**ShakeAlert® Earthquake Early Warning System**

**Technical Engagement**

**Pilot License Agreement**

**Please Ensure All Revisions Are Made Using Track Changes or Similar Editing Functions. Since many provisions are cross-referenced, do not delete any statements as it might affect numbering. A simple ~~strike-out~~ must suffice.**

**Do not sign this agreement until requested by USGS.**

**Not Clearly Identifying Edits May Delay the Review Process**

LICENSEE completes sections marked in red

Remove all instructional blue text prior to signature.

This Pilot 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**

* 1. The USGS is authorized to develop and operate 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 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 the ShakeAlert**®** Earthquake Early Warning system. USGS’s earthquake risk reduction plan is to create an infrastructure where the public receives a notification, alert, or automated action within seconds of the ShakeAlert system detecting an earthquake, thereby potentially providing warning or safety measures before shaking arrives.
	2. 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 [insert legal authority]. *If licensee is neither a State nor a form of Government remove the red sentence*. The purpose of this Agreement is to further the distribution of the ShakeAlert Materials (defined below) to mitigate loss of life and property. This is achieved by granting access to Licensee to evaluate the ShakeAlert Materials’ functionality and compatibility with Licensee’s products and (or) services. Licensee must provide USGS with feedback regarding the functionality and compatibility of the ShakeAlert Materials, as further detailed below. Any class of information or feedback that Licensee wishes to protect as confidential must be identified as such in accordance with Section 2 of this agreement.
	3. The “ShakeAlert Materials” licensed under this Agreement include:
1. “ShakeAlert Messages,” which consist of streams of real-time data 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; these information streams begin shortly after an earthquake is detected, and updated as the earthquake develops and may include Post ShakeAlert Message Follow-up Messages after human review;
2. “ShakeAlert API” (Application Programming Interface), which includes code examples, data file examples, and documentation describing the data streams and interface that publishes the ShakeAlert Messages;
3. Earthquake Early Warning Display (EEWDisplay) is a demonstration module run on a Licensee’s device. The EEWDisplay presents visual and audio information about an earthquake, estimated magnitude and shaking, and when shaking must arrive at Licensee’s location. EEWDisplay is for demonstration only and should not be used for life-safety applications;
4. Credentials to access ShakeAlert Message (Alert) Servers and ShakeAlert Message (Test) Server (aka “Scenario Server”) that provide data connections and development tools; and
5. ShakeAlert education and training materials, including, but not limited to USGS approved messaging and other resources including fact sheets, graphics, animations, and talking points.

**DEFINITIONS**

1. “Affiliate” means any other corporation, partnership, limited liability company, joint

venture, association, trust, unincorporated organization, or other business entity that

controls, is controlled by, or is under common control of the licensee, where “control”

means that the entity possesses, directly or indirectly, the power to direct or cause the

direction of the management policies of the other entity, whether by way of ownership of

more than 50% of its voting or equity securities or assets, an interest in registered capital,

by contract, or otherwise.

1. “Clients” means customers (including test entities) of licensee who utilizes/subscribes to ShakeAlert-powered products and (or) services to be delivered to end-users within their organization and (or) the public.
2. “Derivative Work(s)” means a work which is based upon one or more pre-existing works,

such as a revision, enhancement, modification, translation, abridgment, condensation,

expansion, or any other form in which such pre-existing works may be recast,

transformed, or adapted.

1. “End-users” means targeted entities including persons that are final recipients of ShakeAlert-powered products and (or) services from a licensee.
2. “Intellectual Property Rights” means any and all rights, titles, and interests, whether

foreign or domestic, in and to any and all trade secrets, patents, copyrights, service

marks, trademarks, know-how, or other intellectual property rights, as well as any and all

moral rights, rights of privacy, publicity, and similar rights of any type under the laws or

regulations of any governmental, regulatory, or judicial authority, foreign or domestic.

**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. Grant.
2. Subject to the terms and conditions of this Agreement, 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:
	* + 1. access and use ShakeAlert Materials in connection with the approved pilot application identified in Appendix A (Pilot Project Application and Statement of Work), subject to this Agreement’s terms and conditions.
	1. License Restrictions.
3. Except as specifically provided in this Agreement including License to Operate (LtO) amendment set forth in Section 15, 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.
4. Access to the ShakeAlert Materials must be solely governed by terms and conditions of this Agreement.
5. Licensee may only distribute derivative works based on ShakeAlert Materials (for example delivery of a ShakeAlert-powered alert to an end-user) to USGS approved clients or end-users, as described in Appendix A.
6. Licensee, may only provide limited access of ShakeAlert Materials to its employees and (or) third-party agents, consultants, or contractors (“Delegates”) to the extent necessary for its Delegates to support their work identified under Appendix A and B. Neither Licensee nor its delegates, must interfere with, or disrupt USGS or ShakeAlert Materials, Servers, or Networks, and must comply with the USGS requirements, procedures, policies, and regulations for the ShakeAlert Message (Alert) Servers or Networks, as set forth on Appendix A and B (License to Operate Amendments). Notwithstanding the foregoing, all third-party agents or contractors must be approved in writing by USGS.
7. Upon USGS written consent of any Licensee third-party agents or contractors, Licensee must take all reasonable steps to include or incorporate by reference the terms and conditions set forth in this Agreement in its contracts with its third-party agents or contractors, to the extent necessary for the performance of Licensee’s third-party agent’s, or contractor’s work. In the event of a conflict between the terms and conditions of the agreement between Licensee and its third-party agents or contractors and this Agreement, the terms and conditions of this Agreement shall control.
8. Licensee’s developed ShakeAlert-powered products and (or) services must adhere to USGS’ mandated alert thresholds based on earthquake magnitude, intensity, and other characteristics and limit use of ShakeAlert data to within geographic boundaries prescribed by USGS. The current ShakeAlert-powered alert delivery thresholds are available on ShakeAlert.org.
9. Licensee must adhere to USGS recommended public facing messaging, including but not limited to protective action messaging, guidelines, training, and other resources that Licensee provides to end-users as outlined by the USGS and USGS Delegates.
10. Licensee must work with the USGS, and USGS’ identified Delegates to develop and test education and training resources for this Pilot project. Licensee shall develop a USGS approved education and training plan prior to the License to Operate conversion, as provided in Section 15 (Conversion to License to Operate). Licensee must implement the education and training plan within six (6) months after LtO conversion.
11. Licensee must use ShakeAlert sounds, voice instructions, visual representations, and other characteristics recommended by USGS unless alternatives are approved in writing by the USGS.
12. Licensee must communicate to client(s) and end-users all secondary messages (i.e., automatic, or manual) including USGS Post ShakeAlert Message Follow-Up Messages**.**
13. Unless otherwise agreed by USGS in writing, Licensee is limited to six (6) concurrent connections to the ShakeAlert Message (Alert) Servers identified in Appendix E.
14. Licensee must list all connections to the ShakeAlert Message (Alert and Test) Servers in Appendix E (List of Connections to the ShakeAlert Message [Alert or Test] Servers) The Licensee’s Primary Contact listed in Section 17 assumes responsibility for management of all ShakeAlert system server connections and must contact USGS within ten (10) business days if there are technical issues with the connection, a connection is no longer needed, and (or) a connection must be suspended because of misuse. Changes to the List of Connections is facilitated via an amendment to this Agreement.
15. Licensee must not charge client(s) or end-users a fee in connection with Licensee’s redistribution of ShakeAlert Messages or its related *developed services or products* unless permitted by amendment, as provided in Section 15 or 19 (Amendment).
16. Licensee must ensure that its developed ShakeAlert-powered products and (or) services comply with all applicable state and local laws, including public health and safety laws, and commercially reasonable industry standards (including by obtaining, maintaining, and complying with all necessary permits and licenses) that do not conflict with the terms of this Agreement. All Licensee developed ShakeAlert-powered products and (or) services must be of such quality as must not adversely affect the goodwill, image, and reputation adhering to the USGS and its ShakeAlert trademark.
	1. No Other Restrictions.

Nothing in this Agreement:

1. requires Licensee to use ShakeAlert Materials in Licensee products and (or) services;
2. restricts or impairs either Party's right to acquire, license, develop for itself, or have others develop for it, similar technology and services performing the same or similar functions as the technology, data, software, and services covered by this

Agreement, or to market and distribute such similar technology in addition to, or

in lieu of, the other Party's technology, data, software, or services, provided that

such activities do not make unauthorized use of the other Party’s Confidential

Information, Intellectual Property Rights or other rights or property; or

1. restricts Licensee from exercising any rights it has at law (including, but not limited to U.S. Copyright Act).
	1. Pilot Project Application and Statement of Work (Appendix A)

Each Party must perform its obligations set out in this Agreement, including Appendix A.

1. **Confidential Information.**
	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:

1. becomes public through no fault of the receiving Party;
2. is rightfully given to the receiving Party without a confidentiality obligation;
3. is independently developed by the receiving Party without reference to or use of Confidential Information provided under this Agreement;
4. is required to be disclosed as a matter of court order or law;
5. is permitted to be disclosed per the terms of this Agreement;

Subject to the above, Confidential Information must include:

* For Licensee:
	+ information identified in Appendix D (Confidential Information)

 [Note, the separate signed NDA may be added as part of Appendix D]

* For USGS: **NONE**, unless described here.
	1. Obligations.

The recipient must not disclose the disclosing Party’s Confidential Information, except to its Delegates who have a need to know and who have a legal obligation to keep it confidential. The recipient must use the disclosing 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 must ensure that its Delegates are also subject to the same non-disclosure and use obligations. Notwithstanding, the foregoing, the recipient shall disclose Confidential Information when required by law. Prior to disclosure of Confidential Information required by law, the recipient shall provide at least ten (10) business days prior written notice (unless less time is permitted by law) to the disclosing Party, and in making such disclosure, the recipient shall disclose only that portion of Confidential Information required by law to be disclosed. Upon notice, the discloser may take all reasonable efforts to preserve the confidentiality thereof, including, but not limited to, obtaining protective orders.

Any copies of Confidential Information that are made must be identified as belonging to the disclosing Party and marked “Confidential.” The recipient may not use Confidential Information to reproduce, redesign, or reverse engineer any products or equipment of the disclosing Party.

A non-written disclosure must be considered Confidential Information to the extent that such disclosure is orally identified as Confidential Information at the time of disclosure and is confirmed in writing by the disclosing Party. Written confirmation must (i) sufficiently describe the Confidential Information disclosed in detail: its scope, and manner of disclosure; (ii) identify disclosers and recipients; (iii) be supplied within ten (10) business days after oral disclosure; and (iv) refer to this Agreement.

* 1. Public Statements.
1. Licensee must notify the USGS of all public statements or commercial advertisement in connection with this Agreement. USGS must approve 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 must inform Licensee of the needed revision(s). Licensee must make the requested changes within ten (10) business days after notification by the USGS.
2. Neither Party nor their respective Affiliates or Consultants shall issue press releases or other public statements regarding this Agreement or its subject matter without the other Party’s prior written approval.
3. **Intellectual Property and Endorsements.**

* 1. No Endorsement.

USGS does not directly or indirectly endorse any ShakeAlert-powered product and (or) service provided, or to be provided, by Licensee in connection with this Agreement.

* 1. Retention of Rights.

As between the Parties:

1. USGS retains all rights in the ShakeAlert Materials and USGS’ patents, trademarks, logos, and domain names;
2. Licensee retains all rights in Licensee’s patents, trademarks, copyrights, logos, domain names, and products and services independently made; and
3. Jointly conceived Inventions shall be jointly owned.
	1. Trademarks.

Licensee and its Delegates agrees to use due diligence when selecting or using domain names, or a trademark or seeking State or Federal trademark rights related, in any way, to this License Agreement, or Licensee’s use of the ShakeAlert Materials, or for any product and (or) service offered by Licensee, so that reasonable efforts are made to ensure that any selection or use of trademark(s) by Licensee for its goods or services does not include, the same or a confusingly similar name(s), trademark(s), official insignia, or logos of any trademark of USGS, without USGS written approval.

* 1. Copyrights.

Licensee agrees not to claim or file for copyrights in or including any ShakeAlert Materials, including software or any other material that Licensee has access to by virtue of this Agreement.

* 1. Patents.

Licensee by virtue of its use of the ShakeAlert Materials under this Agreement may generate patentable materials and (or) trade secrets of Licensee.

1. **Maintenance and Support.**
	1. Updates. Subject to Section 4.2 (Notice):
2. 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; and
3. 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.
	1. Notice. USGS must use best efforts to:
4. provide at least ten (10) business days’ advance written notice to Licensee of any changes, fixes, patches, or updates that it makes to any ShakeAlert

 Materials including, but not limited to, the ShakeAlert API; and

1. notify Licensee within twenty-four (24) hours of any unexpected disruptions or malfunctions that occur and affect the ShakeAlert Materials.
2. **Performance Benchmarks.**
	1. Alerting Speed. Licensee must make reasonable efforts to ensure the fastest possible delivery time of ShakeAlert-powered alerts to end-users. Licensee must strive to maintain an average time to receive and process ShakeAlert Messages from the ShakeAlert system and deliver alerts to its end-users and (or) clients of no more than five (5) seconds, for at least ninety-five (95) percent of end-users.
	2. Recordkeeping. Licensee must record and retain performance information sufficient to meet its obligations under Section 6.
3. **Reporting.**

	1. Feedback on ShakeAlert Materials.
		1. As consideration for this Agreement, Licensee must provide an annual report on the anniversary of this license or on another date agreed upon by the Parties. The report must include:
			1. suggestions and feedback regarding the ShakeAlert Materials, including, but not limited to, functionality, design, usability, bugs, based on results of any pilot testing or License to Operate (LtO) operations;
			2. the number and type of end-users served;
			3. the number and type of alerts processed and passed to end-users; and
			4. a summary of compliance with performance benchmarks including elapsed time from when ShakeAlert Messages were received from USGS and when alerts were delivered by Licensee to end-users (e.g., commercial subscribers or clients) with a precision of one (1) second or better.
		2. Upon written request by USGS, Licensee must provide supplemental feedback with respect to the topics identified in Sections 6.1 (a)(i)-(iv).
		3. The USGS is free to share feedback not classified as proprietary or confidential (e.g., Confidential Information) with ShakeAlert Partners as identified in Appendix D (if any), and 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.
	2. Post-Alert Performance Reporting.
		1. Licensee must provide performance data to USGS within ten (10) business days of an alert or upon written request by USGS, in accordance with Appendix A, Section 3.VI. (Performance Reporting).
		2. The USGS is free to share report data not classified as proprietary or confidential with ShakeAlert Partners as identified in Appendix D.
4. **Passwords and Security.**

Licensee is required to register each Connection Name as set forth in Appendix E as an authorized user for access to ShakeAlert Materials. Registration must include a username, password, and contact information (“User Credentials”). For convenience, usernames must reasonably reflect the name of Licensee. User Credentials must be kept accurate and up to date. Licensee is responsible for maintaining the confidentiality of its User Credentials and must not share its User Credentials with anyone or use the User Credentials of others. While USGS must 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.

1. **Attribution.**

If Licensee publishes research or otherwise publicly discloses information derived or related to the ShakeAlert Materials and (or) efforts as described in Appendix A and (or) Appendix B that is permitted by this Agreement, then Licensee in a manner approved in writing by USGS or in Appendix C, must give appropriate credit to the USGS as the source of the ShakeAlert Materials and (or) to ShakeAlert® as the source of the earthquake early warning data. Licensee is permitted to use the name USGS and ShakeAlert®, in black and white, non-stylized text for limited purpose of USGS attribution in a scientific publication. For use of USGS’s mark protected under U.S. Registration No. 4517563, Licensee must follow USGS Office of Communications and Publishing recommendations and ShakeAlert Trademark Guidelines regarding appropriate format. Licensee must send notice to USGS as indicated in Section 17 (Notices) of this Agreement for file and requested color. Guidance is found at <https://www.usgs.gov/information-policies-and-instructions/usgs-visual-identity-system>.

<https://www.usgs.gov/information-policies-and-instructions/usgs-visual-identity-system>

1. **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 unauthorized clients, end-users, or to the public under this Agreement unless specifically identified in Section 1.1.a., or as amended by the Parties in writing, or Licensee’s Pilot License Agreement is converted to LtO under Section 15 (Conversion to License to Operate).

1. **Disclaimers; Warranties; Limitation of Liability.**
	1. Disclaimers.

During the pilot, ShakeAlert Materials are licensed under this Agreement for the purpose of continued research and development. During the Pilot phase or after conversion to an LtO, 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.

Furthermore, USGS does not warrant that the ShakeAlert Materials must always function, in all geographic areas, without interruption, be error-free or that any errors must 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.

Licensee must provide a disclaimer approved by USGS or substantially similar to the

following disclaimer to all clients and end-users that receive and (or) distribute

ShakeAlert-powered alerts through Licensee’s products and services pursuant to this

Agreement:

[Legal Name of 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.

* 1. Licensee Warranties.

Notwithstanding Section 10.1, Licensee warrants that:

* 1. it has authority to enter into this Agreement;
	2. the signatory has the authority to sign on behalf of Licensee;
	3. 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
	4. it will not intentionally or knowingly use a technology in the performance of this Agreement that infringes a valid, third-party intellectual property rights.
	5. USGS Warranties.

Notwithstanding Section 10.1, USGS warrants that it has and must retain all necessary rights to grant the licenses in this Agreement and deliver ShakeAlert Materials to Licensee during the term of this Agreement.

* 1. Authorization and Consent.

In order to avoid any possible interruption in the performance of this Agreement, USGS hereby gives the U.S. Government’s authorization and consent (without prejudice to any rights of indemnification) for all use and manufacture of any invention covered by a U.S. patent in the performance of Licensee’s responsibilities and obligations under this Agreement, including the performance of such responsibilities and obligations by Licensee’s contractors, subcontractors, and agents. If Licensee receives notice of patent infringement, Licensee must notify USGS within Ten (10) business days.

Notwithstanding Section 10.5 below and any amendment, in the event that the United States Government incurs any liability for the practice of inventions or works covered by a United States patent either as royalties owed under an existing United States Government license or as an unlicensed practice of such patent, and such liability is incurred as a result of Licensee and/or any of Licensee’s contractors’ or agents’ performance of Licensee’s responsibilities and obligations under this Agreement, Licensee agrees to indemnify and hold the U.S. Government harmless against such liability, including infringement costs and reimbursement for expenses incurred by the United States Government in defending against any suit or claim for such royalties or infringement. This indemnity shall not apply to infringement of a U.S. patent resulting solely from use of the ShakeAlert Materials, or to infringement resulting from written instructions by USGS directing Licensee to acquire infringing supplies, products materials or equipment in a manner not normally used by the Licensee.

* 1. Liability and Indemnification.
1. Liability. In this Section 10.5, “**Liability**” means any liability, whether under contract, tort (including negligence), or otherwise.
2. Indemnification. Licensee agrees to indemnify and hold the USGS, the U.S. Government and its Delegates harmless from and against any and all claims, suits, losses, damages, costs, fees, and expenses attributable solely to Licensee or its Delegates negligent acts, goods or services arising out of or in connection with its use of ShakeAlert Materials.
3. USGS will be liable to Licensee for any tort or contract claim, to the extent permitted by law including the Federal Tort Claim Act ([28 U.S.C.](https://en.wikipedia.org/wiki/Title_28_of_the_United_States_Code) [§ 1346](https://www.law.cornell.edu/uscode/text/28/1346)) and the Tucker Act ([28 U.S.C. § 1491](https://www.law.cornell.edu/uscode/text/28/1491)), for any loss or damage that Licensee may suffer or incur that may arise from breach of this license or from any products and (or) services supplied by USGS as a result of this license Agreement.
4. **Term and Termination**.
	1. Term.
		1. This Agreement starts on the Effective Date. The pilot covered under Appendix A continues for one (1) year from the effective date, unless terminated earlier by either Party in accordance with Section 11.2 (Termination) or Section 19 (Amendment).
	2. Termination.

Either Party may terminate this Agreement for any reason with thirty (30) days prior written notice. For any license authorized under a LtO, USGS must provide ninety (90) days written notice prior to termination. However, if USGS reasonably believes that immediate termination is in the best interests of the government or public health and safety, then USGS may terminate this Agreement immediately without any advance notice.

* 1. Effects of Termination.

Upon termination or expiration of this Agreement, each Party will be released from all obligations and liabilities to the other occurring or arising after the date of such termination or expiration (as the case may be), except that the provisions of Sections 2, 3, 7 through 10, 12, 14 and 21 must survive any expiration or termination of this Agreement. Neither Party will be liable for any damages claimed by the other Party as a result of the termination of this Agreement in accordance with its terms.

Upon termination or expiration of this Agreement, Licensee agrees to:

* 1. Immediately 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;
	2. Within ten (10) business days of receipt of a written request from a Disclosing Party of Confidential Information, the Receiving Party must, to the extent permitted by law, return or destroy all tangible Confidential Information of the Disclosing Party, including, but not limited to, all electronic files, documentation, notes, plans, drawings, and copies thereof; and
	3. Notify its clients and end-users within a reasonable time that it may no longer provide or (if permitted by terms of this Agreement or amendment) sell ShakeAlert-powered products and (or) services so its clients may identify alternative licensees to acquire ShakeAlert-powered products and (or) services.
1. **Governing Law.**

This Agreement must be governed by and interpreted in accordance with United States Federal Law, and in the absence of applicable federal law, the laws of the State of [Insert Licensee State] must apply where applicable.

Prior to any suit, the disputes must be first submitted to USGS’ and Licensee’s respective signatories or designated representative for an agreed resolution between the Parties. The Parties agree to use reasonable effort in a good faith attempt to resolve as promptly as possible all disputes arising under or in connection with this Agreement. If the Parties are unable to reach an agreed resolution, 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.

1. **Assignment.**

This license and the rights or obligations of Licensee, except to its Affiliates, may not be delegated or assigned or otherwise transferred without the written consent by USGS. USGS’ consent must not be unreasonably withheld where:

* 1. the assignee is not a foreign entity and has agreed in writing to be bound by the terms of this Agreement;
	2. the assigning Party remains liable for obligations under the Agreement if the assignee defaults on them;
	3. the assigning Party has provided notice of the assignment to the other party; and
	4. 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 must 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.

1. **Export Controls and Special 301 Report.**
	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).

* 1. Special 301 Report.

Absent written permission from USGS, Licensee further agrees not to 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. In cases where licensee is a foreign country on the Special 301 Report, it is agreed that any granted License serves as written permission for the foreign licensee and its employees from the same country to access ShakeAlert API. For avoidance of doubt, employees of a United States Licensee are not Foreign Contractors, and this Section 14.2 does not apply to them.

1. **Conversion to License to Operate**.

15.1 Upon USGS’ written notice of approval and both Parties’ execution of a conversion amendment, this Pilot License Agreement must be converted to a LtO (“**Conversion**”). Upon Conversion, Licensee’s use of ShakeAlert Materials is still subject to the terms of this agreement and any additional terms, conditions, and restrictions specified in the conversion amendment. Where there is inconsistency between any portion of this Agreement and Appendix B, Appendix B controls.

15.2. The LtO is not effective until a written amendment signed by both Parties amends Appendix B.

15.3. All sections and terms in the Pilot License Agreement except for those inconsistent with terms in Appendix B are incorporated into the LtO.

1. **Severability**.

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

1. **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 must be treated as given on receipt, as verified by written or automated receipt or by electronic log (as applicable).

**USGS Primary Contact:**

Dr. Robert M. de Groot

USGS ShakeAlert Technical Engagement Coordinator

525 S. Wilson Ave.

Pasadena, CA 91106

(626) 583-7225 (desk)

(626) 372-3262 (cell)

rdegroot@usgs.gov

**USGS Agreements Department:**

Office of Policy and Analysis

Technology Transfer

12201 Sunrise Valley Drive

Mail Stop 153

Reston, VA 22033

(703) 684-4344

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]

1. **Entire Agreement.**

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

1. **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.

1. **No Agency**.

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

1. **No Third-Party Beneficiaries**.

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

1. **Counterparts**.

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

**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 it freely and voluntarily.

**LICENSEE**

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Printed Name of Signatory

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Title and Name of Organization

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Phone and E-mail

**USGS**

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Phone and E-mail

**Appendix A**

**ShakeAlert® Earthquake Early Warning System**

**Technical Engagement**

**Pilot Project Application and Statement of Work**

(LICENSEE completes sections marked in red)

The United States Geological Survey (USGS) seeks well qualified ShakeAlert Technical Partners to develop and cooperatively test products and (or) services that use the USGS-operated ShakeAlert system earthquake early warning notification product (i.e., a ShakeAlert® Message) in real-world applications. The ShakeAlert system currently operates in California, Oregon, and Washington.

Licensee may develop products and (or) services that use ShakeAlert Materials with the aim of commercial (sale) or non-commercial distribution to clients and (or) end-users. Permissible uses include, but are not limited to both machine-to-machine applications and human notification systems. Licensee may develop and test products and (or) services under this Agreement, but may not sell or offer for sale such products and (or) services without a License to Operate (LtO). LtO may be approved for Pilot Projects that successfully demonstrate their ability to meet performance standards for alert delivery and other mandated ShakeAlert Guidelines (e.g., following mandated alerting thresholds and recommended education and training guidelines established by the USGS and (or) USGS Delegates) for the specific applications described in the Statement of Work included in this Appendix A.

Licensee must develop its application(s) based on an understanding of the behavior and limitations of the ShakeAlert system and the content and behavior of the stream of ShakeAlert Messages. Licensee's distribution of ShakeAlert-powered alerts must conform to the magnitude and intensity thresholds and geographic limits established by USGS.

Pilot applications must meet the following criteria:

* not result in notifications beyond the scope of this Appendix A;
* internally recognize that ShakeAlert Messages contain estimates of the location, magnitude, and shaking intensities of a given earthquake. This includes the possibility that the ShakeAlert system might issue a ShakeAlert Message when there was no recorded earthquake or fails to issue a ShakeAlert Message for an earthquake that meets alert delivery thresholds;
* have the capability to be tested using test ShakeAlert Message (Test) Server (aka “Scenario Server”) in order to demonstrate compliance with performance standards; and
* make reasonable efforts to complete testing within one (1) year of the Effective Date.

The USGS-operated ShakeAlert system provides earthquake notification and data streams using internet-based services. The USGS must provide Licensee access to ShakeAlert API and data format documentation and examples, password protected access to a ShakeAlert Message (Test) Server (aka “Scenario Server”), and live streams from ShakeAlert Message (Alert) Servers. The USGS must provide limited application development support.

**In order to commence with development and testing, Licensee must have a fully executed ShakeAlert Pilot License Agreement with the USGS.**

Licensees agree to collaborate with the USGS and (or) USGS Delegates to develop and implement best practices for the use of ShakeAlert-powered products and (or) services.

This includes use of ShakeAlert human interface signals and messaging; development, testing, and implementation of the ShakeAlert education and training program; and participation in ShakeAlert community interactions (conferences, focus groups, etc.) where industry knowledge and best practices must be shared, discussed, and disseminated with the goal of improving the ShakeAlert System.

**Statement of Work (SOW)**

1. **Principal Investigator (PI).**

The USGS principal investigator (PI) for the ShakeAlert Project is:

Valerie Thomas

 USGS Earthquake Early Warning Project Manager

 525 S Wilson Ave

 Pasadena, CA 91106

 (626) 583-7820 (desk)

 (626) 646-3898 (cell)

 vthomas@usgs.gov

The National Coordinator for ShakeAlert Technical Engagement is:

Dr. Robert M. de Groot

USGS ShakeAlert Technical Engagement Coordinator

525 S. Wilson Ave.

Pasadena, CA 91106

(626) 583-7225 (desk)

 (626) 372-3262 (cell)

 rdegroot@usgs.gov

Licensee may interact with ShakeAlert Technical Engagement Regional Coordinators to obtain additional guidance on the USGS education and training. However, any questions or concerns regarding the content of ShakeAlert Agreements (licenses) and this application including approvals must be routed through the National Coordinator for Technical Engagement. Only the USGS has the authority to approve new and (or) amend existing agreements and Pilot Applications.

Licensee PI for the Pilot Project is:

[name]

[title]

[address]

[address]

[email address]

[phone number]

1. **Notices.**

Any notice required to be given or which must be given under this SOW must be in writing and delivered by email (or surface mail) to the Parties as follows:

|  |  |
| --- | --- |
| **USGS:** | **Licensee:** |
| **Technical**: | **Technical**: |
| Valerie Thomas525 S Wilson AvePasadena, CA 91106vthomas@usgs.gov(626) 583-7820 (desk)(626) 646-3898 (cell) |  |
| **Administrative:** | **Administrative:** |
| Iona WilperEarthquake Science Center, USGSP.O. Box 158Moffett Field, CA 94035iwilper@usgs.gov(571)-318-8743DUNS No. 1378256Tax ID No.01450804<http://earthquake.usgs.gov>  |   |
|  | **Team Leads:** |
|  |  |
|  |  |
|  |  |

1. **Pilot Application**:
2. **Goals or Specific Aims of Pilot Project**

*(Provide a 1-2 sentence summary statement of the proposed Pilot Project and its impact.)*

1. **Pilot Scope**

*(In non-technical language, provide a brief (no more than two paragraphs) overview expanding on the goals and aims of the Pilot Project. The overview must include an explanation of the core product, service, application for development, and scale of the Pilot (e.g., 10,000 end-users, 1 building, entire state, etc.). Also include a description of the intended use of the ShakeAlert-powered product, service, and (or) application. Address how the outcome of this Pilot Project must contribute to earthquake risk reduction. Examples of proposed use cases are appropriate.)*

1. **Licensee’s Obligations**

Licensee, in support of this Agreement, must develop one or more products or services based on ShakeAlert Materials and demonstrate their suitability for their intended purpose as described in the Statement of Work. Typically, this must include first demonstration in an internal, pilot, non-commercial testing environment and then in the final operational environment in which it must be deployed. Licensee must create and successfully complete a Test Plan subject to approval by USGS. In addition, Licensee must:

*(In this section provide a detailed technical description of the proposed Pilot Project focusing on how you use ShakeAlert Messages for ShakeAlert-powered alert and (or) notification delivery to end-users. Since the goal of a Pilot Project is to obtain a License to Operate (LtO), the Pilot Project must address the contents of the ShakeAlert Technical Performance Guidelines for License to Operate Conversion available on ShakeAlert.org. To convert to an LtO, all Licensees must also create a detailed Education & Training plan, ready to implement within six (6) months after the Pilot Project to LtO conversion. For more information about education and training, see the ShakeAlert Education & Training Guidelines document on ShakeAlert.org. This section has no maximum length; however, much of the information here can be migrated to the Performance Report submitted to USGS at least two (2) weeks before the Performance Review. The final version of this section (after completing the Performance Report) can be a summary a few paragraphs in length. You may include additional documentation [e.g., technical briefs, graphics, flow charts, etc.] in the separate Performance Report which will be appended to Appendix B upon conversion to an LtO.*

1. **USGS’ Obligations**

The USGS has designated federal authority to issue ShakeAlert Messages. The USGS also provides management and financial support for the Pacific Northwest Seismic Network (PNSN) and California Integrated Seismic Network (CISN) as participating regional seismic Networks within the Advanced National Seismic System (ANSS).

The USGS, in cooperation with ANSS partners:

* operates the ShakeAlert Earthquake Early Warning system in Washington, Oregon, and California and other approved States; and
* must publish ShakeAlert products to ShakeAlert Message (Alert) Servers based on magnitude and intensity thresholds it determines.

The USGS must:

* manually review ShakeAlert Messages that meet specific criteria and publish follow-up Messages;
* operate a ShakeAlert Message (Test) Server (aka “Scenario Server”) that provides on-demand replay of synthetic and recorded events;
* operate and curate a resource repository with documentation and sample code for the benefit of Licensee (i.e. “ShakeAlert API”);
* provide a Test Plan Template/Guidelines; and
* evaluate Licensee’s Test Plan and approve it if appropriate.

USGS and (or) other USGS partners in support of this Pilot Project must:

* provide documentation on the ShakeAlert system and its data products including formats, service protocols, and information on the system’s behavior;
* provide credentials and access to the ShakeAlert Message (Test) Server - “Scenario Server” and web application that allows on-demand simulation of various test ShakeAlert Message scenarios;
* determine and provide magnitude and intensity thresholds and geographic areas within which ShakeAlert Messages can be used for various purposes;
* provide credentials and access to ShakeAlert Message (Alert) Servers subject to the conditions of the Agreement;
* provide access to ShakeAlert technical expertise on a limited basis;
* advise and coordinate with Licensee on end-user training and education;
* inform Licensee of any significant changes in the behavior of the ShakeAlert system or its formats or protocols; and
* advise Licensee on the suitability of ShakeAlert data for a particular applications.
1. **Joint Tasks and Activities (optional section)**

USGS and Licensee must jointly:

1. **Performance Reporting**

	1. USGS is free to provide performance report data to the public, unless identified as confidential in Appendix D.
	2. For any alert with a magnitude of 4.0 and larger, Licensee must provide performance information for any uses under this License upon written request by USGS.
	3. For any alert resulting in mass notification to the public using any modality (e.g., cell phones and other personal devices, sirens, public address systems in public spaces), Licensee must provide a performance report that includes the following information:

		1. For any alert with a magnitude of 4.5 and larger Licensee must report:
			1. The total number of devices alerted and;
			2. Any notable or unexpected behavior in alert delivery that was observed
		2. For any alert with a magnitude of 5.0 and larger, or alerts that are delivered to more than 10,000 users, or for any event specifically requested by USGS, Licensee must report:
			1. The time ShakeAlert Messages were received by Licensee from ShakeAlert Message (Alert) Servers; and
			2. The time alerts were delivered to all devices in one (1) second bins and further broken down by mode of delivery, WiFi™ or cellular.
		3. Any notable or unexpected behavior in alert delivery that was observed
		For any alert with a magnitude of 4.5 and larger Licensee must report:
			1. The total number of devices alerted; and
			2. Any notable or unexpected behavior in alert delivery that was observed.

**Appendix B: License to Operate Amendments (LtO)**

**1. Pilot Projects Converted to License to Operate**

The Parties agree that the following Pilot Projects are approved and deemed converted from Pilot

to License to Operate status pursuant to Section 15 of the Agreement: [Insert Pilot from Appendix A that is converted] To be determined upon agreement by both Parties.

**2. Other LtO Amendment**

The Parties hereby amend the Agreement to add the following Sections:

a. 1.1(a)(ii) to transmit to the public, messages, notifications, alerts, or warnings derived

from the ShakeAlert Materials through projects identified in this Appendix B; and

b. 1.1(a)(iii) Notwithstanding, upon this LtO conversion licensee is permitted to charge

clients or end-users a fee in connection with Licensee’s distribution of ShakeAlert

Materials and/or Derivative Works through projects identified in this Appendix B.

c. 11.1(b) The LtO in Appendix B, “starts on the execution of a separate conversion amendment and automatically renews annually, unless terminated by either Party in accordance with Section 11.2 (Termination).

**Appendix C: Public Release Statements**

To be determined upon agreement by both Parties. This may be developed at a later date.

**Appendix D: Confidential Information**

Licensee to provide confidential information in this Appendix. If this is not applicable, please write N/A in this section.

**Appendix E: List of Connections to the ShakeAlert Message (Alert) Servers**

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User list for each connection to the ShakeAlert Message (Alert) Servers. See Section 1.2.l.

1. *Connection names will be determined in conjunction with USGS.* The Licensee’s Primary Contact listed in Section 17 assumes responsibility for management of all ShakeAlert system server connections and must contact USGS within ten (10) business days if there are technical issues with the connection, a connection is no longer needed, and (or) a connection must be suspended because of misuse. Changes to the List of Connections is facilitated via an amendment to this Agreement.

|  |  |
| --- | --- |
| **Connection** | **Connection N**ame |
| **1** |  |
| **2** |  |
| **3** |  |
| **4** |  |
| **5** |  |
| **6** |  |