

## CERTIFICATION MARK LICENSE AGREEMENT

This Certification Mark License Agreement (“**Agreement**”) is made effective as of \_\_\_\_\_ (“**Effective Date**”) by and between the Orchid Conservation Coalition, <http://www.orchidconservationcoalition.org> (“**Licensor**”) and

\_\_\_\_\_ with its principal place of business at

\_\_\_\_\_ (“**Licensee**”) for the 1% for Orchid Conservation program.

### RECITALS

**WHEREAS**, Licensor is the owner of all right, title and interest in and to the trademarks and service marks set forth in **Exhibit A** (the “Trademarks”);

**WHEREAS**, Licensee wishes to license from Licensor the right to use the Trademarks on the products and in connection with the services or other activities of Licensee, provided that Licensee donates a certain minimum percentage of its net revenues to non profit organizations working to preserve and benefit orchid conservation as set forward by the criteria in this document, and Licensor has agreed to license to Licensee the Trademarks, subject to certain restrictions;

**NOW, THEREFORE**, in consideration of the mutual representations, warranties, covenants and conditions contained herein, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

#### 1. DEFINITIONS AND CONSTRUCTIONS

**1.1 Definitions.** In this Agreement, the following initially capitalized terms have the following meanings:

“Approved Organizations” means those organizations that meet the criteria as set forth on **Exhibit B**

“Brand” shall mean a word, mark, symbol, design, term or a combination of these, both visual and oral, used for the purpose of identification of some product or service.

“Confidential Information” shall have the meaning ascribed thereto in Section 8.1 hereof.

“CPA Report ” shall mean a report, substantially in the form and substance of Exhibit C hereto, prepared by a licensed independent certified public accountant.

“Discloser” shall have the meaning ascribed thereto in Section 8.1 hereof.

“Donations” means monetary donations to Approved Organizations. Non-Monetary Donations of up to one-quarter percent (0.25%) of Net Revenues may be considered Donations and credited toward the One Percent Donation calculation. Donations shall include any Carryover of excess contributions from prior years.

“Carryover” shall mean the amount, if any, by which Licensee’s total Donations for the year exceed the one percent donation for the year.

“Effective Date” shall have the meaning ascribed thereto in the first paragraph hereof.

“Licensee” shall have the meaning ascribed thereto in the first paragraph hereof.

“Licensee Marks” shall have the meaning ascribed thereto in Section 2.7 hereof.

“Licensor” shall have the meaning ascribed thereto in the first paragraph hereof.

“Marketing Materials” shall have the meaning ascribed thereto in Section 2.1 hereof.

“Net Revenues” shall mean the total of Licensee’s sales of goods and services and revenues from other activities that constitute the entity’s operations as computed under the entity’s normal method of accounting, less returns, discounts and allowances.

“Non-Monetary Donations” shall mean property, goods, services or other expenditures contributed to or made directly for the benefit of an Approved Organization. It shall also mean the costs incurred by Licensee to administer its environmental donation program. The value of Non-Monetary Donations shall be computed pursuant to Exhibit F.

“One Percent Donation” shall have the meaning ascribed thereto in Section 2.6 hereof.

“Other Activities” shall have the meaning ascribed thereto in Section 2.1 hereof.

“Products” shall have the meaning ascribed thereto in Section 2.1 hereof.

“Recipient” shall have the meaning ascribed thereto in Section 8.1 hereof.

“Services” shall have the meaning ascribed thereto in<sup>mt</sup>o

(c) Licensee shall not register any Trademarks without Licensor's express prior written consent, and Licensor shall retain the exclusive right to apply for and obtain registrations for the Trademarks throughout the world.

(d) Licensee shall not challenge the validity of the Trademarks, nor shall Licensee challenge Licensor's ownership of the Trademarks or the enforceability of Licensor's rights therein.

**2.3 Notice.** In connection with the use of the Trademarks, Licensee shall (a) mark each use with the appropriate trademark symbol as set forth in **Exhibit A**; and (b) either (i) include a trademark notice in a form reading, "[Trademark] is a trademark of 1% for Orchid Conservation," or (ii) place an asterisk immediately after and slightly above the use of each Trademark, referring to a footnote reading "Trademark of 1% for Orchid Conservation." If the Trademarks are used multiple times on or in a particular Product or an item of Marketing Materials, the symbol and notice need only be used in connection with the first prominent use of the Trademarks on or in such Product or item of Marketing Materials, document, advertisement or other material.

**2.4 Maintenance, Renewal and Enforcement.**

(a) Licensee agrees to cooperate with Licensor's preparation and filing of any applications, renewals or other documentation necessary or useful to protect Licensor's intellectual property rights in the Trademarks.

(b) Licensee shall notify Licensor promptly of any actual or threatened infringements, imitations or unauthorized uses of the Trademarks of which Licensee becomes aware.

(c) Licensor shall have the sole right, though it is under no obligation, to bring any action for any past, present and future infringements of its intellectual property rights in the Trademarks. Licensee shall cooperate with Licensor, at Licensor's expense for any out-of-pocket costs incurred by Licensee, in any efforts by Licensor to enforce its rights in the Trademarks or to prosecute third party infringers of the Trademarks. Licensor shall be entitled to retain any and all damages and other monies awarded or otherwise paid in connection with any such action.

**2.5 Reservation of Rights.** Licensee acknowledges that Licensor is the sole owner of all right, title and interest in and to the Trademarks, and that Licensee has not acquired, and shall not acquire, any right, title or interest in or to the Trademarks except the limited right to use such Trademarks as expressly set forth in this Agreement. All use of the Trademarks by Licensee, and all goodwill associated with such use, shall inure to the benefit of Licensor.

**2.6 Initial and Continued Donation.** Licensee hereby agrees and covenants to make Donations to Approved Organizations, during the Term for each of its fiscal years, or within sixty (60) days after the end of each fiscal year, in an amount not less than one percent (1%) of its Net Revenues ("One Percent Donation") in accordance with the following schedule.

(a) Effective Date Occurs Within the First Six Months: If the Effective Date falls within the first six (6) months of the Licensee's fiscal year, Licensee shall commence making the Donations for the fiscal year in which the Effective Date falls.

(b) Effective Date Occurs After the First Six Months. If the Effective Date falls after the first six (6) months of the Licensee's fiscal year, Licensee shall commence making the Donations for the fiscal year immediately following the fiscal year that includes the Effective Date.

(c) **For Orchid Societies** Licensee hereby acknowledges and agrees that both its covenant to make the One Percent Donation for each of its fiscal years and its making of such Donations each fiscal year are conditions to the granting of and continuation of the license granted pursuant to Section 2.1. As further conditions to the granting of and continuation of the license granted pursuant to Section 2.1, Licensee hereby agrees and covenants that, within ninety (90) days after the end of each of Licensee's fiscal years during the Term, Licensee shall provide to Licensor with the total of donation(s) and the name(s) of the recipient(s) of those donations.

(d) **For Businesses** Licensee hereby acknowledges and agrees that both its covenant to make the One Percent Donation for each of its fiscal years and its making of such Donations each fiscal year are conditions to the granting of and continuation of the license granted pursuant to Section 2.1. As further

conditions to the granting of and continuation of the license granted pursuant to Section 2.1, Licensee hereby agrees and covenants that, within ninety (90) days after the end of each of Licensee's fiscal years during the Term, Licensee shall provide to Licensor each of the following: (a) Licensee's written attestation to Licensor that Licensee has made the One Percent Donation for such fiscal year, executed by an authorized officer of Licensee; and (b) if net revenues exceed \$5 Million Dollars a completed CPA Report from Licensee's certified public accountant in the form and substance of **Exhibit C** hereto.

(e) Notwithstanding the foregoing, if Licensee has Net Revenues of less than \$5 Million Dollars for any of its fiscal years during the Term, Licensee may at its option submit the following information directly to Licensor in lieu of providing a completed CPA Report pursuant to subsection 2.6 (c):

(i) If the license grant hereunder is based upon Net Revenues from Licensee's operations as a whole:

(A) A copy of page 1 of the Licensee's federal income tax return (form 1120, 1120S, 1065 or Schedule C as appropriate);

(B) Support for Licensee's monetary One Percent Donations in the form of copies of cancelled checks (front and back); and

(C) Support for Licensee's Non-Monetary Donations consistent with **Exhibit F** attached hereto.

(ii) If the license grant hereunder is based upon Net Revenues from Licensee's Brand:

(A) A copy of Licensee's internal financial statements reporting the Net Revenues of the Brand or, if no such internal financial statements exist, a copy of that portion of Licensee's year-end trial balance or general ledger which reports the separate gross sales, returns, discounts, and allowances for the Brand;

(B) Support for Licensee's monetary One Percent Donations in the form of copies of cancelled checks (front and back); and

(C) Support for Licensee's Non-Monetary Donations consistent with **Exhibit F** attached hereto.

### 3. QUALITY CONTROL

**3.1 Trademark Guidelines.** Use of the Trademarks hereunder shall be in accordance with the provisions of Section 2, this Section 3, and Licensor's then-current trademark guidelines, as may be provided and updated from time to time by Licensor. Licensee shall not reproduce or use the Trademarks in any manner whatsoever other than as expressly authorized by this Agreement.

**3.2 Conduct of Business.** Licensee shall conduct its business in a manner that will reflect positively on the Trademarks. Licensee shall use the Trademarks in a manner that does not derogate Licensor's rights in the Trademarks or the value of the Trademarks, and shall take no action that would interfere with, diminish or tarnish those rights or value. Determinations under this Section shall be made by Licensor in its sole discretion.

**3.3 Samples.** From time to time and upon Licensor's request, Licensee shall submit to Licensor samples of all materials bearing the Trademarks, including any advertising, packaging and other publicly disseminated materials. If Licensor discovers any improper or unauthorized use of the Trademarks on any such submission and delivers a writing describing in detail the improper or unauthorized use to Licensee, Licensee shall remedy the improper or unauthorized use immediately.

### 4. PAYMENTS

**4.1 Administration Fee.** The Administration Fee schedule as of the Effective Date is set forth on **Exhibit D**. There is no administrative fee currently.

**4.2 Books and Records.** Licensee shall maintain complete and accurate books and records relating to its Donations to Approved Organizations pursuant to this Agreement for a period of no less than two (2) years after the end of the Licensee's fiscal year following such Donations. Licensor or its agents may, upon one (1) week advance notice, examine and inspect such books and records and make extracts for the purpose of determining the accuracy of Donations made to Approved Organizations. In the event that such examination and inspection reveals that Licensee has under-contributed to Approved Organizations for any fiscal year by five percent (5%) or more of the One Percent Donation (i.e., by 0.05% or more of Licensee's Net Revenues), Licensee shall bear all expenses reasonably incurred by Licensor in connection with such examination and inspection for such fiscal year, which shall be due and payable immediately, Licensee's rights under this Agreement to use the Trademarks shall immediately terminate without further action of Licensor, and Licensee shall immediately cease using Licensor's Trademarks in any manner.

## 5. TERM AND TERMINATION

**5.1 Term.** The term of this Agreement shall commence on the Effective Date and shall continue in full force and effect thereafter, unless and until terminated earlier as provided in this Section 5 (the "Term").

**5.2 Termination for Convenience.** Either party may terminate this Agreement at any time for any or no reason, upon thirty (30) days prior written notice to the other.

**5.3 Termination for Cause.** Either party may terminate this Agreement upon written notice to the other party if (a) the other party breaches any term or condition of this Agreement; provided that if the breach is one capable of cure, the termination right shall not arise until the breaching party shall have failed to correct such breach within thirty (30) days following written notice specifying such breach; (b) the other party applies for or consents to the appointment of a receiver, trustee or liquidator for substantially all of its assets, or such a receiver, trustee or liquidator is appointed for the other party; or (c) the other party has filed against it an involuntary petition for bankruptcy that has not been dismissed within sixty (60) days thereof; or the other party files a voluntary petition for bankruptcy or a petition or answer seeking reorganization, becomes or is insolvent or bankrupt, admits in writing its inability to pay its debts as they mature, or makes an assignment for the benefit of creditors.

**5.4 Effect of Termination.** Upon expiration or any termination of this Agreement, all rights and licenses granted hereunder shall immediately terminate, except that Sections 1, 2.2, 2.4, 2.5, 4, 5.4, 6, 7, 8, and 9 shall survive. Neither party shall be liable to the other party for damages of any kind solely as a result of terminating this Agreement in accordance with its terms, and any such termination of this Agreement by a party will be without prejudice to any other right or remedy of such party under this Agreement or applicable law. Without limiting the foregoing, as of the termination date of this Agreement, Licensee may not use or display the Trademarks on any Marketing Materials, even if such materials have been printed prior to such termination date. However, so long as Licensee is not in breach of this Agreement and otherwise subject to Licensor's reasonable approval, notwithstanding the termination of this Agreement Licensee may, for one hundred eighty (180) days thereafter, sell its existing inventory of Products bearing the Trademarks, insofar as such Products have been manufactured bearing the Trademarks prior to the termination date of this Agreement, but may not use or display the Trademarks on any other Products or in connection with any Services or Other Activities

## 6. INDEMNIFICATION

Licensee, at its own expense, shall indemnify, hold harmless and defend Licensor, its affiliates, successors and assigns, and its and their directors, officers, employees and agents, against any claim, demand, cause of action, debt, expense or liability (including attorney's fees and costs), to the extent that it (a) is based on a claim arising out of or in connection with Licensee's business or operations, including claims that any Product or Service has caused injury to or the death of any person or damage to any property; (b) results from a breach, or is based on a claim that, if true, would be a breach, of this Agreement by Licensee; or (c) is based upon Licensee's use of the Trademarks.

## 7. LIMITATION OF WARRANTY AND LIABILITY

**7.1 Warranties.** LICENSOR HEREBY SPECIFICALLY DISCLAIMS ANY WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT OF THIRD-PARTY RIGHTS, AND ANY WARRANTIES THAT MAY ARISE DUE TO COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE, WHETHER RELATED TO THE TRADEMARKS OR OTHERWISE.

**7.2 Damages.** IN NO EVENT SHALL LICENSOR OR ANY OF ITS DIRECTORS, OFFICERS, EMPLOYEES, LICENSORS, SUPPLIERS OR OTHER REPRESENTATIVES BE LIABLE FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, OR DAMAGES FOR LOSS OF PROFITS, BUSINESS INTERRUPTION, LOSS OF GOODWILL, COMPUTER FAILURE OR MALFUNCTION OR OTHERWISE, ARISING FROM OR RELATING TO THIS AGREEMENT OR THE TRADEMARKS, EVEN IF LICENSOR IS EXPRESSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. The foregoing limitation of liability and exclusion of certain damages shall apply regardless of the failure of essential purpose of any remedies available to either party. IN NO EVENT WILL THE AGGREGATE LIABILITY OF LICENSOR EXCEED ONE HUNDRED DOLLARS (\$100.00).

## 8. CONFIDENTIAL INFORMATION

**8.1 Definition.** “Confidential Information” means all information disclosed by one party (“Discloser”) to the other party (“Recipient”) (in writing, orally or in any other form) that is designated, at or before the time of disclosure, as confidential, or provided under circumstances reasonably indicating that the information is confidential, including trade secrets, customer lists, business plans, technical data, product ideas, personnel, and contract and financial information. Confidential Information does not include information or material that (a) is now, or hereafter becomes, through no act or failure to act on the part of the Recipient, generally known or available; (b) is or was known by the Recipient at or before the time such information or material was received from the Discloser, as evidenced by the Recipient’s tangible (including written or electronic) records; (c) is furnished to the Recipient by a third party that is not under an obligation of confidentiality to the Discloser with respect to such information or material; or (d) is independently developed by the Recipient without any breach of this Agreement, as evidenced by the Recipient’s contemporaneous tangible (including written or electronic) records.

**8.2 Restrictions on Use.** Each party shall take all reasonable measures to protect the confidentiality of the other party’s Confidential Information in a manner that is at least as protective as the measures it uses to maintain the confidentiality of its own Confidential Information of similar importance. Recipient shall hold Confidential Information in strict confidence and shall not disclose, copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of such information, or give or disclose such information to third parties, or use such information for any purposes whatsoever other than as necessary in order to fulfill its obligations or exercise its rights under this Agreement. Notwithstanding the foregoing, Recipient may disclose the other party’s Confidential Information (a) to employees and consultants that have a need to know such information, provided that Recipient shall advise each such employee and consultant of their obligations to keep such information confidential and shall require that each such employee and consultant sign a written nondisclosure agreement consistent with the confidentiality and nondisclosure provisions herein; and (b) to the extent Recipient is legally compelled to disclose such Confidential Information, provided that Recipient shall give advance notice of such compelled disclosure to the other party, and shall cooperate with the other party in connection with any efforts to prevent or limit the scope of such disclosure and/or use of the Confidential Information.

## 9. MISCELLANEOUS

**9.1 Assignment.** Licensee shall not and shall not have the right to assign, sell, transfer, delegate or otherwise dispose of, whether voluntarily or involuntarily, by operation of law or otherwise, this Agreement or any of its rights or obligations under this Agreement without the prior written consent of Licensor, which the Licensor can withhold in its sole discretion; provided, however, Licensee may assign,

sell, transfer, delegate or otherwise dispose of this Agreement or any of its rights or obligations under this Agreement without the prior written consent of Licensor if (a) the assignment is in connection with a merger, consolidation, sale of all or substantially all of Licensee's assets, or any other transaction in which more than fifty percent (50%) of Licensee's voting securities are transferred; and (b) the assignee agrees to be bound by this Agreement and all the terms and conditions hereof to the same extent as Licensee. Any purported assignment, sale, transfer, delegation or other disposition by Licensee, except as permitted herein, shall be null and void. Licensor may freely assign this Agreement. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and permitted assigns.

**9.2 Injunctive Relief.** Licensee acknowledges that a breach of its obligations under this Agreement, including its obligations set forth in Sections 2.2, 2.3, and 3, would cause Licensor irreparable damage. Accordingly, Licensee agrees that in the event of such breach or threatened breach, in addition to remedies at law, Licensor shall have the right to seek and obtain injunctive or other equitable relief, without the necessity of posting a bond, to prevent Licensee's violations of its obligations hereunder.

**9.3 Severability.** If any provision of this Agreement, or the application thereof to any person, place or circumstance, shall be held by a court of competent jurisdiction to be invalid, void or otherwise unenforceable, such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties, or, if incapable of such enforcement, shall be deemed to be deleted from this Agreement, and the remainder of this Agreement and such provisions as applied to other persons, places and circumstances shall remain in full force and effect.

**9.4 Waivers.** The waiver by either party of a breach of or a default under any provision of this Agreement, shall not be effective unless in writing and shall not be construed as a waiver of any subsequent breach of or default under the same or any other provision of this Agreement, nor shall any delay or omission on the part of either party to exercise or avail itself of any right or remedy that it has or may have hereunder operate as a waiver of any right or remedy.

**9.5 Governing Law.** This Agreement is to be construed in accordance with and governed by the internal laws of the State of California without giving effect to any choice of law rule that would cause the application of the laws of any jurisdiction other than the internal laws of the State of California to the rights and duties of the parties.

**9.6 Independent Contractors.** Each party is an independent contractor and neither party's personnel are employees or agents of the other party for federal, state or other taxes or any other purposes whatsoever, and are not entitled to compensation or benefits of the other. Except for the specific obligations set forth in this Agreement, nothing hereunder shall be deemed to constitute, create, give effect to or otherwise recognize a joint venture, partnership or business entity of any kind, nor shall anything in this Agreement be deemed to constitute either party the agent or representative of the other.

**9.7 Notices.** All notices and other communications under this Agreement shall be in writing and shall be deemed given when delivered by hand or upon confirmed receipt of a facsimile transmission, two (2) days after being deposited with an overnight courier, or five (5) days after mailing, postage prepaid, by register or certified mail, return receipt requested, to the below address or such other addresses as either party shall specify in a written notice to the other.

**To Licensor:**

Orchid Conservation Coalition

1% For Orchid Conservation.

<http://www.orchidconservationcoalition.org>

Attn: Mark Sullivan

e-mail: [MarkSullivan@orchidconservationcoalition.org](mailto:MarkSullivan@orchidconservationcoalition.org)

**To Licensee:**

\_\_\_\_\_

Attn: \_\_\_\_\_

E-mail: \_\_\_\_\_

**9.8 Force Majeure.** Neither party will be liable to the other for failure or delay in performing its obligations hereunder if such failure or delay is due to circumstances beyond its reasonable control, including acts of any governmental body, war, insurrection, sabotage, embargo, fire, flood, strike or other

labor disturbance, interruption of or delay in transportation, unavailability of or interruption or delay in telecommunications or third party services, or inability to obtain raw materials, supplies or power used in or equipment needed for provision of the services hereunder.

**9.9 Headings.** Headings used in this Agreement are for reference purposes only and shall not be deemed a part of this Agreement.

**9.10 Entire Agreement.** This Agreement (including the Exhibits attached hereto, which are incorporated herein by reference) constitutes the entire agreement of the parties hereto with respect to its subject matter and may be amended or modified only in writing and signed by duly authorized officers of both parties. This Agreement supersedes all previous, contemporaneous and inconsistent agreements, negotiations, representations, marketing statements, and promises between the parties, written or oral, regarding the subject matter hereunder. There are no oral or written collateral representations, agreements or understandings except as provided herein.

**IN WITNESS WHEREOF,** each of the parties hereto have caused this Certification Mark License Agreement to be executed by themselves or their duly authorized representative as of the date first set forth above.

**LICENSOR:  
Orchid Conservation Coalition**

**LICENSEE:**

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print)

\_\_\_\_\_  
(Print)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**If filing digitally initial here \_\_\_\_\_**

By checking, I agree that I am filing digitally and that I will abide by the Certification Mark License Agreement.

A digital signature can also be typing your name in the signature line and typed in initials.


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**EXHIBIT A  
TRADEMARKS**

Trademark	Trademark symbol (“®” or “™” or “SM”)	Territory
	TM	U.S., Japan and European Union
1% for Orchid Conservation	TM	U.S., Japan and European Union

## EXHIBIT B

### APPROVED ORGANIZATIONS

#### **Criteria for what define a contribution towards fulfillment of 1% for Orchid Conservation.**

The underlying premise following the criteria is to give the spirit of what the criteria is trying to accomplish.

#### **Ex situ orchid conservation:**

Non-profit organizations that have a collection of species orchids with which they have an active and organized propagation program from which they both sell or give freely the resulting species orchids. Propagation is done vegetatively and from seed resulting from pollination of their species orchids. Neither the lab work nor the raising of seedlings necessarily has to be done by the non-profit organization.

The underlying premise of this ex situ orchid conservation criterion is that a collection of species orchids is not conservation, but by actively propagating and disseminating orchid species to the public the availability increases in the market place and reduces the need to collect (legal or illegal) orchids from their natural habitat. While orchid conservation education is important, it is not enough solely to have an impact on in situ orchid conservation.

#### **In situ orchid conservation:**

1. Non-profit organizations that directly buy or work with other non-profit or government agencies to buy orchid habitat in which native orchid species exists. Expenses can also go toward lobbying to buy, researching and evaluating orchid habitat for conservation, maintaining, and protection of the orchid habitat.
2. Non-profit organizations that directly buy or work with other non-profit or government agencies to buy orchid habitat in which native orchid species will be reintroduced into a habitat. Expenses can go toward lobbying, propagation and growing of the reintroduced orchid species, researching and evaluating orchid habitat for reintroduction, maintaining, and protection of the orchid habitat.
3. A non-profit organization that as its primary function reviews grants and awards money to orchid conservation projects as outlined in the rest of these criteria. This non-profit organization should donate 70% or more of the money it collects to orchid conservation as outlined in the rest of these criteria. This leaves 30% for overhead, orchid conservation education, and other things. If the donation goes to a conservation committee of a large orchid organization then that the whole 1% must go to orchid conservation as stipulated in the rest of the criteria.
4. The expenses of reintroduction of orchid species or the maintenance of already protected orchid habitat.
5. The buying of property or rights that directly insure the continuing protection of the conditions that makes a protected orchid habitat's environment suitable for their continued protection in situ. Examples: The buying of right for any logging or extraction of minerals, oil, or water, and the buying of land for a protection barrier around the habitat or to keep a wetland from being drained, or a river from being dammed.
6. The study, habitat protection, and environmental supports needed for the protection or reintroduction of an orchid pollinator in which there are protected orchids of the pollinator in the reasonable vicinity.

The underlying premise of these in situ orchid conservation criteria is to protect orchids in their native habitat, the habitat, and their pollinators. The orchid habitat does not have to be owned by a non-profit but does have to be protected from destruction into perpetuity. The orchid habitat does not have to have a "rare" orchid in its bounds.

**EXHIBIT C**  
**CPA REPORT**

[on independent certified public accounting firm or individual independent certified public accountant's letterhead]

INDEPENDENT ACCOUNTANT'S REPORT  
ON APPLYING AGREED-UPON PROCEDURES

To XYZ Corporation and 1% for the Planet, Inc.,  
[Addresses]

We have performed the procedures enumerated below, which were agreed to by XYZ Corporation ("Licensee") and 1% for Orchid Conservation. ("Licensor"), solely to assist the parties in evaluating Licensee's compliance, for its fiscal year ended 12/31/05 with the Certification Mark License Agreement, dated November 1, 2004 between Licensor and Licensee ("License Agreement"). Management is responsible for Licensee's compliance with those requirements. This agreed upon procedure engagement was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants. The sufficiency of these procedures is solely the responsibility of those parties specified in this report. Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose.

Procedures and findings are enumerated below:

- 1) We obtained the Net Revenues (as defined in the License Agreement) from Licensee's financial statements\*\* that were prepared by its independent accountants. The financial statements chosen were Licensee's [identify highest level of accounting records used] financial statements for the year ending mm/dd/yy. The Net Revenue amount is the total of Licensee's sales of goods and services and its revenues from other activities that constitute the entity's operations, as computed under the entity's normal method of accounting, less returns, discounts, and allowances.
- 2) We compared a list that was prepared by Licensee of its Donations (as defined in the License Agreement) to Approved Organizations (as defined in the License Agreement) determined by Licensor.  
Findings: All Donations that were listed on the schedule as prepared by Licensee were to Approved Organizations.
- 3) Total monetary Donations on the list of Donations to Approved Organizations was traced to Licensee's general ledger.

Findings: Total Donations tie to contributions recorded in Licensee's general ledger.

- 4) Total Non-Monetary Donations were divided by Net Revenues as determined in procedure #1 above.

Findings: Non-Monetary Donations do not exceed one quarter of one percent (0.25%) of Net Revenues (Allowable Non-Monetary Donations).

- 5) Non-Monetary Donations were traced to a schedule or General Ledger Report.

Findings: Licensee's schedule or General Ledger Report contains a listing of Non-Monetary donations, the total of which equals total claimed Non-Monetary Donations.

- 6) The amount of Net Revenues as determined in procedure #1 above was divided into the sum of Monetary Donations in procedure #3 plus Allowable Non-Monetary Donations in procedure #4.

Findings: The result of this computation was at least 1%.

We were not engaged to, and did not conduct an examination, the objective of which would be an expression of an opinion on compliance. Accordingly, we do not express an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

This report is intended solely for the information and use by Licensee and Licensor and is not intended to be, and should not be used by anyone other than those specified parties.

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[Name of independent certified public accounting firm or individual independent certified public accountant]

\*\* If the license granted under Section 2.1 of the License Agreement is based upon Net Revenues from Licensee's operations as a whole and if audited financial statements are not available, the financial statements chosen will be Licensee's Independent Accountant's highest level of assurance financial statements. If there are no Independent Accountant's financial statements, then Licensee's income tax returns will be used.

If the license granted under Section 2.1 of the License Agreement is based upon Net Revenues from a Brand of Licensee, the financial statements used will be the Licensee's Independent Accountant's highest level of assurance financial statements which separately report Net Revenues for the Brand. If no such Independent Accountant's financial statements exist, then Licensee's internally prepared financial statements will be used if they separately report Net Revenues for the Brand. If Licensee does not report Net Revenues for the Brand on separate internal financial statements then Net Revenues will be obtained from the Licensee's General Ledger accounts which report the separate gross sales, returns, discounts, and allowances for the Brand.

**EXHIBIT E**

**LIST OF LICENSEE'S TRADEMARKS AND SERVICE MARKS**

[to be provided by Licensee]

**EXHIBIT D**  
**ADMINISTRATION FEE SCHEDULE**

None

**EXHIBIT F**  
**NON-MONETARY DONATIONS**

**VALUATION OF NON-MONETARY DONATIONS**

Licensee will be given credit for Non-Monetary Donations based upon the following valuation criteria:

1. Inventory property shall be valued at Licensee's cost.
2. Other property shall generally be valued at Licensee's Net Book Value (NBV) unless Licensee obtains a written third-party appraisal of the property's fair market value (FMV) in which case the property will be valued at fair market value.
3. Expenditures made directly on behalf of Approved Organizations shall be valued at cost.
4. Services provided to or on behalf of Approved Organizations shall be valued at cost.

**SUPPORTING NON-MONETARY DONATIONS**

Support for your Non-Monetary Donations to Approved Organizations should consist of:

1. A schedule or General Ledger Report showing the following data related to each non-monetary donation item:
  - a. Date of Expenditure or property donation
  - b. Name of Approved Organization
  - c. Value of the non-monetary donation computed pursuant to above.