

## LICENSE AGREEMENT

This License Agreement (the "Agreement") is made as of \_\_\_\_\_, 200\_ (the "Effective Date") between American Antiquarian Society, located at 185 Salisbury Street, Worcester, MA 01609-1634 (the "Society") and \_\_\_\_\_, (the "Licensee") located at \_\_\_\_\_.

The Society owns various proprietary materials protected by common law, copyright laws and/or other applicable laws restricting use of such materials. The Licensee desires to use certain of the materials for a specific purpose and use.

In consideration of the mutual promises contained herein, the parties agree as follows:

### 1. RIGHTS GRANTED

In consideration for the Licensee's payment of the License Fee set forth in Appendix A, the Society grants the Licensee the non-exclusive license, during the term, as set forth in Appendix A (the "Term"), to use the material(s) owned by the Society, which are listed in Appendix A (the "Licensed Material"), for the limited purpose and in the manner described in Appendix A (the "Project").

### 2. OWNERSHIP OF LICENSED MATERIAL

Unless the Society consents in writing, the Licensee shall not sell, distribute, copy or otherwise use the Licensed Material in any manner not expressly described in Appendix A. Except as specifically set forth in this Agreement, the Licensee acknowledges that the copyrights and all other proprietary rights in and to the Licensed Material are exclusively owned by and reserved to the Society and the Licensee shall neither acquire nor assert copyright ownership or any other proprietary rights in the Licensed Material or in any derivation, adaptation, or variation thereof.

### 3. UNLICENSED USE OF LICENSED MATERIALS

- a. The Licensee agrees that it will not use the Licensed Material, the Society's name, or any other material which is owned by the Society in any way other than as authorized and expressly described in Appendix A.
- b. The Licensee agrees to use its best efforts to prevent third parties from using and/or copying the Licensed Material in any manner other than as contemplated in this Agreement and will notify the Society in writing of any such use by third parties of the Licensed Material of which the Licensee becomes aware.

### 4. APPROVALS

- c. Before the publishing, broadcasting, distribution, exhibition, marketing and exploitation in any manner and means of the Project, the Licensee shall submit to the Society, for its review and prior written approval, a proposal of sufficient detail which explains how the Licensed Material will be utilized in the Project, unless otherwise expressly stated in Appendix A.
- d. Without the prior written approval of the Society or unless otherwise stated in Appendix A, the Licensee shall not:

- (i) Alter, distort, modify or otherwise change the Licensed Material in any way.
  - (ii) Use the name “American Antiquarian Society” or any variation thereof.
- e. The Society’s approval or disapproval shall lie solely at the Society’s discretion. Any use of the Licensed Material in violation of this Agreement shall be deemed unlicensed. If any unapproved use of the License Material is exploited in the manner described in Section 4(a) of this Agreement, the Society may, together with other remedies available to it, require such use of the Licensed Material to be immediately withdrawn from the market.
- f. Notwithstanding the Society’s right of approval, the Licensee shall be solely responsible for ensuring that use of the Licensed Material is in compliance with all applicable laws.

**5. COPYRIGHT NOTICE/PROPRIETARY NOTICE/CREDIT**

- g. As a condition to the grant of rights hereunder, the Society may require, if so described in Appendix A, the Project, and any other related matter which the Society permits to include the Licensed Material, to bear a credit line and/or a permanently affixed copyright notice in the Society’s name (i.e., "© American Antiquarian Society"), and/or such other notice as the Society may request in writing that the Licensee use. The Licensee will comply with such instructions as to form, location and content of the notice as the Society may give the Licensee.

**6. INDEMNITY**

- h. The Licensee agrees to indemnify the Society (and its officers, directors and employees) during and after the Term against all claims, liabilities and expenses (including reasonable attorneys’ fees) arising out of the Licensee’s activities described in this Agreement or the exploitation of the Projects, or the Licensee’s breach of the Agreement.
- i. The Society warrants that it owns the Licensed Material. However, no warranty or indemnity is given by the Society with respect to any liability or expense arising from any claim that use of the Licensed Material under this Agreement infringes on any right of any party. It is expressly agreed that it is the Licensee’s responsibility to carry out such investigations as the Licensee may deem appropriate to establish that use of the Licensed Materials does not infringe the rights of any party, and the Society shall not be liable to the Licensee if such infringement occurs. The Licensee will obtain all required consents and releases, if any, necessary for its use of the Licensed Material.
- j. The Society and the Licensee agree to give each other prompt written notice of any claim or suit which may arise under the indemnity provisions set forth above.

**7. WITHDRAWAL OF LICENSED MATERIAL AND TERMINATION**

The Licensee agrees that the Society may, without obligation to the Licensee, other than to give the Licensee prior written notice thereof, or without prejudice to any other right or remedy available to the Society, withdraw from the scope of this Agreement any Licensed Material if the Licensee breaches a material term of this Agreement.

**8. RIGHTS AND OBLIGATIONS UPON EXPIRATION OR TERMINATION**

Upon the expiration or termination of this Agreement, all rights herein granted to the Licensee shall revert to the Society and the Society shall be entitled to all Fees. The Licensee agrees that from the expiration or termination of this Agreement the Licensee shall not manufacture, sell, distribute or otherwise exploit any material containing the Licensed Material, and that the Licensee will deliver to the Society any and all Licensed Material.

**9. WAIVERS**

A waiver by either party at any time of a breach of any provision of this Agreement shall not apply to any breach of any other provision of this Agreement, or imply that a breach of the same provision at any other time has been or will be waived, or that this Agreement has been in any way amended, nor shall any failure by either party to object to conduct of the other be deemed to waive such party's right to claim that a repetition of such conduct is a breach thereof.

**10. ASSIGNMENT**

Unless otherwise described in Appendix A, the Licensee shall not voluntarily or by operation of law assign, sub-license, transfer, encumber or otherwise dispose of all or any part of its interest in this Agreement without the Society's written consent, to be granted or withheld in the Society's absolute discretion. Any attempted assignment, sub-license, transfer, encumbrance or other disposal without such consent shall be void and shall constitute a material default and breach of this Agreement.

**11. RELATIONSHIP**

This Agreement does not provide for a joint venture, partnership, agency or employment relationship between the parties.

**12. CONSTRUCTION**

The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning and not strictly for or against any of the parties. Headings of paragraphs in this Agreement are for convenience of reference only and are without substantive significance.

**13. MODIFICATIONS OR EXTENSIONS OF THIS AGREEMENT**

Except as otherwise provided herein, this Agreement can only be extended or modified by a writing signed by both parties.

**14. NOTICES**

Any notice which either party is required or may desire to serve upon the other party shall be in writing, addressed to the party to be served at the address set forth in the first paragraph of this Agreement, and may be served personally or by depositing the notice addressed as stated in this Agreement (unless and until otherwise notified), postage prepaid, in the United States mail. Such notice shall be deemed served upon personal delivery or upon the date of mailing; provided, however, that the Society shall be deemed to have been served with a notice of a request for approval of materials under this Agreement only upon the Society's actual receipt of the request and of any required accompanying materials.

**15. PREVIOUS AGREEMENTS**

This Agreement contains the entire agreement between the parties concerning the subject matter hereof and supersedes any pre-existing agreement and any oral or written communications between the parties.

**16. CHOICE OF LAW AND FORUM**

This Agreement shall be governed and interpreted according to the laws of the Commonwealth of Massachusetts. Any legal actions pertaining to this Agreement shall be commenced within the Commonwealth of Massachusetts.

**17. EQUITABLE RELIEF**

The Licensee acknowledges that the Society will have no adequate remedy at law if the Licensee continues to manufacture, sell, advertise, promote or distribute the Project, embodying the Licensed Material, upon the expiration or termination of this Agreement. The Licensee acknowledges and agrees that, in addition to any other remedies albeit inadequate but available to the Society, the Society shall have the right to have any such activity by the Licensee restrained by equitable relief, including, but not limited to, a temporary restraining order, a preliminary injunction, a permanent injunction, or such other alternative relief as may be appropriate, without the necessity of the Society posting any bond.

IN WITNESS WHEREOF, the parties have executed this Agreement under seal as of the day and year first written above.

AMERICAN ANTIQUARIAN SOCIETY

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

The Licensee

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**APPENDIX A**

**PERMISSION TO USE/REPRODUCE LICENSED MATERIAL**

**Agreement dated:** between The American Antiquarian Society and

**Project:**

**Term:**

**Licensed Material:**

**Required Credit Line and/or Copyright Notice:**

**License Fee:**

**Other Conditions:**