may terminate this Agreement upon written notice of termination to the other Party with immediate effect.
  - 1.2.4. (a) In the event that the Agreement is terminated for any reason as provided for above, then [COMPANY NAME] shall be required to return to IUCN the Data in its possession associated with this Agreement or destroy such Data or do a combination of both, as IUCN may notify [COMPANY NAME] in writing. (b) It is understood that [COMPANY NAME]'s computer systems may be periodically backed up creating copies of all information resident in these systems, which may include part or all of the Data. To the extent [COMPANY NAME]'s computer back-up procedures create copies which do include Data, and notwithstanding the foregoing provision at sub-paragraph (a), [COMPANY NAME] may retain such copies for the period it normally archives backed-up computer records, and the terms of the Agreement pertaining to the sale, trade, or disclosure and the confidentiality of the Data shall survive until the information on such back-up copy is destroyed.
- 1.3. The financial contribution paid to IUCN by [COMPANY NAME] hereunder shall be non-refundable. Data provided is provided 'as is'.

### **2. TERMS OF FINANCIAL CONTRIBUTIONS.**

- 2.1. The total financial contribution (the "Total Contribution") due and payable by [COMPANY NAME] to IUCN hereunder for the use of Data over each twelve-month period shall be based upon the agreed total number of Users who will have access to the Data each through their respective work station.

2.1.1 The agreed number of Users hereunder shall be [Fifteen (15)/Thirty (30)] (the "Initial Users"), and the Total Contribution for each twelve-month period shall be in the amount of [\$40,000 USD/\$60,000 USD. Upon payment to IUCN of a Total Contribution in the amount of USD 80,000.00, [COMPANY NAME] shall have the right to grant access to the Data to an unlimited number of Users]. It is further agreed that if [COMPANY NAME] wishes to add additional Users to the above number ("Additional Users"), it may do so upon written agreement by IUCN and this may be subject to payment of a corresponding additional charge.

2.1.2 For purposes of this Agreement, the term "User" shall mean an employee of [COMPANY NAME] or of an entity that controls or is controlled by [COMPANY NAME] ("Affiliated Company"), or a consultant contracted by [COMPANY NAME] or an Affiliated Company requiring access to the data for the specific purpose of carrying out any activity on behalf of the [COMPANY NAME] or the Affiliated Company.

- 2.2. IUCN shall invoice [COMPANY NAME] after Data delivery, it being understood that Data delivery shall be deemed to have occurred upon receipt of data in an agreed format by [COMPANY NAME]. The Total Contribution shall be due and payable in full, in United States of America Dollars, on net thirty (30) day terms after [COMPANY NAME's] receipt of the invoice. Payment shall be consistent with the laws and regulations of Switzerland.
- 2.3. [COMPANY NAME] may request support in the use of the data up to a maximum total of 40 (forty) hours per one twelve-month term. Any additional technical support that might be requested by [COMPANY NAME] will be provided by IUCN in IUCN's reasonable discretion and subject to the necessary capacity, on the basis of an appropriate market rate that the Parties shall agree in writing at the time that the additional technical support is requested. IUCN shall invoice [COMPANY NAME] upon completion of the services requested, and [COMPANY NAME] shall make payment to IUCN as set forth in clause 2.2 above.
- 2.4. The Parties agree that to the extent IUCN replaces the Data, in whole or in part, with improved or newly developed data, [COMPANY NAME] shall have the right, upon written request to IUCN, to replace the Data provided hereunder with the improved or newly developed data for the remainder of the term of this Agreement.

### **3. RIGHTS OF USE AND CONFIDENTIALITY.**

- 3.1. IUCN warrants that it has the authority and right to grant to [COMPANY NAME] the world-wide, non-exclusive, revocable right to use the Data as described above. [COMPANY NAME] agrees not to disclose, provide or otherwise transfer the Data to any third party in whole or in part, except as expressly provided otherwise under this Agreement. [COMPANY NAME] agrees not to remove any copyright notice or other proprietary markings from the Data.
- 3.2. [COMPANY NAME] may make the Data available to its Consultants for analysis, interpretation, or otherwise for uses directly connected to work that the Consultants were contracted to perform by [COMPANY NAME], provided that such Consultant agrees in writing that the Data are confidential and shall not be disclosed to any other party and that all Data and any analyses and/or interpretations will be returned to [COMPANY NAME] upon completion of their work. Consultants are Users, as this term is defined above, and to the extent that they are Additional Users [COMPANY NAME] shall disclose to IUCN their number prior to providing them with access to the Data. IUCN shall have the right to invoice [COMPANY NAME] in accordance with the provisions of Art. 2 of this Agreement where appropriate.
- 3.3. IUCN shall have the right to request and obtain from [COMPANY NAME] information pertaining to [COMPANY NAME'S] use of the Data, including but not limited to information concerning the type, nature and/or volume of the use, and/or number of

“hits” on any relevant internet domain or website; provided, however, that it shall (a) keep confidential such information and not disclose it to any third parties, and (b) cause its employees, representatives and subcontractors to comply fully with this confidentiality obligation.

- 3.4. Furthermore, IUCN agrees (a) to keep confidential and not disclose to any third Parties all information and documentation received from [COMPANY NAME] and identified in writing as confidential, including but not limited to technical information, data and proprietary information concerning the business, plans, and activities of [COMPANY NAME], or of Third Parties that is made available to IUCN by [COMPANY NAME], (b) to cause its employees, representatives and subcontractors to comply fully with this confidentiality obligation, and (c) not to use, and to cause its employees, representatives and subcontractors not to use, said confidential information and documentation except for the purpose of performing the services hereunder.

#### **4. DISCLAIMER OF WARRANTIES.**

- 4.1. The Data delivered to [COMPANY NAME] hereunder are, to the best of IUCN’s knowledge, information and belief accurately prepared in accordance with accepted industry practices. However, it is understood and agreed that (a) IUCN provides and [COMPANY NAME] accepts the Data “as is,” and IUCN makes no representation or warranty, express or implied, of any kind or description in respect thereto except as may be provided otherwise herein; and (b) any action [COMPANY NAME] may take in reliance on the Data shall be solely at its own risk and responsibility and IUCN shall have no responsibility or liability whatsoever to [COMPANY NAME] in respect thereto.

#### **5. ADDITIONAL LIABILITY EXCLUSION AND LIMITATION.**

- 5.1. The Parties agree that neither Party shall have any right or claim against the other for any consequential, exemplary, or punitive damages, loss of profit or business interruption damages arising out of or in connection with this Agreement, regardless of whether the cause of action for such damages is alleged to arise in breach of contract, tort, under statute or any other theory of legal liability; provided, however, that the foregoing shall not in any way limit the liability of either Party for damages caused by gross negligence or willful misconduct.

- 5.2. THE PARTIES FURTHER UNDERSTAND AND AGREE THAT THE INTERNET IS ACCESSIBLE BY PERSONS WHO MAY ATTEMPT TO BREACH THE SECURITY OF IUCN’S AND/OR [COMPANY NAME]’S NETWORK. ACCORDINGLY, EACH PARTY EXPRESSLY (a) DISCLAIMS ANY LIABILITY OR RESPONSIBILITY WHATSOEVER TO THE OTHER FOR ANY SUCH ACTIONS OF THIRD PARTIES, AND (b) ASSUMES ALL RISK OF USE IN PROVIDING AND/OR ACCESSING THE DATA PROVIDED HEREUNDER VIA THE INTERNET.

EXCEPT AS OTHERWISE PROVIDED HEREUNDER, THE TOTAL LIABILITY OF IUCN UNDER THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNT OF THE CONTRIBUTION PAID TO IUCN BY [COMPANY NAME] UNDER THIS AGREEMENT DURING THE TWELVE-MONTH PERIOD DURING WHICH THE RELEVANT LIABILITY AROSE.

#### **6. RIGHT TO AUDIT.**

- 6.1. [COMPANY NAME]’s duly authorized representatives shall have access at all reasonable times and upon reasonable notice to IUCN’s available data and information relevant to the Data as may reasonably be needed to audit and verify that the Data comports with any applicable specifications provided hereunder.

#### **7. GOVERNING LAW AND JURISDICTION, DISPUTE RESOLUTION**

- 7.1. This Agreement shall be governed by and interpreted in accordance with the laws of Switzerland, excluding conflict of laws provisions.
- 7.2. Any dispute arising in connection with this Agreement that the Parties are unable to resolve in an amicable fashion shall be finally settled by formal arbitration in Geneva, Switzerland, in accordance with the Swiss Rules of Commercial Arbitration of the Swiss Chambers of Commerce in force on the date when the Notice of Arbitration is submitted in accordance with these Rules. The number of arbitrators shall be one. The arbitral proceedings shall be conducted in English. Arbitration shall commence and be concluded as quickly as practicable, subject to reasonable delay as may be appropriate to resolve any third-party issues. Any decision or award rendered by the arbitrator shall be in writing, shall be final and binding on both Parties, and shall be enforceable in any court having jurisdiction thereof. The foregoing shall be the exclusive ultimate means for the parties to resolve any disputes under this Agreement.

## 8. LIMITATION OF RIGHTS

- 8.1. It is understood and agreed that [COMPANY NAME] shall have no rights to use or permit the use of the Data other than the rights expressly granted hereunder.

## 9. OTHER TERMS.

- 9.1. If [COMPANY NAME] discovers that the Data are inaccurate, then [COMPANY NAME] agrees to notify IUCN of such inaccuracy(-ies) within a reasonable time following such discovery. Upon its receipt of such notice, IUCN shall make commercially reasonable efforts to rectify the inaccuracies in a timely manner.
- 9.2. The terms of this Agreement may not be altered by any course of dealings between the parties. Except as specifically set forth herein, this Agreement may be amended only by a written instrument executed by IUCN and [COMPANY NAME].
- 9.3. The determination that any provision of this Agreement is invalid shall cause that provision to be deemed severed from the remainder of this Agreement and shall not, to the extent reasonably possible, cause the remainder of this Agreement to be invalid or unenforceable.
- 9.4. The Parties shall comply with all applicable laws, regulations, and orders of all governmental authorities applicable to the performance, rights and obligations of each Party with respect to this Agreement.
- 9.5. **Neither Party shall, without the prior express written consent from the other Party in each specific instance, (i) use the name or any trade name or registered trademark of the other Party or of its Members or Affiliated Companies in any advertising or communications to the public through any medium or in any format, or (ii) make publicity releases or announcements regarding this Agreement or any other agreement related to it. It is understood and agreed that each Party shall cause its employees, representatives and subcontractors strictly to comply with these requirements.**
- 9.6. This Agreement contains the entire agreement between the Parties with respect to the subject matter of this agreement and supersedes any prior or contemporaneous written or oral agreement between the Parties with respect thereto.
- 9.7. This Agreement shall not create any agency, partnership or joint venture between IUCN and [COMPANY NAME]. Neither Party shall be entitled to represent or hold itself out in any way as acting on the other Party's behalf.

9.8. IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in two counterparts, each of which shall be deemed an original and both shall be considered one and the same instrument.

**[COMPANY NAME]:**

**IUCN, INTERNATIONAL UNION FOR  
CONSERVATION OF NATURE AND NATURAL  
RESOURCES**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_