

ARIZONA CENTER *for* NATURE CONSERVATION



ARIZONA CENTER *for*
NATURE CONSERVATION
at South Mountain Park

PHOTOGRAPHY/VIDEOGRAPHY/OTHER CONTENT COMMERCIAL USE AGREEMENT

THIS AGREEMENT is made and entered into by and between Arizona Center for Nature Conservation, an Arizona non-profit corporation, with principal offices at 455 N. Galvin Parkway, Phoenix, AZ 85008, hereinafter referred to as “ACNC” and _____, a _____, with a principal address of _____, hereinafter referred to as “PRODUCER” this ____ day of _____, 20 ____ (hereinafter the “Effective Date”). ACNC and PRODUCER may each be individually referred to as a “PARTY” or jointly referred to as the “PARTIES”.

RECITALS

WHEREAS, ACNC permits PRODUCER to use photos or video content obtained through access of ACNC facilities, property, guests, staff or animal collection for a commercial purpose, as stated herein; and

WHEREAS, ACNC will approve photo/video, placement and distribution, hereinafter referred to as “CONTENT” as described herein; and

WHEREAS, PRODUCER agrees to provide compensation to ACNC as described herein;

NOW, THEREFORE, in consideration of the mutual covenants contained herein and intending to be bound thereby, the PARTIES agree as follows:

SECTION I

TERM OF AGREEMENT

- A. PARTIES agree that the term of this AGREEMENT is for one (1) year from the Effective Date and thereafter continues on a month-to-month basis on the same terms and conditions, unless terminated by either party. The PARTIES agree this Agreement may be renewed for a successive one (1) year term through mutual written agreement between the Parties.
- B. Either PARTY may terminate this AGREEMENT or any month-to-month extension thereof without cause or penalty upon thirty (30) days written notice specifying the date termination is effective. In the event of a material breach of this Agreement by either party, each party reserves the right to terminate this Agreement immediately upon written notice (“Notice of Termination”). The termination of the AGREEMENT, by the lapse of time or otherwise, shall not relieve PRODUCER of its obligation to pay ACNC any and all compensation, revenue share or charges that have occurred during the period in which this AGREEMENT is in effect.

SECTION II

CONTENT APPROVAL

- A. PRODUCER shall submit a written Disclosure of Intent to summarize specifics of the CONTENT subject to commercial use to include: (1) image(s), (2) placement, (3) distribution, (4) duration of time and (5) projected income. Upon approval by ACNC, the Disclosure of Intent will serve as Exhibit A to this AGREEMENT.
- B. PRODUCER must submit to ACNC, in writing, any proposed adjustments to the Disclosure of Intent. ACNC agrees to approve or deny proposed adjustment within thirty (30) days of receipt of PRODUCER's revised Disclosure of Intent.
- C. ACNC reserves the sole right to adjust prospective commercial use of the CONTENT should circumstances arise that create a conflict with ACNC's mission or in any way negatively affect the reputation of ACNC.

SECTION III

COMPENSATION AND FEES

- A. PRODUCER agrees to pay ACNC, in the form of a donation, twenty-percent (20.0%) of all Gross Proceeds resulting from the commercial use of the CONTENT. The term "Gross Proceeds" is defined as all revenue and income received and/or obtained by PRODUCER from the direct or indirect use of the CONTENT.
- B. On a frequency not less than annually, PRODUCER shall provide ACNC: (1) a written summary of Gross Proceeds in sufficient detail as requested by ACNC, and (2) the donation, in United States legal tender, equaling twenty percent (20.0%) of the Gross Proceeds.
- C. ACNC will provide PRODUCER an acknowledgment letter for the total donation received in each calendar year by January 31st of the following calendar year.

SECTION IV

SALES, RELATIONSHIP OF PARTIES AND LIABILITY

- A. PRODUCER is solely responsible for negotiating commercial use terms with third-party retailers and/or distributors, with no involvement from ACNC. This AGREEMENT does not convey any express or implied permission for PRODUCER to sell commercially on ACNC property or to ACNC guests in person or electronically.
- B. PRODUCER shall be responsible for payment and reporting of applicable sales and use taxes to the corresponding state and local jurisdictions for the commercial sales of CONTENT related to this AGREEMENT.

- C. ACNC and PRODUCER enter into this Agreement as independent contractors and at arms length. PRODUCER shall control the methodology for performing its work under this Agreement. Neither PRODUCER nor its employees, contractors, or agents may be considered agents or employees for any purpose and have no authority to act or purport to action on ACNC's behalf. PRODUCER shall comply with all federal, state, county and municipal laws, regulations, codes and ordinances applicable to the PRODUCER'S scope of work.
- D. PRODUCER agrees to immediately indemnify, defend and hold harmless ACNC, and its officers, agents, board members, employees and representatives from any and all claims, demands, or suits arising out of or relating to PRODUCER'S commercial use of the CONTENT.
- E. This Agreement shall be non-exclusive and ACNC reserves the right to contract with others to perform the same services as PRODUCER.

**SECTION V
GOVERNING LAW**

This AGREEMENT shall be construed, governed and enforced under the laws of the State of Arizona, without regards to the internal law of Arizona regarding conflict of laws. The PARTIES mutually consent to submit to the jurisdiction of the State courts of Maricopa County, Arizona. The PARTIES shall bring any action or suit concerning the AGREEMENT or related matters only in the state courts in Maricopa County, Arizona. The PARTIES shall not raise, and do hereby waive, any defenses based on venue, inconvenience of forum, or lack of personal jurisdiction in any action or suit brought in accordance with this Section. In the event an action or proceeding is brought by any PARTY against the other under this AGREEMENT, the prevailing party shall be entitled to recover all costs and expenses, including court costs and reasonable attorneys' fees.

**SECTION VI
ENTIRE AGREEMENT AND SEVERABILITY**

- A. PRODUCER acknowledges that he/she has read this AGREEMENT, understands its content and agrees to the terms and conditions.
- B. Nothing in this AGREEMENT is intended, or shall be deemed, to confer any rights upon any person who is not a PARTY to this AGREEMENT.
- C. The terms of this AGREEMENT can only be modified or amended by written agreement of the PARTIES.
- D. This AGREEMENT constitutes the entire AGREEMENT of the PARTIES and supersedes all prior or contemporaneous agreements, whether oral or written, between the PARTIES.

E. If any paragraph, subparagraph, sentence, clause, phrase, or portion of this AGREEMENT is, for any reason, held invalid by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of this AGREEMENT, provided that the substantial economic benefits of the AGREEMENT and the intent of the PARTIES is not frustrated thereby.

F. All notices required under this AGREEMENT shall be delivered to the address stated above.

IN WITNESS WHEREOF, the PARTIES hereto have executed this AGREEMENT, acknowledging their acceptance of the terms of this AGREEMENT in its entirety this ____ day of _____, 20__.

ARIZONA CENTER FOR NATURE CONSERVATION

PRODUCER

BY: _____

BY: _____

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____