

# ShakeAlert™

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

### Evaluation License Agreement

LICENSEE completes sections marked in red

Remove all instructional blue text prior to signature.

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 stream of data messages produced by the system is used to reduce earthquake impacts by initiating automated machine-to-machine actions, notifying people 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 the ShakeAlert® Earthquake Early Warning system. USGS’s earthquake risk 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. Licensee’s authority to enter into the Agreement is pursuant to [for State or local governmental entities, enter a legal authority]. *If this sentence is not applicable, remove the sentence.* 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:

- i. “ShakeAlert Messages,” which consist of streams of real-time data messages that may include parameters derived from ground motion records, ground motion estimates, or earthquake source information including origin time, location estimates, magnitude estimates, and fault rupture description, and duration; the stream of messages begins shortly after an earthquake is detected and updated messages are published as the earthquake develops and may include follow-up messages based on human review;
  - ii. “Earthquake Early Warning Display or EEWDisplay” is a demonstration module run on a Licensee’s device. EEWDisplay presents visual, and audio information about an earthquake, estimated magnitude and shaking, and when shaking will arrive at Licensee’s location. EEWDisplay is for demonstration only and should not be used for life-safety applications; and
  - iii. Credentials to access ShakeAlert servers that provide data connections and development tools.
- d. The ShakeAlert Materials licensed under this Agreement include an application, the EEWDisplay demonstration module that may run on Licensee’s computer. The EEWDisplay presents visual and audio information about an earthquake, and when and how shaking may arrive at the Licensee’s location. Licensees are not permitted to take actions based on outputs of the EEWDisplay 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 10.2, Termination), non-transferable, royalty-free license to access ShakeAlert Materials, **for the limited purpose of 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, DISTRIBUTE, 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.
- e. 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.
- f. Unless otherwise agreed by USGS in writing, Licensee is limited to [##] concurrent connections to ShakeAlert servers.  
*A maximum of six (6) connections are provided to Licensee. If Licensee needs more connections, in another document, provide a justification for USGS consideration.*
- g. Licensee must list all employees using a connection in Appendix A (List of Connections).

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 confidential proprietary information that one Party discloses to the other Party under this Agreement, and that is visibly identified 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;
- e. permitted to be disclosed per the terms of this agreement; or
- f. name of Licensee that possess access credentials to connect to the ShakeAlert servers.

Parties will not share Confidential Information during this evaluation period.

## 2.2. Public Statements

- a. Licensee will notify the USGS of all public statements or commercial advertisement in connection with this Agreement. USGS will verify any of Licensee's public statements or commercial advertisement in connection with this Agreement prior to use. In the event correction is needed, the USGS will inform Licensee of the needed revision(s). Licensee must make the requested changes within ten (10) business days after notification by the USGS.
- b. Subject to Section 2.2.c., public statements or commercial advertisements issued by Licensee after verification must 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. Licensee may ask USGS to make a determination as to the propriety of promotional material.
- c. 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 patents, trademarks, copyrights, logos, domain names, and 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, 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 this Agreement 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 will 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 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 ten (10) 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 twenty-four (24) hours of any unexpected disruptions or malfunctions that occur and affect the ShakeAlert Materials.

## 5. Feedback.

As consideration for this Agreement, 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 with ShakeAlert Partners to use and incorporate any feedback in USGS' products, without payment of royalties or other consideration to Licensee, so long as adoption by USGS does not infringe any active patents, copyrights, or trade secret of Licensee.

## 6. Passwords and Security.

Licensee is required to register for access to ShakeAlert Materials. Registration will include a username, password and contact information ("Credentials"). For convenience, usernames will reasonably reflect the name of Licensee. Credentials must be kept accurate and up to date. Licensee is responsible for maintaining the confidentiality of its Credentials and must not share its Credentials with anyone or use the Credentials of others. While USGS will use its best efforts to provide advance notice, USGS reserves the right to disable, delete, or change Authorized 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, must give appropriate credit to the USGS as the source of the ShakeAlert Materials and (or) to ShakeAlert<sup>®</sup> as the source of the earthquake early warning data. Licensee is permitted to use the name, USGS and ShakeAlert<sup>®</sup>, in black and white, non-stylized text for limited purpose of USGS attribution in a scientific publication. For use of

actual “USGS” mark, Licensee must follow USGS Office of Communications and Publishing recommendations regarding appropriate format. Licensee must send notice to USGS as indicated in Section 15 (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, including the EEWDisplay module, to themselves, to unauthorized clients, 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. The USGS makes 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.

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 Licensee, including its employees, assigns, and insurers.

### **9.2. Licensee Warranties.**

Notwithstanding Section 9.1, Licensee warrants that:

- a. Licensee has the authority to enter into this Agreement;
- b. the signatory has the authority to sign on behalf of Licensee;
- c. as of the Effective Date and to the best of its knowledge, Licensee is not debarred or suspended by any agency of the U.S. government; and
- d. Licensee will not use or manufacture a technology in the performance of this Agreement that infringes or otherwise adversely impacts any third-party intellectual property rights.

### **9.3. USGS Warranties.**

Notwithstanding Section 9.1, 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 9.4, “**Liability**” means any liability, whether under contract, tort (including negligence), or otherwise and whether or not foreseeable or contemplated by the Parties.
- b. Indemnification. Licensee agrees to indemnify and hold the USGS, the United States Government, and its employees and its officers, agents, and employees harmless from and against any and all claims, suits, losses, damages, costs, fees, and expenses attributable to Licensee or its employees, agents, contractors, or subcontractors and arising out of or in connection with Licensee’s or its employees’, agents’, contractors’, or subcontractors’ use of ShakeAlert Materials, including but not limited to use of Licensee’s products or services.

**10. Term and Termination.**

10.1. Term.

This Agreement starts on the Effective Date and continues for one (1) year, unless terminated earlier by either Party in accordance with Section 10.2 (Termination). USGS will not be liable for any damages claimed by Licensee or its clients as a result of the termination of this Agreement in accordance with its terms.

*The term of this Agreement is a maximum of one year. If Licensee needs more time, in another document, provide a justification for USGS consideration.*

10.2. Termination.

Either Party may terminate this Agreement for any reason with thirty (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.

10.3. 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 information of the first Party, including, but not limited to, all electronic files, documentation, notes, plans, drawings, and copies thereof.

## 11. Governing Law.

This Agreement will be governed by and interpreted in accordance with United States Federal Law.

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. If the Parties are unable to reach an agreed resolution, this Agreement will be governed by and construed in accordance with the federal laws of the United States, and the Parties agree to submit to the jurisdiction of a federal court of the United States with respect to all disputes or matters arising out of or pertaining to this Agreement.

## 12. 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 will 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 12, this Agreement will 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.

## 13. Export Controls and Special 301 Report.

### 13.1. 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).

### 13.2. Special 301 Report.

Licensee further agrees to not allow any foreign personnel that is engaged by 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 13.2 does not apply to them.

#### 14. 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.

#### 15. 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]

**16. Entire Agreement.**

This Agreement constitutes the entire Agreement with respect to use by Licensee of the ShakeAlert Materials and 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.

**17. Amendment.**

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

**18. No Agency.**

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

**19. No Third-Party Beneficiaries.**

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

**20. Counterparts.**

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

**21. Consultants and Contractors.**

Subject to Section 13.2 (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 Connections**

	<b>Name</b>	<b>Email Address</b>
<b>1</b>		
<b>2</b>		
<b>3</b>		
<b>4</b>		
<b>5</b>		
<b>6</b>		