

ShakeAlert™

ShakeAlert® Earthquake Early Warning System California – Oregon – Washington Technical Engagement Program

Evaluation License Agreement (Licensee completes sections marked in red)

This Evaluation Phase License Agreement (including all attachments and appendices, collectively the “Agreement”) is entered into between the United States Geological Survey (“USGS”), a bureau of the U.S. Department of the Interior, having offices at 12201 Sunrise Valley Drive, Reston, Virginia, 20192, and [name of Licensee] (“Licensee”) and is effective on the date of last signature below (the “Effective Date”). Each of USGS and Licensee may also be referred to as a “Party” and together, the “Parties.”

BACKGROUND

- a. The USGS is authorized to develop a system capable of providing earthquake warning data to mitigate damage from earthquakes as established by the Disaster Relief Act (P.L. 93-288, popularly known as the Stafford Act) and the National Earthquake Hazard Reduction Program, as enacted by the Earthquake Hazards Reduction Act of 1977, 42 U.S.C. §§ 7701 et seq. The data feed in coordination with state and private entities is used to develop mechanisms to respond to the data to notify the public about the earthquake. The USGS, in partnership with the University of Washington, the California Institute of Technology, the University of California at Berkeley, and the University of Oregon is continuing efforts to develop and maintain this Earthquake Early Warning (EEW) system called ShakeAlert®. USGS’s earthquake reduction plan is to create an infrastructure where the public receives a notification or alert within seconds of the ShakeAlert system detecting an earthquake, thereby providing warning before destructive shaking arrives.
- b. This Agreement is entered under the authority of the Federal Technology Transfer Act of 1986, codified in 15 U.S.C. § 3710a(a)(2), as amended. The Licensee’s authority to enter into the Agreement is pursuant to [Enter Authority if a State entity or not applicable if no authority is needed]. The purpose of this Agreement is to further the development of the ShakeAlert Materials by granting access to Licensee to evaluate the ShakeAlert Materials’ functionality and compatibility with Licensee’s products and services. Licensee will provide USGS with feedback regarding the functionality and compatibility of the ShakeAlert Materials, as further detailed below.
- c. The ShakeAlert Materials licensed under this Agreement include real-time data streams that may include parameters derived from ground motion records, ground motion estimates, or earthquake source information including origin time, location, magnitude, fault rupture description, and duration. These information streams begin shortly after an earthquake is detected and update as the earthquake develops.
- d. The ShakeAlert Materials licensed under this Agreement include an application, the UserDisplay demonstration module that may run on a LICENSEE’S computer. The UserDisplay presents visual and audio information about an earthquake, and when and how shaking may arrive at the user’s location. No user actions are permitted based on outputs of the UserDisplay module or from the real-time data stream. Failure to comply may result in the termination of this agreement.

In consideration of the mutual promises set forth herein, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. License.

1.1 Grant.

- a. USGS grants Licensee a non-exclusive, revocable (as provided in Section 11.2, Termination), non-transferable (except as expressly permitted in this Agreement), royalty-free license to access ShakeAlert Materials, **for the limited purpose of the LICENSEE’S internal evaluation of the real-time ShakeAlert data stream only**, subject to this Agreement’s terms and conditions.

1.2 License Restrictions.

- a. Licensee will not **PUBLICLY RELEASE, DISTRIBUTION, or RESPOND**, whether public or internal response, to distributed ShakeAlert Materials.
- b. Licensee will not advertise, sell, copy, modify, reverse engineer, publish, rent, lease, loan, sublicense, or distribute ShakeAlert Materials or derivative works based on ShakeAlert Materials to the public or any other third-party without the prior written consent of USGS.
- c. Access to the ShakeAlert Materials will be solely governed by terms and conditions of this Agreement;
- d. Licensee, including its employees and (or) USGS approved Licensee third-party, will not interfere with or disrupt USGS or ShakeAlert Materials servers or networks, and will comply with the USGS requirements, procedures, policies, and regulations for the ShakeAlert servers or networks, as set forth on Attachment B (License to Operate Amendments). Upon USGS written consent of any Licensee third-party, Licensee will take all reasonable steps, including flow down provisions, to ensure that terms required by Licensee under this agreement are passed to its contactors to the extent necessary for the performance of its contractor’s work.
- e. Unless otherwise agreed by USGS in writing, Licensee is limited to [##] concurrent connections to ShakeAlert servers. The users of each connection are listed in Appendix A.

1.3 No Other Restrictions.

Nothing in this Agreement:

- a. requires Licensee to use any ShakeAlert Materials in Licensee products or services;
- b. restricts Licensee from using content it obtains elsewhere; or
- c. restricts Licensee from exercising any rights it has at law (including under the U.S. Copyright Act).

2. Confidential Information.

2.1. Confidential Information.

“**Confidential Information**” means information that one Party discloses to the other Party under this Agreement, and that is marked as confidential or would normally be considered confidential information under the circumstances. It does not include information that:

- a. becomes public through no fault of the receiving Party;
- b. is rightfully given to the receiving Party without a confidentiality obligation;
- c. is independently developed by the receiving Party without reference to or use of information provided under this Agreement;
- d. required to be disclosed as a matter of court order or law; or

- e. permitted to be disclosed per the terms of this agreement.

Subject to the above, Confidential Information shall include:

- For the Licensee:
 - Non-public information related to Licensee’s products and services, including metrics and findings related to Licensee’s use of the ShakeAlert Materials; and
 - Information related to Licensee’s operations, products, and services provided in the Evaluation Agreement.
- For USGS: **NONE**, unless described below

2.2. Obligations.

The recipient will not disclose the other party’s Confidential Information, except to employees, agents, or professional advisors (“Delegates”) who need to know it and who have a legal obligation to keep it confidential. The recipient will use the other party’s Confidential Information only to exercise rights and fulfill obligations under this Agreement while using reasonable care to protect the Confidential Information. The recipient will ensure that its Delegates are also subject to the same non-disclosure and use obligations. The recipient may also disclose Confidential Information when required by law after giving reasonable notice to the other party, if permitted by law.

2.3. Public Statements

- a. Subject to Section 2.3.b., public statements or commercial advertisements issued by Licensee after verification shall not refer to this Agreement in a manner which states or implies that the products or services of Licensee are endorsed by the Government, or are considered by the Government to be superior to other products or services. This restriction is intended to avoid the appearance of preference by the Government toward any product or service. The Licensee may ask USGS to make a determination as to the propriety of promotional material.
- b. Licensee may refer to this Agreement in any public statements or commercial advertisements using language agreed upon by both Parties.

3. Intellectual Property and Endorsements.

3.1 No Endorsement.

USGS does not directly or indirectly endorse any product or service provided, or to be provided, by Licensee in connection with this Agreement.

3.2 Retention of Rights.

As between the parties:

- a. USGS retains all rights in the ShakeAlert Materials and USGS’ patents, trademarks, logos, and domain names; and
- b. Licensee retains all rights in Licensee’s products and services independently made.

3.3 Trademarks.

Licensee, including its employees, third-parties, and agents, will not use any trademarks, domain names, social media account names or handles, any independent development, or seek any trademark registration that are the same or confusingly similar to any USGS trademarks including its tradename(s), logo(s), brand(s), or seal(s), whether registered or not, without first obtaining written permission from USGS. Permission to use USGS' trademark(s) will not be unreasonably withheld, so long as Licensee's use does not state or imply any endorsement, suggest any other relationship than the one established by the license or a pending agreement with the USGS, or that the mark is not placed on or in connection with any Licensee or third-party goods.

Furthermore, Licensee agrees to use due diligence when selecting or using domain names, a trademark or seeking state or Federal trademark rights related, in any way, to this License Agreement, the ShakeAlert Materials, or for any good or service offered by Licensee, so that reasonable efforts are made to ensure that any of Licensee's trademark do not include, or are confusingly similar to, the names, trademarks, official insignia, or logos of the USGS.

3.4 Copyrights.

By virtue of this Agreement and Licensee's relationship with USGS, Licensee will be granted access to subject matter that may qualify for copyright protection in accordance with 17 U.S.C. §102. Without the prior written consent of USGS, Licensee shall not claim, file for, or otherwise acquire an interest in any copyrights in the ShakeAlert Materials, including software or any other material that Licensee has access to by virtue of this Agreement.

3.5 Patents.

Licensee by virtue of its use of the ShakeAlert Materials under this Agreement may generate patentable materials and (or) trade secrets of the Licensee. If Licensee uses federal funding and the ShakeAlert Materials provided under this Agreement to develop a patentable invention, Licensee grants to the USGS a perpetual, worldwide, nonexclusive, nontransferable, irrevocable, royalty-free license to practice or have practiced such invention, throughout the world by or on behalf of the Government for research or other Government purposes.

4. Maintenance and Support.

4.1. Updates. Subject to Section 4.2 (Notice):

- a. USGS is under no obligation to provide maintenance for the ShakeAlert Materials. If, in its sole discretion, USGS makes an update available to Licensee, it will be deemed incorporated into the ShakeAlert Materials and subject to this Agreement.
- b. USGS reserves the right to make any and all changes to ShakeAlert Materials that it deems necessary to maintain and improve the function of the system.

4.2. Notice. USGS will use best efforts to:

- a. provide at least 14 days' advance written notice to Licensee of any of any changes, fixes, patches, or updates that it makes to ShakeAlert API; and
- b. notify Licensee within 24 hours of any unexpected disruptions or malfunctions that occur and affect the ShakeAlert Materials.

5. Feedback.

As consideration for this Agreement, the Licensee will provide suggestions and feedback regarding the ShakeAlert Materials, including, but not limited to, functionality, design, usability, bugs, and results of any

testing performed by Licensee on a quarterly basis or upon the request by the USGS. The USGS is free to share feedback not classified as proprietary or confidential with ShakeAlert Partners to use and incorporate any feedback in USGS' products, without payment of royalties or other consideration to the Licensee, so long as adoption by USGS does not infringe any active patents, copyrights, or trade secret of the Licensee.

6. Passwords and Security.

Licensee is required to register as an authorized user for access to ShakeAlert Materials. Registration will include a username, password and contact information ("User Credentials"). For convenience, usernames will reasonably reflect the name of the Licensee. User Credentials must be kept accurate and up to date. Licensee is responsible for maintaining the confidentiality of its User Credentials and will not share its User Credentials with anyone or use the User Credentials of others. While USGS will use its best efforts to provide advance notice, USGS reserves the right to disable, delete, or change Authorized User Credentials at any time if USGS reasonably believes that doing so is in the best interests of the government or serves the public's interest, immediately without any advance notice.

7. Attribution.

If Licensee publishes research or otherwise publicly discloses information related to the ShakeAlert Materials that is permitted by this Agreement, then Licensee upon written approval by USGS, shall give appropriate credit to the USGS as the source of the ShakeAlert Materials. Licensee is permitted to use the name, USGS, in black and white, non-stylized text for limited purpose of USGS attribution in a scientific publication. For use of actual "USGS" mark, Licensee shall follow USGS Office of Communications and Publishing recommendations regarding appropriate format. Licensee shall send notice to USGS as indicated in Section 17 (Notices) of this Agreement for file and requested color. Guidance may also be found at <https://www.usgs.gov/information-policies-and-instructions/usgs-visual-identity-system>.

8. Prohibition on the Distribution of Warning Signals.

Licensee is not authorized to transmit messages, notifications, alerts, or warnings derived from the ShakeAlert Materials to unauthorized clients or to the public under this Agreement.

9. Disclaimers; Warranties; Limitation of Liability.

9.1. Disclaimers.

During the evaluation phase, ShakeAlert Materials are licensed under this Agreement for the purpose of continued research and development. The Parties make no express or implied warranty as to any matter whatsoever, including the conditions of the research or any invention or ShakeAlert Material, whether tangible or intangible, made or developed under or outside the scope of this Agreement, or the ownership, merchantability, or fitness for a particular purpose of any research, invention or material, or that a technology used by a Party in connection with the ShakeAlert Materials, or the ShakeAlert Materials, do not infringe any third-party patent rights.

Furthermore, USGS does not warrant that the ShakeAlert Materials will always function, in all geographic areas, without interruption, be error-free or that any errors will be corrected. All ShakeAlert Materials are provided "AS IS" and without any warranty, express, implied, or otherwise, regarding its accuracy or performance. Any reliance upon ShakeAlert Materials is at the express and sole risk of the Licensee, including its employees, assigns, and insurers.

Licensee shall provide the following disclaimer to all Clients that receive and distribute data about earthquakes:

LICENSEE MAKES NO WARRANTY WITH RESPECT TO ANY TECHNOLOGY, GOODS, OR SERVICES USING THE DATA AND HEREBY DISCLAIMS ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

9.2. Licensee Warranties.

The Licensee warrants that:

- a. it has authority to enter into this Agreement;
- b. the signatory has the authority to sign on behalf of the Licensee; and
- c. as of the Effective Date and to the best of its knowledge, the Licensee is not debarred or suspended by any agency of the U.S. government.

9.3. USGS Warranties.

USGS warrants that it has and will retain all necessary rights to grant the licenses in this Agreement and deliver ShakeAlert Materials to Licensee during the term of this Agreement.

9.4. Liability.

- a. Liability. In this Section 10.4, “**Liability**” means any liability, whether under contract, tort (including negligence), or otherwise and whether or not foreseeable or contemplated by the parties.
- b. Limited Liabilities. Subject to Subsection (c) (Unlimited Liabilities) and any amendment, neither Party will have any Liability arising out of or relating to this Agreement or the ShakeAlert Materials for:
 - i. lost revenues, profits, savings, or goodwill;
 - ii. indirect or consequential losses;
 - iii. special or incidental losses; or
 - iv. punitive damages.
- c. Unlimited Liabilities. Nothing in this Agreement excludes or limits either party’s Liability for:
 - i. death or personal injury resulting from its negligence or the negligence of its employees or agents;
 - ii. willful misconduct or a lack of good faith;
 - iii. fraud or fraudulent misrepresentation;
 - iv. breach of Section 2 (Confidential Information); or
 - v. matters for which liability cannot be excluded or limited under applicable law.

10. Independent Development.

The USGS understands that the Licensee may currently or in the future develop information internally or receive information from other parties that may be similar to the delivered ShakeAlert Materials. Accordingly, nothing in this Agreement will be construed as a representation or inference that the Licensee will not develop products, or have products developed for it, that compete with or are similar to the ShakeAlert Materials. Licensee shall ensure that no Independent Development breaches the terms of this Agreement.

11. Term and Termination.

11.1. Term. (Select Option 1 or 2. Delete the option that is not selected.)

Option 1. The term of this Agreement will commence on the Effective Date and continue for a period of (##) months.

Or

Option 2. This Agreement is renewed annually unless terminated by either Party. This Agreement will continue until terminated in accordance with this **Section 11.2.**

{Remove inapplicable clause and blue instructions from final version prior to signing}

11.2. Termination.

Either Party may terminate this Agreement for any reason with 30 days prior written notice. However, if USGS reasonably believes that immediate termination is in the best interests of the government or serves the public’s interest, then USGS may terminate this Agreement immediately without any advance notice.

11.3. Effects of Termination.

Upon termination:

- a. Licensee will stop utilizing ShakeAlert Materials (subject to any wind-down provisions agreed to by the parties in writing) and return to USGS or destroy all copies of the ShakeAlert Materials in accordance with instructions from USGS; and
- b. Within ten (10) business days of receipt of a Party’s written request, and at the second Party’s option, the second Party will use commercially reasonable efforts to return or destroy all tangible Confidential Information of the first Party, including, but not limited to, all electronic files, documentation, notes, plans, drawings, and copies thereof.

12. Governing Law.

This Agreement shall be governed by and interpreted in accordance with United States Federal Law. Prior to seeking a court of competent jurisdiction for any outstanding dispute, the parties agree to resolve such matters through submission of their dispute to USGS’ and Licensee’s respective signatories for an agreed resolution between the parties.

13. Assignment.

This license and the rights or obligations of any Party hereunder may not be assigned or otherwise transferred by any Party without the written consent by the appropriate delegated official of the other Party. USGS’ consent shall not be unreasonably withheld where:

- a. the assignee has agreed in writing to be bound by the terms of this Agreement;
- b. the assigning party remains liable for obligations under the Agreement if the assignee defaults on them;
- c. the assigning party has provided notice of the assignment to the other party; and
- d. any Licensee assignee has completed all training required by USGS regarding the use of the ShakeAlert Materials.

If assigned in accordance with this Section, this Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assignees. Any other attempt to assign is void.

14. Export Controls and Special 301 Report.

14.1. Export Control.

Licensee agrees to comply with U.S. export laws and regulations including obtaining licenses as needed from the Bureau of Industry and Security for export and re-export(s).

14.2. Special 301 Report.

Licensee further agrees to not allow any foreign personnel that is engaged by the Licensee as a contractor, consultant, grantee, or third-party collaborator (“Foreign Contractor”) whose country of origin is listed on the current annual Office of the U.S. Trade Representative (USTR) Special 301 Report (Report) to access the ShakeAlert API (e.g., by providing ShakeAlert API developer credentials or an API access key to the Foreign Contractor) for the performance of any work under this Agreement. The Report must be consulted annually throughout the term of the Agreement for compliance. For avoidance of doubt, employees of a United States Licensee are not Foreign Contractors, and this Section 14.2 does not apply to them.

15. Severability.

If a provision of this Agreement is found illegal or unenforceable, the validity, legality, and enforceability of the remaining provisions will not in any way be affected or impaired thereby and such provision will be ineffective only to the extent of such invalidity, illegality, or unenforceability.

16. Notices.

All notices of termination or breach must be in writing and addressed to the other party’s Legal Department. Additionally, termination and (or) breach notices from Licensee to USGS must also be addressed to the USGS Primary Contact. All other notices must be in writing and addressed to the other party’s primary contact. Notice will be treated as given on receipt, as verified by written or automated receipt or by electronic log (as applicable).

USGS Primary Contact:

Douglas Given
USGS Earthquake Early Warning Coordinator
525 S. Wilson Ave
Pasadena, CA 91106
626-583-7812
doug@usgs.gov

USGS Agreements Department:

Office of Policy and Analysis
Technology Transfer
12201 Sunrise Valley Drive
Mail Stop 153
Reston, VA 22033
(703) 684-7550
Gs-a_opa@usgs.gov

Licensee’s Primary Contact:

[name]
[title]
[address]

[address]
[email address]
[phone number]

Licensee's Legal Department:

[name]
[title]
[address]
[address]
[email address]
[phone number]

17. Entire Agreement.

This Agreement constitutes the entire Agreement with respect to use by Licensee of the subject matter and supersedes all prior or contemporaneous, oral, or written agreements concerning use of the subject matter including any online, clickwrap, click-through or other terms or agreements that may be a part of the ShakeAlert Materials.

18. Amendment.

Any amendment and (or) modification to this Agreement must be in writing, signed by the duly authorized representatives of each party, and expressly state that it is amending this Agreement.

19. No Agency.

This Agreement does not create any agency, partnership, or joint venture between the parties.

20. No Third-Party Beneficiaries.

This Agreement does not confer any benefits on any third party unless it expressly states that it does.

21. Counterparts.

The parties may execute this Agreement in counterparts, including facsimile, PDF, and other electronic copies, which taken together will constitute one instrument.

22. Consultants and Contractors.

Subject to Section 14.2 (Special 301 Report), Licensee may use its consultants and contractors to exercise its rights and fulfill its obligations under this Agreement, if those parties are subject to the same obligations as Licensee. Licensee is liable for those parties' acts and omissions.

SIGNATURES

By executing this Agreement, each Party represents that all statements made herein are true, complete, and accurate to the best of its knowledge; that each has read and understood this agreement prior to signing; and that each enters into it freely and voluntarily.

Licensee

Signature Date

Printed Name of Signatory

Title and Name of Organization

Phone E-mail

USGS

Signature Date

Printed Name of Signatory

Title and Name of Organization

Phone E-mail

Appendix A
List of Users for Connections