**Trademark License Agreement**

This Trademark License Agreement (“Agreement”) is made and entered into on [\*\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_,\*] by and between the Geological Society of America, Inc., a New York nonprofit corporation whose principal place of business at 3300 Penrose Place, Boulder, Colorado 80301 (“GSA”) and [\*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\*], a [\*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\*], whose principal place of business is [\*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\*] (“Licensee”).

WHEREAS, GSA is the sole and exclusive owner of the common law rights in the trademark “EARTHCACHE”; and

WHEREAS, Licensee desires to obtain from Licensor a non-exclusive license to use the Trademark on or in association with certain Articles (defined below) offered [\*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\*] by Licensee.

NOW, THEREFORE, in consideration of the promises and covenants set forth herein and for other good and valuable consideration, the receipt of which is acknowledged, the parties agree as follows:

1. LICENSE GRANT. In consideration for Licensee’s agreement to pay and Licensee’s payment of all Royalties, GSA hereby grants to Licensee for the Term of this Agreement a non-exclusive, non-transferable [\*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\*] right to use the trademark **EarthCache** (“Trademark”) in the Territory on or in connection with the Articles (defined below), as may be approved when Article is approved, and to manufacture and sell the Articles.
   1. The license and rights granted under this Section are subject to the terms and conditions stated in this Agreement. GSA hereby reserves all rights not expressly and explicitly granted to Licensee hereunder. Licensee’s right to sublicense shall be subject to written approval by GSA, and is limited to granting sublicenses to the extent necessary to have the Articles manufactured.
2. LICENSED ARTICLES. GSA Licensee shall use the Trademark only on or in connection with those Articles specifically identified on Schedule A (the “Articles”), which is incorporated herein by this reference. GSA agrees that those Articles are eligible to be marketed and sold under the Trademark.
3. TERRITORY. The territory in which the Articles may be sold includes [\*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\*]. For purposes of clarification, the Licensee’s use of the Trademark shall be limited to Articles targeted to and provided within the Territory only, notwithstanding that Licensee’s use of the Trademark (subject to GSA’s approval rights) may be used in conjunction with an internet website from outside the Territory. Incidental sales outside the Territory will not be considered a material breach of this Agreement.
4. ROYALTY. Licensee shall make payment to GSA at execution and upon each anniversary of this Agreement a non-refundable royalty of [\*\_\_\_\_\_\_ ($\_\_\_\_\_.00)\*] and [\*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\*] (“Royalty”). “Net Sales” means actual invoiced billings (i.e. sales quantity multiplied by Licensee’s selling price) for Articles sold less volume discounts. Deductions may not be made for cash discounts, defective goods allowances, costs incurred in manufacturing, importing or selling the Articles, freight costs and uncollectible accounts.
5. [\*PAYMENT OF ROYALTIES. [\*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\*]
6. AUDITS AND MAINTAINING RECORDS. Licensee shall keep accurate records of all transactions relating to this Agreement during the Term and for one (1) year thereafter. GSA or its representatives shall have the right from time to time to examine and make extracts from such records. [\*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\*]
7. TERM. This Agreement and the license granted herein shall commence on the date hereof and shall continue until [\*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\*]or the Licensee desires to terminate in accordance with the provisions of this Agreement (“Term”). However, in the event that (a) the Royalty is not paid in a timely fashion, or (b) Licensee is in breach of this Agreement, GSA shall have the right to terminate this Agreement upon written notice to Licensee, effective immediately upon Licensee’s receipt thereof.
   1. The Term may be renewed, upon written request of Licensee delivered not less than ninety (90) days before the end of the Term, provided that Licensee is in compliance with all the terms and conditions contained in this Agreement, and Licensee has not during the Term, persistently breached any term or condition.
   2. Except as provided above, neither of the parties shall be obligated to renew or extend this Agreement or the business relationship in any respect, offer a “first right of negotiation” or “first right of refusal” for a further renewal of the license, or the grant of any new license.
8. PRE-PRODUCTION APPROVALS.
   1. As early as possible, and in any case before commercial production of any Article, Licensee shall submit to GSA for GSA’s review and written approval all concepts, designs, material specifications and artwork (“Pre-Production Materials”) which comprise or are to appear on or in any and all Articles. GSA shall respond to Licensee’s submission of Pre-Production Materials within [\*\_\_\_\_\_ (\_\_)\*] business days of submission. GSA’s failure to respond to any Pre-Production Materials properly submitted to it for approval within that timeframe shall be deemed a disapproval.
   2. Approval or disapproval shall lie solely in GSA’s discretion, and any Article not approved in writing by GSA, or deemed approved as foresaid, shall be deemed unlicensed and shall not be manufactured or sold by Licensee. If any unapproved Article is being sold, GSA may, together with all other remedies available to GSA, including but not limited to immediate termination of this Agreement, by written notice require such Article to be immediately withdrawn from the market. Any material modification of an Article, including but not limited to, change of design or shape or size of the representation of the Trademark must be submitted in advance for GSA’s written approval as if it were a new Article.
9. APPROVAL OF PRODUCTION SAMPLES.
   1. Before any Article is furnished for [\*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\*], Licensee agrees to furnish to GSA from the first production run of each manufacturer of each of the Articles, for GSA’s approval of all aspects of the Article in question, a sample with all packaging, which shall conform to the Pre-Production Materials. Samples delivered to GSA become the property of GSA. Approval or disapproval of the Trademark’s artwork and the quality of the Article shall lie in GSA’s sole discretion. Any Article not approved in writing (or deemed approved) by GSA shall be deemed unlicensed, shall not be sold and unless otherwise agreed by GSA in writing, shall be destroyed.
10. QUALITY CONTROL.
    1. Licensee shall furnish to GSA, prior to any use by Licensee, copies of all advertising and promotional material on which the Trademark appears (“Materials”). GSA shall have the right to approve or disapprove any or all Materials and GSA’s approval shall not be unreasonably withheld. Any Materials submitted to GSA shall be deemed approved unless GSA notifies Licensee to the contrary within ten (10) business days after the receipt of such Materials.
    2. Licensee acknowledges that the Trademark is associated with high quality products. Licensee shall, and shall cause its approved sublicensees to, adhere to the level of quality and shall maintain the reputation of the Trademark at a level comparable to the level at the time of this Agreement or thereafter imposed by GSA. Accordingly, GSA recommends that Licensee submit production samples to GSA for approval before committing to a large production run or to purchase a large shipment from a new supplier.
    3. All Articles in public circulation must conform in all respects to the approved production sample. Licensee is responsible for the consistent quality and safety of the Articles and their compliance with all applicable laws.
    4. If the quality of the Articles falls below the standard set forth in Section 10(b), Licensee shall use its best efforts to restore such quality.
    5. GSA shall have the right to inspect upon reasonable notice and during normal business hours, the Articles being processed, sold or distributed under the Trademark.
    6. Licensee and any sublicensee shall comply with all federal, state or local laws or regulations applicable to the handling, use, sale or distribution of the Articles under the Trademark.
11. MANUFACTURE OF ARTICLES BY THIRD PARTY MANUFACTURER. Licensee may contract with third parties to manufacture Articles, provided that Licensee ensures in its contract with the manufacturer that it shall abide by the terms and conditions of this Agreement as applicable to the protection and use of the Trademark, the quality of design, material and workmanship of the Articles.
12. BEST EFFORTS. Licensee shall use its best efforts to promote the Articles offered under the Trademark and to coordinate the development, creation, distribution and advertising of the Articles so as to maintain and enhance the value of the good will residing in the Trademark. Licensee represents and warrants that each Article shall be of good quality and free of defects in design, workmanship and material and shall comply with such the sample thereof approved by GSA.
13. TERMINATION. Licensee shall have the right to terminate this Agreement at will upon written notice to GSA, effective [\*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\*] GSA’s receipt of such notice. Without prejudice to any other right or remedy available to GSA, GSA shall have the right to terminate this Agreement at any time immediately by giving Licensee written notice thereof:
    1. If Licensee fails to timely furnish statements [\*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\*];
    2. If Licensee makes available for sale or public consumption any articles bearing the Trademark other than approved Articles;
    3. If Licensee breaches any provision of this Agreement and fails to remedy such breach to GSA’s satisfaction within ten (10) days after notice of such breach is provided by GSA; and
    4. If Licensee makes an assignment for the benefit of creditors or files a petition in bankruptcy.

The exercise of any right of termination under this Section 13 shall not affect any rights which have accrued prior to termination and shall be without prejudice to any other legal or equitable remedies to which the terminating party may be entitled by reason of such rights.

1. OWNERSHIP.
   1. Licensee hereby acknowledges GSA’s right, title and interest in and to the Trademark and GSA’s exclusive right to use and license the use of the Trademark.
   2. During the Term, Licensee shall at no time adopt or use, without GSA’s prior written consent, any variation of the Trademark or any trademark likely to be similar or confusing with the Trademark.
   3. Licensee’s use of the Trademark and any and all good will arising from such use shall inure solely to the benefit of GSA, and, during the Term, Licensee shall not assert any claim to the Trademark or such good will.
   4. Licensee agrees to comply with the rules and guidelines set forth from time to time by GSA with respect to the appearance and use of the Trademark. Any form use of the Trademark not specifically provided for by such rules shall be adopted by Licensee only upon prior written approval by GSA.
   5. At all times that Licensee displays the Trademark, it shall always include all appropriate notices and legends with respect to the Trademark as are or may be required by applicable federal, state or local trademark laws or which may be reasonably requested by GSA.
   6. All uses of the Trademark by Licensee hereunder shall inure to the benefit of GSA, who is the exclusive beneficial owner of the Trademark and of any trademark incorporating all or any part of the Trademark, and any and all trademark rights created by such uses. Licensee hereby assigns to GSA all of Licensee’s right, title and interest in the Trademark, and any trademark consisting or incorporating the Trademark, and any other derivations, adaptations, compilations or variations of the Trademark.
   7. Licensee agrees not to use any trademark, service mark, trade name, domain name or any other designation which is likely to be confused with GSA’s Trademark.
2. REGISTRATION. Licensee shall not register or attempt in any country to register as a trademark, service mark, copyright, domain name, trade name or any other designation the Trademark or any adaptations, derivations, or variations or any word, symbol or design which is so similar thereto as to suggest association with or sponsorship by GSA.
3. INDEMNIFICATION.
   1. Licensee, at its sole expense, shall defend and indemnify and save and hold harmless GSA from and against any and all liabilities, claims, causes of action, suits, demands, investigations, damages and expenses, including reasonable attorneys’ fees and expenses (collectively, “Claims”) for which GSA becomes liable or may incur or be compelled to pay by reason of (1) breach of this Agreement by Licensee, (2) product liability or similar tort claims, (3) any actions, whether by omission or commission, that may be committed or suffered by Licensee or any of its directors, officers, employees or agents in connection with Licensee’s performance of this Agreement.
   2. GSA, at its sole expense, shall defend and indemnify and save and hold harmless Licensee from and against any and all Claims for which Licensee becomes liable or may incur or be compelled to pay by reason of (1) breach of this Agreement by GSA, or (2) any actions, whether by omission or commission, that may be committed or suffered by Licensee in connection with GSA’s performance of this Agreement.
   3. The provisions of this Section 16 shall survive the termination of this Agreement.
4. INFRINGEMENT. Licensee shall promptly inform GSA by written notice of any infringement or other misuse by a third party, of the Trademark on or in connection with the Articles similar to the Articles that Licensee learns of, and Licensee shall make available to Licensor any information relevant thereto in its possession. Any action for infringement or other misuse of the Trademark against another party shall be brought by GSA at its sole option, and any such action and all damages receive in the recovery shall be solely for the account of GSA. If GSA fails to act, Licensee may enforce GSA’s rights and any recovery shall be solely to the account of Licensee. If requested to do so, either party shall reasonably cooperate with the other party in any such action, including joining the action as a party.
5. RELATIONSHIP OF THE PARTIES. The relationship of the Licensee to GSA is that of an independent contractor and neither Licensee nor its agents or employees shall be considered employees of GSA. This Agreement does not constitute a partnership, joint venture, or grant of franchise between GSA and Licensee. This Agreement shall not be construed as an authority for either party to act for the other party in any agency or other capacity or to make commitments of any kind for the account of or on behalf of the other, except to the extent and for the purposes provided herein.
6. NOTICES. All notices, consents and other communications hereunder shall be in writing and shall be deemed to have been duly given when delivered by hand or nationally recognized overnight courier service to the party for whom intended, at the address for such party set forth below; provided, however, that any notice of change of address shall be effective only upon actual receipt.
7. SUCCESSORS AND ASSIGNS. The rights and obligations of the parties hereby shall inure to the benefit of and be binding and enforceable upon the permitted successors and assigns of the Licensee and upon the respective successors and assigns of GSA.
8. WAIVER. The failure of any party to enforce any right to claim breach of any term of this Agreement shall not constitute a waiver of the breach. Any waiver must be in writing signed by the party granting the waiver to be effective. No waiver by any party of any breach of any provision shall constitute a waiver of, or estoppel with respect to, any other subsequent breach of that or any other provision.
9. SEVERABILITY. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, void or unenforceable, such determination shall not affect the validity or enforceability of any other party or provision of this Agreement.
10. COMPLETE AGREEMENT. This Agreement, together with the attached Schedule A, constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all proposals, negotiations, representations, commitments, writings and all other communications between the parties, both oral and written. This Agreement may not be modified except by a writing signed by a duly authorized agent of each party.
11. COUNTERPARTS. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which, when taken together, will be deemed to constitute one and the same document.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

For GSA: For Licensee:

Geological Society of America, Inc. [\*name\*]

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

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

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

Address for notices:

|  |  |
| --- | --- |
| Geological Society of America, Inc. | [\*Name\*] |
| 3300 Penrose Place | [\*Address\*] |
| Boulder, Colorado 80301 | [\*City State Zip\*] |
| Attention: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Attention: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

**Schedule A**

**Licensed** **Articles**

[\*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\*]