

1% for Orchid Conservation “Good Faith” Agreement for Small Businesses

Purpose: To raise money and awareness for in situ orchid conservation.

Definitions:

Small Business: a business with sales of less than \$5 million.

Licensee: the Orchid Conservation Coalition

Licensee’s Trademark: 1% for Orchid Conservation trademark (Exhibit A)

Licensor: the business entering into 1% for Orchid Conservation "Good Faith" Agreement for Small Businesses

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 (Exhibit B).

The value of Non-Monetary Donations shall be computed pursuant to Exhibit D.

Fulfillment of Participation:

Donation: A business agrees to donate 1% or more of net revenue each year towards the in situ orchid conservation organization or project of **its choice**. In situ orchid conservation is defined by the criteria in Exhibit B (Approved Organizations). The criterion is a broad definition of in situ orchid conservation from the buying of habitat to research that supports in situ orchid conservation.

Businesses can also contribute to their own in situ orchid conservation projects.

A quarter (.25 %) of the first 1% can be non-monetary donations including volunteering.

Business will determine the fair market value of any non-monetary donations.

Donations above 1% can be any combination of monetary and non-monetary.

Initial and Continued Donation: A business agrees to make donations to approved organizations (Exhibit B), during 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) Joining Date Occurs Within the First Six Months: If an business’s joining date falls within the first six (6) months of an business’s fiscal year, the business shall make the donations starting that fiscal year.

(b) Joining Date Occurs After the First Six Months: If the joining date falls after the first six (6) months of an business’s fiscal year, the business shall make the donations for the fiscal year immediately following the fiscal year that it joined. However, they can make donations in the fiscal year that they join in.

Reporting of Donation: Businesses will report the amount of its donation and the recipient for a fiscal year to the administrator. This information will be held confidentially. It will only be used in a grand total for promotion to encourage other organizations to join the coalition and to measure how the coalition is doing.

Trademark Use: A participating business can use the 1% for Orchid Conservation logo for plant sales, shows, and where needed. 1% for Orchid Conservation banners and digital files are available. Ask the administrator. If a participating business has a website the Orchid Conservation Coalition asks that the business use the logo on the website and link to the Orchid Conservation Coalition website. If a business is to use the 1% for Orchid Conservation Trademark for marketing purposes such as on plant tags, advertisement or sales brochures and catalogs see Exhibit C.

No Fee: Beyond the above fulfillment of participation there is no fee. **1% for Orchid Conservation and the Orchid Conservation Coalition does not accept any money.** You cannot give or donate any money to 1% FOC or the OCC. The coalition does not pool money or decide where money should go beyond defining in situ orchid conservation in the criteria Exhibit B of this agreement.

Notice of Joining or Termination: The business's owner will notify the Orchid Conservation Coalition administrator of a society's participation or termination. Participation or Termination is executed upon notification. This is not a signed agreement. **It is an agreement in good faith.**

Limitation of Warranty and Liability

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.

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

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.

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.

Administrator: information@orchidconservationcoalition.org or the current administrator is Mark Sullivan at MarkSullivan@orchidconservationcoalition.org

1% for Orchid Conservation is a program of the Orchid Conservation Coalition. Participation in 1% for Orchid Conservation means you have joined the Orchid Conservation Coalition. This agreement is an agreement between coalition participants. The coalition does not have a board. All coalition participants have equal ownership of the coalition. The Orchid Conservation Coalition is a coalition in every sense of the word "coalition".

**EXHIBIT A
TRADEMARKS**


Trademark	Trademark symbol ("®" or "TM" or "SM")	Territory
	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

License of Use of Trademark

The following set forth that Orchid Conservation Coalition owns the 1% for Orchid Conservation trademark and protects its rights to the trademark. It also sets rules for use to protect the quality and integrity of the 1% for Orchid Conservation trademark which safeguards everyone in the coalition.

1 License Grant. Subject to the terms and conditions of the full 1% for Orchid Conservation “Good Faith” Agreement for Small Businesses. Licensor hereby grants to Licensee, under the rights Licensor has or may have in the Trademarks, a non-transferable (except as set forth in Section 7 Assignment), non-sub licensable, non-exclusive, restricted license, in the Territory, during the Term of this Agreement, to use and display the Trademarks solely on Licensee’s gadgets and website, and on promotional materials, informational materials, marketing materials, advertisements and press releases concerning such Products, Services, or Other Activities of Licensee (“Marketing Materials”).

All rights of Licensor in and to the Trademarks not expressly granted under this Section are reserved by Licensor.

2 Restrictions. During the term and after any termination of this Agreement:

- (a) Licensee shall not reproduce or use (or authorize the reproduction or use of) the Trademarks in any manner whatsoever other than as expressly authorized by this Agreement.
- (b) Licensee shall not use or register any service mark, service name, trade name, trademark, design or logo(s) which are confusingly similar, in Licensor’s sole discretion, to (i) any Trademark; or (ii) any other service mark, service name, trade name, trademark, design, or logo(s) of Licensor.
- (c) 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.

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 Orchid Conservation Coalition”, place an asterisk immediately after and slightly above the use of each Trademark, referring to a footnote reading “Trademark of the Orchid Conservation Coalition.” 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.

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 Trademark.
- (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.

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.

6 Quality Control

6.1 Trademark Guidelines. Use of the Trademarks hereunder shall be in accordance with Licensor's 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.

6.2 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.

6.3 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

7 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.

Exhibit D
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.