***Instructions to preparer:***

***Refer to U.S. Geological Survey (USGS) Manual (SM) Chapter 500.20, Technology Transfer Authority, (***[***https://www.usgs.gov/about/organization/science-support/survey-manual/50020-technology-transfer-authority)***](https://www.usgs.gov/about/organization/science-support/survey-manual/50020-technology-transfer-authority)) ***for Bureau policy on engaging in technology transfer activities. Please insert the information indicated within [brackets]. When sending the draft Agreement to the USGS Office of Policy and Analysis (OPA) and the Collaborator for review, remove the blue instructional notes.***

COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENT (CRADA)

This cover page identifies the Parties to this CRADA:

The U.S. Geological Survey, a Bureau of the U.S. Department of the Interior, a Federal Government agency, as represented by

Click or tap here to enter text,

hereinafter referred to as **“USGS”** or **“Government,”**

and

Click or tap here to enter text,

hereinafter referred to as **“Collaborator,”**

having offices at Click or tap here to enter text,

created and operating under the laws of [State].

The title of the CRADA project:

Click or tap here to enter text

USGS Principal Investigator: Click or tap here to enter text

Collaborator Principal Investigator: Click or tap here to enter text

USGS COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENT

GENERAL PROVISIONS

This Cooperative Research and Development Agreement (CRADA) entitled “Click or tap here to enter text” is entered into by and between Click or tap here to enter text and the U.S. Geological Survey (USGS), a Bureau of the U.S. Department of the Interior, through its Click or tap here to enter text.

Whereas the U.S. Congress in enacting the Stevenson-Wydler Technology Innovation Act of 1980, as amended by the Federal Technology Transfer Act of 1986, Public Law No. 99-502, October 20, 1986, and the National Technology Transfer and Advancement Act of 1995, Public Law No. 104-113, March 7, 1996, has found that Federal laboratories’ developments should be made accessible to private industry and State and local Governments, and has declared that one of the purposes of such Act is to improve the economic, environmental, and social well-being of the United States by stimulating the utilization of federally funded technology developments by such Parties; and,

# Whereas the Federal Technology Transfer Act of 1986, codified in the United States Code (15 U.S.C. 3710(a)) as amended, among other technology transfer legislation, has provided each Federal agency with the authority to permit the Director of Government-operated Federal laboratories to enter into Cooperative Research and Development Agreements (CRADAs) with Federal or non-Federal entities, including private firms and organizations, or other persons, for the purpose of providing to collaborating parties personnel, services, property, facilities, equipment, or other resources (EXCEPT FUNDS), or obtaining from collaborating parties personnel, services, property, facilities, equipment, or other resources (INCLUDING FUNDS) toward the conduct of specified research and development efforts, which may include the disposition of patent rights for the inventions which may result from such collaborations; and,

Whereas the USGS has performed substantial research and development with respect to Click or tap here to enter text and,

Whereas the Collaborator carried out certain studies on Click or tap here to enter text and,

Whereas the USGS has unique technical capabilities and facilities to Click or tap here to enter text; and,

Whereas it is the intention of the Parties hereto that research and development on Click or tap here to enter text should be to their mutual benefit and the benefit of the people of the United States; and,

Whereas the cooperative research to be conducted under this CRADA will be jointly planned and conducted;

# Whereas, the project entitled “Click or tap here to enter text” is intended by the Parties to be mutually beneficial and to benefit the people of the United States;

# Now therefore, the Parties hereby agree as follows:

# Article 1. Introduction

In the event of any conflict between 1) Articles 1 through 13 of this CRADA and 2) the appendices or any other previously signed agreement between the Parties regarding the same activity, Articles 1 through 13 shall prevail.

# Article 2. Definitions

The terms listed in this Article shall carry the meanings indicated throughout the CRADA. Terms defined in applicable statutes or regulations, but not defined in this CRADA, shall carry the meaning of the statutory or regulatory definition.

2.1. “**Authorized Representative**” means a person who is approved or delegated by his/her respective employer to execute this Agreement.

2.2. **“Background Intellectual Property”** refers to a patent or patent application covering an invention or discovery of either party, or a copyrighted work, a mask work, trade secret, or trademark developed with separate funds outside of the CRADA by one of the Parties or with others. Background Intellectual Property is not considered a Subject Invention.

2.3. “**Background Invention**” means an invention conceived and reduced to practice or made the subject of a patent application in accordance with patent law in the United States, or in any other country or region, before the Effective Date of this CRADA.

2.4. **“Collaborator’s Employee**” means any individual who is employed by the Collaborator.

2.5. **“Collaborator’s Materials**” means all tangible materials not first produced in the performance of the Statement of Work that are owned or controlled by the Collaborator and are used in the performance of the Statement of Work.

2.6. **“Computer Software” or “Software”** means computer programs, source code, source code listings, object code listings, designs, details, algorithms, processes, flow charts, formulae, and related material that would enable the Software to be reproduced, recreated, or recompiled. Computer Software does not include computer databases or Computer Software documentation.

2.7. **“Confidential Commercial or Financial Information**” means scientific, commercial, or financial Proprietary Information or Background Intellectual Property so marked or otherwise identified by notification, either as **“Collaborator Confidential Commercial or Financial Information”** or as **“USGS Confidential Commercial or Financial Information,”** provided that the information is not:

(a) Publicly known or available from public sources; or

(b) Made available by its owner to others without a confidentiality obligation; or

(c) Already known by the receiving Party, or independently created or compiled by the receiving Party without reference to or use of information provided under this CRADA.

2.8. **“Cooperative Research and Development Agreement (CRADA)”** means the document describing research activities that are jointly undertaken by the USGS and one or more non-Federal Parties that have entered into a CRADA with the USGS for that purpose pursuant to 15 United States Code (U.S.C.) Section 3710a.

2.9. **“Copyright”** means a property right in an original work for authorship fixed in a tangible medium of expression, which may include software, giving the holder exclusive rights to reproduce, adopt, distribute, perform, and display the work.

2.10. **“Deliverables”** means the products identified in the Statement of Work, first created by the Parties in the performance of the Statement of Work.

2.11. **“Effective Date”** means the date of the last signature of the Parties. Research activities and expenditures can start as of this date.

2.12. **“Expiration Date”** means the end date of the CRADA.

2.13. **“Foreign Personnel”** means any person who is not a citizen or a national of the United States of America.

2.14. **“Generated Information”** means all information created as a result from research and development activities (for example, tangible materials, data, software, research products, and information first produced by the Parties in the performance of the Statement of Work).

2.15. **“Government Purpose”** means any activity in which the Government is a Party, including agreements with international or multinational defense organizations, or sales or transfers by the Government to foreign governments or international organizations, and competitive procurements. Government purpose does not include use for commercial purposes.

2.16.**“In-Kind”** means a nonmonetary commitment of goods or services, such as personnel, equipment, supplies, travel, facilities, information, or computer software.

2.17. **“Intellectual Property”** means patents, trademarks, copyrights, trade secrets, mask works, and other forms of comparable property protected by Federal, State, or foreign laws.

2.18. **“Intellectual Property Plan”** means a written agreement between the parties regarding payment of patent expenses, prosecution strategy, and licensing and marketing of the Intellectual Property.

2.19. **“Invention”** means any invention or discovery which is or may be patentable under Title 35 (“Patents”) of the United States Code.

2.20. **“Key Personnel”** means those individuals who are mutually recognized as essential to the successful completion of this Agreement. These persons will be identified in the Statement of Work.

2.21. **“Made”** means, in relation to any invention, the conception or first actual reduction to practice of such invention.

2.22. **“Party”** or **“Parties”** means the USGS and the Collaborator, herein referred to as a **“Party”** and collectively as the **“Parties.”**

2.23. **“Principal Investigator”** or “PI” means the USGS or Collaborator’s Employee who conducts the basic research in accordance with the Statement of Work; that is, under whose immediate direction the research is conducted; if research is conducted by a team of investigators or with Key Personnel, the Principal Investigator is the responsible leader of that team.

2.24. **“Proprietary Information”** means confidential, scientific, business, government or financial information, which may embody trade secrets, provided such information:

2.24.1 Is not generally known or available from other sources without obligations concerning its confidentiality;

2.24.2 Has not been made available by the owners to others without obligation concerning its confidentiality;

2.24.3 Is not already available to the receiving Party without obligation concerning its confidentiality;

2.24.4 Has not been developed independently by persons who had no access to the Proprietary Information; or

2.24.5 May lawfully be withheld from disclosure under the Freedom of Information Act, 5 U.S.C. 552.

2.25. **“Protected Information”** means information that is either developed by the Government or that may be held under another agreement or contract and that the Government has restricted access to protect sources and methods or other Government interests.

2.26. **“Subject Invention”** means any invention made in the performance of research under this CRADA. “Invention” means any discovery which is or may be patentable under Title 35 U.S.C.

2.27. **“USGS Employee”** means any individual who is employed by the USGS or is a registered volunteer.

2.28. **“Written Notice”** means a signed communication delivered by one Party to the other, via attachment to electronic mail, facsimile, or common carrier.

# Article 3. Cooperative Research and Development

3.1. **Statement of Work**. Research performed under this CRADA shall be performed in accordance with the Statement of Work (SOW). The Parties acknowledge that the SOW, contained in Appendix A, describes the collaborative research and development activities they will undertake and that interim research goals set forth in the SOW are good-faith guidelines. Should events occur that require modification of these goals, the Parties may modify the SOW through a formally executed amendment to the CRADA in accordance with Article 13.4.

3.2. **Goals and Objectives.** The Parties agree that any descriptions, statements, or specifications in the SOW shall be interpreted as goals and objectives of the services to be provided under this CRADA; each Party acknowledges that such goals or objectives may not be achieved and recognizes that all research is conducted on a best-efforts basis.

3.3. **Principal Investigator Responsibilities**. The Principal Investigators (PIs) shall be responsible for coordinating the scientific and technical conduct of this project on behalf of their respective Parties. Principal Investigators shall ensure that the research under this CRADA is conducted in accordance with USGS policies, applicable laws, and Federal regulations. In the event that one Party’s PI is unable to continue, a replacement, satisfactory to the other Party, shall be provided within forty-five (45) days of the vacancy or the project may be terminated. Article 13.17.1 provides the names of the PIs for each Party.

The USGS PI will need to complete a “Conflict of Interest Form for Non-Government Entities” (USGS Form 9-3142) and submit it to the USGS Ethics Office ([EthicsOffice@usgs.gov](mailto:EthicsOffice@usgs.gov)). For questions, contact the Ethics Office.

3.4. **Key Personnel Responsibilities**. Personnel designated as “Key Personnel” shall be assigned for the timely completion of tasks. These persons are subject to PI oversight.In the event that Key Personnel are unable to continue in this project, the Parties will make every effort to substitute mutually agreeable replacement persons of equal abilities and qualifications within forty-five (45) days of the vacancy. The replacement must be officially added to this Agreement by a mutually signed amendment to the CRADA in accordance with Articles 13.4 and 13.6.

Key USGS personnel will need to complete a “Conflict of Interest Form for Non-Government Entities” (USGS Form 9-3142) and submit it to the USGS Ethics Office ([EthicsOffice@usgs.gov](mailto:EthicsOffice@usgs.gov)). For questions, contact the Ethics Office.

3.5. **Third-Party Participants**

3.5.1. **Involvement.** The research and development activities to be carried out under this CRADA will be performed solely by the Parties identified on the cover page of this CRADA. If a Party engages a third-party participant (such as a contractor, consultant, or grantee) to perform any portion of the SOW after the Effective Date of this CRADA, such Party will notify the other Party and provide information about the third-party involvement within seven (7) days. No contractors shall be listed as ineligible in the System for Award Management (SAM.gov) unless waived by the DOI. However, these participants are not Parties to the CRADA, and this CRADA does not grant the Collaborator any rights to Inventions made solely by the USGS or its third-party participants.

3.5.2. **Disclosure of Information.**  The Parties agree to allow disclosure of Proprietary Information or Background Intellectual Property to third parties (such as students, contractors, subcontractors, consultants, or other external parties) for the purposes of carrying out this CRADA. The Parties agree that they have ensured, or will ensure, that third-party participants are under written obligation not to disclose Proprietary Information or Background Intellectual Property, except as required by law or court order, before the third parties have access to the Collaborator’s Proprietary Information under this CRADA.

3.5.3. **Foreign Personnel.** No foreign personnel shall be engaged by the Collaborator as a contractor, consultant, grantee or third-party collaborator for the performance of any work under this CRADA without first identifying the individual, his country of origin, and the work to be performed to USGS so that USGS may determine whether the agency requires advanced approval by an authorized agency official before working with the foreign contractor, consultant, grantee or third-party collaborator, and whether any data, technology or products shared with or used by a foreign contractor, consultant, grantee or third-party collaborator as part of the technical assistance under this agreement are in accordance with all U.S. laws and regulations, including national security export controls and U.S. Department of State regulations and policies.

3.5.4. **Compliance with Regulations.** The Parties agree that they will advise any third parties to comply with all applicable Executive Orders, statutes, and regulations related to this CRADA.

# Article 4. Financial and Equipment Contributions

4.1. **USGS and Collaborator Contributions**. Resources to be used to conduct the CRADA activities are summarized in “Appendix A. Statement of Work (SOW) Between the USGS and the Collaborator.” The respective contributions of the Parties are set forth in “Appendix B. Resources (Staffing, Funding, and Materials/Equipment) Provided by the USGS and the Collaborator.” All funds from the Collaborator shall be in U.S. dollars. The Collaborator’s failure to make any scheduled payment shall be deemed a material breach. If the Collaborator fails to cure such a breach within thirty (30) days, the USGS shall not be obligated to perform its responsibilities under this CRADA and may terminate this CRADA in accordance with the procedures set forth in Article 10. All remedies for such nonpayment remain available to the USGS under applicable laws. Contributions may be provided as in-kind resources.

4.1.1. **Collaborator Contributions.** The Collaborator will provide an estimated $ Click or tap here to enter text in funds-in to the project. *(Note: If this is a fixed price agreement, delete the words “an estimated”)* The Collaborator is providing in-kind services valued at $ Click or tap here to enter text. *(Note: This will depend on the facts of the project. Sometimes the project involves only in-kind efforts by the participants and, if so, this clause would need to be modified accordingly.) [Optional – If collaborator is providing in-kind travel support, use the following statement, modified as needed to specify the type of travel support.* The Collaborator is providing in-kind services valued at $ Click or tap here to enter text, which include providing airline tickets, lodging, and other support. *USGS Employees may receive in-kind payment of their travel expenses. They cannot accept a check made payable to the Employee for reimbursement or cash directly from the Collaborator and are not permitted to “sign over to USGS” a check from the Collaborator. If funds are to be provided as a reimbursement, such funds must come through the Agreement as “funds-in” to the USGS.)*

4.1.2. **Advance Payment.** The USGS requires an advance of $ Click or tap here to enter text. *(Note: This requirement may be met by paying the entire amount in advance or by paying lesser amounts in advance of work segments. If there are funds-in, the USGS does not have to require a full advance. Under this authority, an advance requirement may also be waived and the work billed quarterly or monthly following the completion of work segments. See the policy on advances in the SM 500.20, subsection 10, “Responsibilities.”)*

*For section 4.1.3, there are now two options. The first is for when the Parties will be pursuing an agreement based on paying in advance. The second is for when the Parties will be pursuing an agreement based on reimbursable expenses. Please choose the proper option, insert the appropriate billing information (choices provided in bold text), and delete the other clause.****OPTION 1:*** 4.1.3. **Payment Schedule.** This Agreement has been negotiated to be paid in advance on Choose an item basis and will not be subject to interest or administrative or penalty fees. In the event payment is not received in accordance with the billing terms and schedule, the USGS will bill based on expenses incurred and will bill interest and other fees required by Federal law, at the annual rate established by the U.S. Treasury pursuant to the Debt Collection Act of 1982 (codified in 31 U.S.C. 3717).

***OPTION 2:*** 4.1.3. **Payment Schedule.** This Agreement has been negotiated to be paid based on expenses incurred. The USGS will submit invoices to the Collaborator’s administrative contact, identified in Appendix A [financial contact identified in Appendix A?], on Choose an item basis. Invoices not paid within Choose an item will bear interest, and other fees required by Federal law, at the annual rate established by the U.S. Treasury pursuant the Debt Collection Act of 1982 (codified in 31 U.S.C. 3717).

4.1.4. **USGS Contributions.** The USGS is providing in-kind services valued at $ Click or tap here to enter text to the collaboration. *(Note: Describe any USGS contributions to the effort and provide the estimated dollar value.)*

4.2. **Title to Capital Equipment**. The Collaborator’s commitment, if any, to provide the USGS with capital equipment appears in the SOW. If the Collaborator transfers capital equipment to the USGS or provides funds to the USGS for the purchase of capital equipment, the USGS shall own the equipment. If the Collaborator loans capital equipment to the USGS for use during this CRADA, the Collaborator shall be responsible for paying costs associated with the transport, installation, maintenance, repair, removal, or disposal of the equipment, and the USGS shall not be liable for damages done to the equipment or caused by the equipment, except for damages due to the negligence of the USGS. The Collaborator agrees to maintain records of receipts and expenditures of any Government property loaned to it under this CRADA or subsequent amendments. The Collaborator shall retain records during the duration of the loan and provide the records to the USGS at the end of the loan period. The Collaborator agrees to provide records of disposition to the USGS of any USGS expendable property disposed under the Collaborator’s purview.

# Article 5. Intellectual Property

5.1. **Background Inventions**. Nothing in this CRADA shall be construed to grant a Party any rights in another Party’s Background Invention other than to use the Background Invention to fulfill the requirements of the SOW.

5.2. **Ownership of Subject Inventions**. Pursuant to 15 U.S.C. 3710a, the USGS or the Collaborator shall retain sole ownership of and title to Subject Inventions made solely by its respective employees. The USGS and the Collaborator shall jointly own Subject Inventions made jointly.

5.2.1. **Collaborator’s Employee’s Inventions.** The Collaborator hereby grants to the U.S. Government a nonexclusive, nontransferable, irrevocable, paid-up license in any Collaborator’s Employee’s Subject Invention to practice the invention or have the invention practiced throughout the world by or on behalf of the U.S. Government for research or other Government purposes. Such nonexclusive license shall be evidenced by a confirmatory license agreement prepared by the Collaborator in a form satisfactory to the USGS in accordance with Article 6.

The USGS, on behalf of the U.S. Government, waives ownership rights that the U.S. Government may have in Subject Inventions made by the Collaborator’s Employees under this CRADA and agrees that the Collaborator shall have the option to retain title to any such Collaborator’s Employee’s Subject Invention provided that the Collaborator shall promptly notify the USGS upon making this election and agrees to file patent applications on such Employee’s Subject Invention at its own expense and in a timely fashion.

5.2.2. **USGS Employee’s Inventions.** The USGS, on behalf of the U.S. Government, shall have the initial option to retain title to each Subject Invention made by its employees under this CRADA. If an invention is made jointly by personnel of both parties under this CRADA, the invention and all patent applications and (or) patents issued thereon shall be jointly owned by the parties, and available for use and licensing without obligation to account to the other party, subject to the obligations contained in Articles 5, 6, 7, and 10. The USGS may release the rights provided for by this Article to employee inventors or to the Collaborator, subject to a license with the USGS. (See Article 5.4.)

5.3. **Reporting**. The Parties agree to disclose to each other every Subject Invention that may be patentable or otherwise protectable within sixty (60) days of the time that an inventing Party reports such invention to the person(s) responsible for patent matters in the inventing organization. (See Article 13.17.3 for contacts for Intellectual Property Matters.) These disclosures should be in sufficient detail to enable a reviewer to make and use the invention under 35 U.S.C. 112. The disclosure shall also identify any statutory bars such as printed publications describing the invention or public use or sale of the invention in the United States. The Parties further agree to disclose to each other any subsequent statutory bar that occurs for an invention disclosed but for which a patent application has not been filed. All invention disclosures shall be marked as confidential under 35 U.S.C. 205. The Parties’ final report shall also list all patents, regardless of source.

5.4. **Filing of Patent Applications**. The USGS and the Collaborator shall each make timely decisions regarding filing patent applications on Subject Inventions made jointly or solely by their respective employees. Prior to filing an application, the Parties agree, in good faith, to negotiate and enter into an Intellectual Property Plan.

The Collaborator shall have the first opportunity to file a patent application on joint Subject Inventions, in consultation with the USGS. The Collaborator shall notify the USGS of its decision whether to file within one hundred twenty (120) days of the Report of Invention (ROI). If the Collaborator fails to notify the USGS of its decision within that time period or notifies the USGS of its decision not to file a patent application, then the USGS has the right to file a patent application on the joint Subject Invention. The Collaborator shall place the following statement in any patent application it files on a Subject Invention: “This invention was created in the performance of a Cooperative Research and Development Agreement with the U.S. Geological Survey, a Bureau within the U.S. Department of the Interior, an agency of the U.S. Government, which has certain rights in this invention.” Each party shall provide the other party with copies of the patent applications it files on any Subject Invention along with the power to inspect and make copies of all documents retained in the official patent application files by the applicable patent office.

5.5. **Non-election of Patent**. If the USGS or the Collaborator elects not to file a patent application on a Subject Invention, the Party electing not to file such a patent application may assign its interest to the other Party. In the event neither the USGS nor the Collaborator elects to file a patent application, either or both (if the Subject Invention was made jointly under this CRADA) may assign ownership to the inventor(s).

5.6. **Patent Expenses**. Prior to the filing of patent applications, the Parties shall agree as to which Party shall bear the expenses attendant to filing the applications. Any post-filing and post-patent fees shall also be borne by the same Party.

5.7. **Prosecution of Patent Applications**. The Party filing a patent application for a Subject Invention shall provide the other Party with a copy of any official communication relating to prosecution of the patent application within thirty (30) days. The Parties agree to cooperate in the preparation and filing of patent applications relating to Subject Inventions.

5.8. **Collaborator Third-Party Contractors or Consultants or Grantees.** If the Collaborator elects to perform any portion of the SOW through a third-party participant, the Collaborator agrees to incorporate into such contracts all provisions necessary to ensure that the work of the third-party participant is governed by the terms of the CRADA, including, but not limited to, a provision for the assignment and licensing of inventions of the third-party participant to the Collaborator as well as which inventions shall be deemed Subject Inventions. In any subcontract or other agreement in connection with this Agreement, the Collaborator shall include the following provisions, suitably modified, to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental, or research work to be performed: “This Agreement is performed with Government support under [identify the Agreement] executed with the U.S. Geological Survey. Accordingly, the Government is hereby granted a nonexclusive, nontransferable, irrevocable, paid-up license to practice by or on behalf of the U.S. Government for research or other Government purposes all inventions generated herein.” The subcontract or other agreement must also require the following statement to be utilized in patent applications filed by the subcontractor: “This invention was made with Government resources under [identify Agreement] provided by the U.S. Geological Survey. The Government of the United States has certain rights in the invention.”

* 1. **Copyrights** 
     1. **Jointly Created.** Jointly created Works shall be owned by both Parties. For Works created solely by the Collaborator under this CRADA, the Collaborator, pursuant to the Federal Technology Transfer Act of 1986 (15 U.S.C. 3710a(b)(2)), shall provide the Government with a nonexclusive, paid-up, irrevocable copyright license in order for the Government to be able to use, modify, reproduce, perform, display, release, or disclose the Work. The Work shall have the following marking: “This Work was created in the performance of a Cooperative Research and Development Agreement [USGS CRADA number] with the U.S. Geological Survey, a Bureau within the U.S. Department of the Interior. The Government of the United States has a copyright license to use this Work.”

The Collaborator can commercialize the Work, including computer software, if both Parties determine in writing that no patent protection will be sought and terms and conditions are negotiated in writing between the Parties.

* + 1. **Ownership.** The Parties agree that each party shall retain ownership in any copyrighted material to which they had title prior to this Agreement.

5.10. **Assignment of Trademarks and Service Marks**

In the event the Collaborator owns any trademark or service mark on the Subject Invention and elects not to exercise its option under Article 6, the Collaborator hereby assigns to the USGS all trademarks and service marks for that Subject Invention.

# Article 6. Licensing

The USGS grants the Collaborator an option to elect a nonexclusive, partially exclusive, or exclusive license on any Subject Invention made solely by USGS Employee(s) or made jointly by USGS and Collaborator’s Employees. Any license granted shall be subject to negotiation of reasonable license terms within one hundred eighty (180) days after the exercise of the option and shall be substantially in the form of the model USGS license agreement. To exercise this option, the Collaborator shall submit a written notice to the USGS Office of Policy and Analysis within one hundred twenty (120) days after notification by the USGS of a Subject Invention in accordance with Article 13.6. The Collaborator agrees to negotiate and pay reasonable patent costs. At the discretion of the Parties, they will execute an amendment to this Agreement that defines marketing and licensing roles and responsibilities. Include the license agreement as an amendment to this CRADA, attached as an appendix.

# Article 7. Generated Information Use, Proprietary Information and Background Intellectual Property, Protected Information, Presentations and Publications, and Software

7.1. **Generated Information Use**

7.1.1. **Exchange.** The parties agree to exchange all Generated Information produced during the performance of this CRADA. Use or dissemination of this data must be consistent with the terms and conditions in this CRADA.

7.1.2. **Release Restrictions.** The USGS shall have the right to use all Generated Information for any governmental purpose but shall not release such Generated Information publicly except:

(a) the USGS, when reporting on the results of sponsored research, may publish Generated Information, subject to the provisions of Article 7.4 below; and

(b) the USGS may release such Generated Information where such release is required pursuant to a request under the Freedom of Information Act (5 U.S.C. 552) or litigation in whole or redacted to protect any controlled unclassified information (32 CFR 2002).

Provided, however, that such data shall not be released to the public if a patent application is to be filed (35 U.S.C. 205) until the Party having the right to file has had a reasonable time to file.

7.1.3. **Generated Information**. Except as provided for in Article 5.1, the Parties agree to exchange all Generated Information. Both Parties shall agree when Generated Information is jointly created and jointly owned property. Generated Information will be shared equally by the Parties unless the Parties agree in writing to other disposition. Subject to these sharing requirements, the Generated Information created under this CRADA is the jointly owned property of the Parties. The Parties agree to make mutually acceptable arrangements for the disposition of unique or hard-to-replace Generated Information.

7.2. **Proprietary Information and Background Intellectual Property**

7.2.1. **Disclosing Information.**  The Party receiving Proprietary Information and (or) Background Intellectual Property shall use due care to ensure that the information or property will not be disclosed to the public for any purpose or used by the Government and (or) the Collaborator for any purpose other than testing or evaluation as described in the SOW using the Submitter Notice in Appendix C.

7.2.2. **Limiting Disclosure.**  Each Party agrees to limit its disclosure of original Proprietary Information and (or) Background Intellectual Property to the amount necessary to carry out the activities described in the SOW. A Party orally disclosing the information or property to the other Party will summarize the disclosure in writing, clearly mark or label the information as “Confidential Commercial or Financial Information” and provide it to the other Party within fifteen (15) days of the disclosure. Each Party receiving the information agrees to use it only for the purposes described in the SOW.

7.2.3. **Proprietary Information.** The USGS is required to control proprietary information to protect information designated as proprietary from unauthorized disclosure, as described in the Submitter Notice in Appendix C and the Controlled Unclassified Information (CUI) Markings per the [[[National Archives CUI Registry](https://www.archives.gov/cui/registry/category-list)](https://www.archives.gov/cui/registry/category-list).](https://www.archives.gov/cui/registry/category-list) The Collaborator agrees that the USGS is not liable for the disclosure of information designated as proprietary which, after notice to and consultation with the Collaborator, the USGS determines may not lawfully be withheld or which a court of competent jurisdiction requires disclosure.

7.2.4.  **Background Intellectual Property.** Both parties agree to identify in advance or during the CRADA any Background Intellectual Property that has value for joint research but that was developed with separate funds outside the CRADA. Background Intellectual Property does not qualify as a Subject Invention and is not subject to a Government-use license unless originally developed with non-CRADA Government funds.

7.3. **Protected Information**

7.3.1. **Designation.** Each Party may designate any Generated Information produced by its employees as Protected Information, as defined in Article 2.25. All such designated Protected Information shall be appropriately marked.

7.3.2. **Protection Period.** For a period of up to five (5) years from the date when Protected Information is produced (as codified in 15 U.S.C. 3710a(c)), the Parties agree not to further disclose such information except:

(a) As necessary to perform this CRADA.

(b) As mutually agreed by the parties in advance.

Parties may agree to less than 5 years. If so, replace “5” with the agreed-upon time.

7.3.3. **End of Protection Period.** The obligation of Article 7.3.2 above shall end sooner for any Protected Information that shall become publicly known without fault of either Party, shall come into a Party's possession without breach by that Party of the obligations of Article 7.3.2 above, or shall be independently developed by a Party’s employees who did not have access to the Protected Information or as required by the Freedom of Information Act, litigation, or legal requirement such as National Archives and Records Administration approved records schedules.

7.4. **Presentations and Publications**

7.4.1. **Publication Lead.** The USGS and the Collaborator may submit for publication the results of the research work associated with this project. The USGS will have the lead, consistent with the terms of the CRADA and SOW, for preparation of all manuscripts for this project. Authorship shall be determined by mutual agreement of the Collaborator and the USGS, in accordance with customary scientific practices. The Parties acknowledge that presentations, planning, methodology, analysis, and publications are subject to the USGS Fundamental Science Practices and records management requirements, as applicable. In no event, however, shall the name of the Collaborator or any of its trademarks and trade names be used in any publications without its prior written consent.

The Parties acknowledge that USGS is required to provide timely public access to the results of scientific information and data that does not contain sensitive protected information. This may include using machine-readable and open formats, data standards, and [common core and extensible metadata](https://project-open-data.cio.gov/schema/) for all new non-protected information created and collected in accordance with USGS Fundamental Science Practice regarding the review, approval, and release of information set out in [SM 502.4](https://www.usgs.gov/about/organization/science-support/survey-manual/fundamental-science-practices-review-approval-and) (Fundamental Science Practices: Review, Approval, and Release of Information Products), [SM 502.7](https://www.usgs.gov/about/organization/science-support/survey-manual/fundamental-science-practices-metadata-usgs) (Fundamental Science Practices: Metadata for USGS Scientific Information Products Including Data), [SM 502.8](https://www.usgs.gov/about/organization/science-support/survey-manual/fundamental-science-practices-review-and-approval) (Fundamental Science Practices: Review and Approval of Scientific Data for Release), and in the [Office of Management and Budget Memorandum M-13-13](https://obamawhitehouse.archives.gov/sites/default/files/omb/memoranda/2013/m-13-13.pdf).

7.4.2. **Publication Consultation.** The USGS and the Collaborator agree to confer and consult at least thirty (30) days prior to either Party’s submission for presentation and (or) publication of Generated Information to ensure that no Proprietary Information, Protected Information, and (or) Subject Inventions are released, that patent rights are not jeopardized, and (or) security concerns are protected. The Party receiving the document for review has thirty (30) days from receipt to object in writing, detailing the objections to the proposed submissions.

Upon expiration of the review period with no comments received from the other Party, the first Party will proceed with submission of the publication and presentation.  The 15 days review period is provided as a courtesy to review the publications or presentations to ensure confidential or proprietary information is not disclosed and ensure that there is not inadvertent release of such information that could be used for a patent or invention application. All comments provided within the review period will be forwarded to the contacts identified in Article 13.6.

7.4.3. **Confidentiality.** The Parties shall excise Confidential Commercial or Financial Information, other than the results of the research, identified by the other Party in the draft presentation or publication.

7.4.4. **Potential Patentability.** If either Party determines that any draft publication or presentation submitted for review in accordance with this Article describes one or more potentially patentable Subject Inventions, notice will be provided to the other Party of this determination prior to expiration of the review period. The Parties shall have sixty (60) days from the date of such notice to file patent application(s) for such inventions in accordance with Article 5, during which time the other Party shall refrain from publication of the draft presentation or publication. The Parties acknowledge that the total delay for publication cannot exceed ninety (90) days.

7.4.5 **Acknowledgement and Credit.** The Collaborator will acknowledge the USGS as its source for the information, data, and software supplied by the USGS for the Collaborator website or other marketing material.  All Collaborator products produced using USGS supplied data and information, which are displayed on the Collaborator website or in Collaborator literature or purchased from the Collaborator or its agents, will be accompanied by an acknowledgement, approved by USGS, which reflects USGS participation and contribution to the product.

7.4.6 **License to use Trademarked USGS Identifier**. Any product produced by the Collaborator which uses USGS supplied data and information will identify the USGS as the original source of the data and information either by means of a line of text or the official USGS identifier.  This agreement includes permission to use the trademarked USGS identifier on products arising from this agreement only. The USGS will supply the Collaborator with a vector file of the USGS identifier and the associated use requirements.

7.5. **Software.** The Parties agree that all Software and documentation originated and developed by the Collaborator prior to the Effective Date of this CRADA and furnished to the USGS by the Collaborator in the performance of its obligations under this CRADA shall be deemed Background Intellectual Property and shall remain the property of the Collaborator and marked to reflect ownership.

If the USGS provides any Software to the Collaborator, the USGS will indicate to the Collaborator whether 1) the USGS-provided information is USGS Confidential Commercial or Financial Information, 2) the Software can be integrated in a public version of the Collaborator’s software, or 3) the USGS-provided software can be integrated into a Government-only tool. Furthermore, the USGS and the Collaborator agree that any Software and documentation originated and developed by the USGS and furnished to the Collaborator for use under this Agreement shall remain the property of the USGS.

**Article 8. Rights In Generated Information**

The Parties understand that the Government and the Collaborator shall have unlimited rights in all Generated Information or information provided to the Parties under this CRADA that is not marked as being copyrighted (subject to Article 5), Proprietary Information, Background Intellectual Property (subject to Article 7.2), or Protected Information (subject to Article 7.3). The USGS is required under the Federal Records Act and other Federal regulations to create, maintain, and apply disposition to records that document USGS work.

**Article 9. Warranties**

9.1. **Party Warranties**. The Parties warrant that:

(a) Each has authority to enter into this CRADA; and

(b) The signatories have authority to sign on behalf of their organization.

9.2. **Additional Collaborator Warranties**. The Collaborator also warrants that:

(a) The Collaborator is financially able to satisfy the funding obligations described herein; and

(b) The Collaborator maintains insurance or self-insurance at levels sufficient to support the indemnification of obligations assumed herein. Upon request, the Collaborator shall provide evidence of such insurance.

9.3. **No Warranties**. Except as specifically stated in this Article, the Parties make no express or implied warranty as to any matter whatsoever, including the conditions of the research or any invention or material, whether tangible or intangible, made or developed under or outside the scope of this CRADA; the ownership, merchantability, or fitness for a particular purpose of the research or any invention or material; or that a technology used by a Party in the performance of the SOW does not infringe any third-party patent rights.

# Except as provided in 28 U.S.C. 1498 (Patent and Copyright Cases), the U.S. Government shall not be liable for the use or manufacture of any invention made under this CRADA nor for the infringement of any patent or copyright during the performance of this CRADA. These provisions shall survive termination of the CRADA.

# Article 10. Expiration and Termination

10.1. **Duration of Agreement.** The Parties recognize that the development program cannot be rigidly defined in advance, and that the contemplated time periods for completion of each phase are good-faith guidelines subject to adjustment by mutual agreement, to fit circumstances as the development program proceeds. In no case will this CRADA extend beyond the Expiration Date specified in the SOW, unless it is revised in accordance with Article 13.4.

10.2. **Effective Date.** This CRADA shall enter into force as of the date of the last signature of the parties as shown on the CRADA signature page.

10.3. **Expiration**. This CRADA shall expire in accordance with the SOW. The term of this CRADA may be extended by mutual written consent of the Parties in accordance with Articles 13.4 and 13.6.

10.4. **Termination by Mutual Consent**. The USGS and the Collaborator each have the right to terminate this CRADA upon a thirty-day (30-day) written notice to the other Party, in accordance with Articles 13.4 and 13.6.

10.5. **Unilateral Termination**. Either the USGS or the Collaborator may unilaterally terminate this CRADA 1) at any time by providing a thirty-day (30-day) written notice in accordance with Article 13.6 at least thirty (30) days before the desired termination date, or 2) immediately upon a material breach or for good cause.

10.6. **Termination after Change of Control.** USGS may terminate this Agreement immediately if direct or indirect control of the Collaborator is transferred to a foreign company or government or, if Collaborator is already controlled by a foreign company or government, if that control is transferred to another foreign company or government.

10.7. **Payments**. If this CRADA is terminated, the Collaborator shall pay any funds due through the date of termination and for work accomplished through the date of termination, as well as for reasonable termination costs and noncancelable obligations; that is, costs that cannot be prevented or mitigated and that arise directly as a result of this CRADA, including the cost of returning Collaborator property or removal of abandoned Collaborator property. The USGS shall repay the Collaborator any prorated portion of payments previously made to the USGS, pursuant to Article 4.1, in excess of actual costs incurred by the USGS in pursuing this project. A report on the results to date of termination will be prepared by the USGS, and the cost of the report will be deducted from any amounts due to the participants from the USGS.

For $0 Agreements, this clause may be modified as appropriate.

10.8. **Dispensation of Tangible and Intangible Data and (or) Materials.** All tangible and intangible data and (or) materials will be dispensed via processes described within the SOW, as applicable, or a jointly developed dispensation plan, as needed.

10.9. **New Commitments**. No Party shall incur new expenses related to this CRADA after expiration, mutual termination, or unilateral termination, and each Party shall, to the extent feasible, cancel all outstanding commitments and contracts by the termination date.

10.10. **Final Report**. Upon termination or expiration, the Parties shall prepare, no later than sixty (60) days after the termination or Expiration Date, a final joint report summarizing the activities completed within the SOW and disclose any Subject Inventions not previously reported. The Parties acknowledge that a plan for development of this report that includes a proposed format for the report may be a task to be performed as a part of the project activities.

The number of days may be adjusted as appropriate and justified.

10.11. **Rights and Obligations.** Termination of this CRADA by either Party for any reason shall not affect the rights and obligations of the parties accrued prior to the effective date of termination of this CRADA. No termination or expiration of this CRADA, however effectuated, shall release the Parties hereto from their rights, duties, and obligations under Articles 4, 5, 6, 7, 8, and 12.

# Article 11. Disputes

11.1 **Settlement**. The signatories to this Agreement shall expend their best efforts to amicably resolve any dispute that may arise under this Agreement. Any dispute that the signatories are unable to resolve within thirty (30) days shall be submitted to the Director of the USGS or his/her designee and the senior representative designated by the Collaborator or his/her designee for resolution. If no resolution is reached, the Parties agree that the courts of the United States shall have jurisdiction over any claims arising out of work under this Agreement.

11.2 **Continuation of Work.** Pending the resolution of any dispute or claim pursuant to this Article, the Parties agree that performance of all obligations shall be pursued diligently in accordance with the direction of the USGS signatory.

# Article 12. Indemnification and Liability

12.1. **USGS Indemnification.** The Collaborator agrees to indemnify and hold harmless the U.S. Government for any loss, claim, damage, or liability of any kind involving an employee of the Collaborator arising in connection with this CRADA, except to the extent that such loss, claim, damage, or liability arises from the negligence of the USGS or its employees. The USGS shall be solely responsible for the payment of all claims for the loss of property, personal injury, or death, or otherwise, arising out of any negligent act or omission of its employees in connection with the performance or work under this CRADA as provided under the Federal Tort Claims Act.

12.2. **Property.** The U.S. Government shall not be responsible for damages to any property of the Collaborator provided to USGS, or acquired by USGS, pursuant to this Agreement.

12.3. **Federal Tort Claims**. The Federal Tort Claims Act (FTCA, 28 U.S.C. 2671 et seq.) is the exclusive remedy for common law torts committed by USGS Employees. The Parties agree that any claims that USGS Employees were negligent in the performance of this CRADA shall be handled in accordance with the FTCA.

12.4. **Collaborator’s Employees’ Obligations.** During any temporary assignment at USGS facilities that may result from this CRADA, the Collaborator’s Employees shall pursue their activities on the work schedule mutually agreed upon between them, the Collaborator, and the USGS. The Collaborator’s Employees must agree to comply with Federal Government security and conduct regulations that apply to USGS Employees. The Collaborator’s Employees shall conform to the requirements of the Office of Government Ethics published in “Standards of Ethical Conduct for Employees of the Executive Branch” and “Limitations on Outside Earned Income, Employment and Affiliations for Certain Noncareer Employees” (Title 5 of the Code of Federal Regulations, Parts 2635 and 2636) and security regulations, hereby made part of this CRADA, to the extent that these regulations prohibit private business activity or interest incompatible with the best interests of the USGS.

12.5. **Notification Obligations.** The Parties shall promptly notify the other Party (or Parties, in the case of a multi-party CRADA) of any liability, claim, action, suit, complaint and (or) injury relating to this Agreement.

12.6. **Technical Developments and Products**. The Collaborator holds the U.S. Government harmless and indemnifies the Government for all liabilities, demands, damages, expenses, and losses arising out of the use by the Collaborator, or any party acting on its behalf or under its authorization, of USGS research and technical development or out of any use, sale, or other disposition by the Collaborator or others acting on its behalf or with its authorization, of products made by the uses of USGS technical developments. In respect to this Article, the Government shall not be considered as an assignee or licensee of the Collaborator. This provision shall survive termination of the CRADA.

12.7. **Force Majeure**. Neither Party shall be liable for any unforeseeable event beyond its reasonable control not caused by the fault or negligence of such Party, which causes such Party to be unable to perform its obligations under this CRADA (and which it has been unable to overcome by the exercise of due diligence), including, but not limited to, flood, drought, earthquake, storm, fire, pestilence, lightning, and other natural catastrophes, epidemic, war, riot, civil disturbance or disobedience, strikes, labor dispute, or failure, threat of failure or sabotage of USGS facilities, or any order or injunction made by a court or public agency. In the event of the occurrence of such a force majeure event, the Party unable to perform shall promptly notify the other Party. It shall further use its best efforts to resume performance as quickly as possible and shall suspend performance only for such period of time as is necessary as a result of the force majeure event.

# Article 13. Miscellaneous

13.1. **No Benefits**. No member of, or delegate to the U.S. Congress, or resident commissioner, shall be admitted to any share or part of this CRADA, nor to any benefit that may arise therefrom; but this provision shall not be construed to extend to this CRADA if made with a corporation for its general benefit.

13.2. **Governing Law**. This CRADA is subject to interpretation under applicable U.S. Federal laws and State, and Tribal laws, if applicable. If any provision in this CRADA conflicts with or is inconsistent with any U.S. Federal law or regulation, the applicable U.S. Federal law or regulation shall govern the construction validity, performance, and effect of this CRADA for all purposes.

13.3. **Severability**. The illegality or invalidity of any provisions of this CRADA shall not impair, affect, or invalidate the other provisions of this CRADA.

13.4. **Amendments**. If either Party desires a modification to this CRADA, the Parties shall, upon reasonable notice of the proposed modification by the Party desiring the change, confer in good faith to determine the desirability of such modification. Modifications shall not be effective until confirmed and signed by the appropriate delegated official for all Parties. A written amendment shall be provided to all Parties hereto by their representatives duly authorized to sign such amendment within thirty (30) days of the modification.

13.5. **Assignment**. Neither this CRADA nor any rights or obligations of any Party hereunder may be assigned or otherwise transferred by any Party without the prior written notification in accordance with Article 13.6. This CRADA shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assignees.

13.6. **Notices**. All notices shall be in writing and signed by an authorized representative of the notifying Party. Parties shall send notices in a manner mutually agreed upon. Notices shall be properly addressed to the other Parties at the addresses provided below in Article 13.17 (Contacts) or to any other address designated in writing by the other Parties.

13.7. **Independent Parties**. The relationship of the Parties to this CRADA is that of independent entities and not as agents of each other or as joint ventures or partners. The USGS shall maintain sole and exclusive control over its personnel, operations, and records documenting the work.

13.8. **USGS Use of Collaborator Name or Trademark and Media Releases**. The USGS and (or) the U.S. Department of the Interior shall not use the name of the Collaborator on any product or service which is directly or indirectly related to either this CRADA or any patent license or assignment agreement which implements this CRADA without the prior approval of the Collaborator. The USGS and (or) the U.S. Department of the Interior shall not publicize, or otherwise circulate, promotional materials which state or imply the Collaborator’s endorsement of a product, service, or position which the USGS and (or) the U.S. Department of the Interior represents.

13.9. **Collaborator Use of USGS Name or Trademark**. The Collaborator shall not use the name of the USGS or the U.S. Department of the Interior on any product or service that is directly or indirectly related to either this CRADA or any patent license or assignment agreement which implements this CRADA without the prior approval of the USGS. The Collaborator shall not publicize, or otherwise circulate, promotional materials (such as advertisements, sales brochures, press releases, speeches, still and motion pictures, articles, manuscripts, or other publications) that state or imply Governmental, Departmental, Bureau, or Government employee endorsement of a product, service, or position which the Collaborator represents. No release of information relating to this CRADA may state or imply that the Government approves of the Collaborator's work product or considers the Collaborator’s work product to be superior to other products or services.

13.10. **CRADA Public Release Statement And Media Releases and Public Information Releases.**

13.10.1. **CRADA Public Release Statement.** The Parties shall provide a proposed CRADA Public Release Statement related to this CRADA to each other for review and approval within sixty (60) days of execution of this CRADA. The USGS may use the approved media release in its annual technology transfer report to the Office of Management and Budget or similar reports. The Collaborator may use the approved Public Release Statement (only, specifically as written) without further approval. Modifications or any future additional media releases related to this CRADA shall be mutually agreed upon in writing by both Parties.

This clause may be optional. Negotiate with partner. The Public Release Statement must be approved by the USGS Office of Policy and Analysis and the Office of Communications and Publishing (OCAP).

13.10.2. **Media and Public Information Releases Approval.** The Collaborator and the USGS agree to obtain prior approval from each other before any other public information releases that refer to the U.S. Department of the Interior, any Bureau, or Employee (by name or title), the Collaborator, its products or services, or this CRADA. The specific text, layout, photographs, and other features of the proposed releases must be submitted with the request for approval to the PI for each party identified in the SOW.

All media and public information releases must be approved by the OCAP.

13.11. **Reasonable Consent**. Whenever a Party’s consent or permission is required under this CRADA, its consent or permission shall not be unreasonably withheld.

13.12. **Import/Export Controls**. The use and dissemination of Generated Information and materials exchanged under this Agreement shall be in accordance with all U.S. laws and regulations, including those pertaining to national security and export control. Nothing in this Agreement shall be construed as a license to export Generated Information or to permit any disclosure in violation of law, regulation, or U.S. Department of the Interior policy. The exporting Collaborator is responsible for obtaining any export licenses that may be required by U.S. Federal law.

13.13. **Entire Agreement**. This CRADA constitutes the entire agreement of the Parties concerning the subject matter of this CRADA and supersedes any prior understanding or written or oral agreement relative to said matter.

13.14. **Headings.** Titles and headings of the sections and subsections of this CRADA are for the convenience of references only and do not form a part of this CRADA and shall in no way affect the interpretation thereof.

13.15. **Survivability**. The provisions of Articles 5, 6, 7, 8, 12, 13.8, and 13.9 shall survive the termination of this CRADA.

13.16. **Travel.**  Travel arrangements for all Government staff will be made in accordance with the USGS and Federal travel rules and regulations, whether arranged by the USGS and funded using either appropriated funds or CRADA funds or arranged and funded directly by the Collaborator.

13.17. **Contacts**

13.17.1. **Principal Investigators**

**For USGS:**

Click or tap here to enter text.

Click or tap here to enter text.

Click or tap here to enter text.

Click or tap here to enter text.

Click or tap here to enter text.

**For Collaborator:**

Click or tap here to enter text.

Click or tap here to enter text.

Click or tap here to enter text.

Click or tap here to enter text.

Click or tap here to enter text.

Click or tap here to enter text.

13.17.2. **Contacts for** **General CRADA Notices**

**For** **USGS**:

Click or tap here to enter text.

Click or tap here to enter text.

Click or tap here to enter text.

Click or tap here to enter text.

Click or tap here to enter text.

**For Collaborator**:

Click or tap here to enter text.

Click or tap here to enter text.

Click or tap here to enter text.

Click or tap here to enter text.

Click or tap here to enter text.

13.17.3. **Contacts for Intellectual Property Matters**

**For USGS**:

Office of Policy and Analysis

12201 Sunrise Valley Drive

MS 153

Reston, VA 20192

Gs-aei\_opa@usgs.gov

**For Collaborator**:

Click or tap here to enter text.

Click or tap here to enter text.

Click or tap here to enter text.

Click or tap here to enter text.

Click or tap here to enter text.

13.17.4. **Contacts for Delivery of Materials** **(if any)**

**For** **USGS**:

Click or tap here to enter text.

Click or tap here to enter text.

Click or tap here to enter text.

Click or tap here to enter text.

Click or tap here to enter text.

**For Collaborator**:

Click or tap here to enter text.

Click or tap here to enter text.

Click or tap here to enter text.

Click or tap here to enter text.

Click or tap here to enter text.

13.17.5. **Contacts for Financial Management**

**For USGS:**

Click or tap here to enter text.

Click or tap here to enter text.

Click or tap here to enter text.

Click or tap here to enter text.

Click or tap here to enter text.

**For Collaborator**:

Click or tap here to enter text.

Click or tap here to enter text.

Click or tap here to enter text.

Click or tap here to enter text.

Click or tap here to enter text.

**Collaborator Federal ID Number**: Click or tap here to enter text  
Taxpayer Identification Number (TIN): Click or tap here to enter text

Data Universal Numbering System (DUNS) Number: Click or tap here to enter text

13.18. **Use and Disposition of Collaborator Materials**. The USGS agrees to use Collaborator Materials only in accordance with the SOW. Upon completion, expiration, or termination of this CRADA, the USGS agrees to dispose or return these materials in accordance with this CRADA.

13.19.  **Scientific Integrity.** Scientific integrity is vital to Department of the Interior (DOI) activities under which scientific research, data, summaries, syntheses, interpretations, presentations, and/or publications are developed and used. Failure to uphold the highest degree of scientific integrity will result not only in potentially flawed scientific results, interpretations, and applications but will damage DOI’s reputation and ability to uphold the public’s trust. All work performed must comply with the DOI Scientific Integrity Policy posted to [http://www.doi.gov](http://www.doi.gov/), or its equivalent as provided by their organization or State law.

**SIGNATURES ARE FOUND ON THE NEXT PAGE.**

**SIGNATURE PAGE**

ACCEPTED AND AGREED:

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 CRADA prior to signing; and that each enters into it freely and voluntarily.

FOR COLLABORATOR:

Click or tap here to enter text

Collaborator Signature Date

Click or tap here to enter text

Typed Name

Click or tap here to enter text

Title

Collaborator should sign the CRADA BEFORE the USGS signs.

FOR USGS:

Click or tap here to enter text

USGS Signature Date

Click or tap here to enter text

Typed Name

Click or tap here to enter text

Title

**Appendix A. Statement of Work (SOW) Between the USGS and the Collaborator**

1. **Background**
2. **Purpose**
3. **Objectives**
4. **Term/Project Schedule**

1. **Collaborator’s Role and Expertise**

**Specific Collaborator Tasks**

1. **USGS’ Role and Expertise**

**Specific USGS Tasks**

1. **Anticipated Outcomes and Deliverables *(If Applicable, Include Joint Outcomes)***
2. **Funds-in and In-kind Contributions**
3. **Additional Contacts:**
4. **Principal Investigators (PIs)**

USGS

Collaborator

1. **Administrative Contacts**

USGS

Collaborator

1. **Financial Contacts**

USGS

Collaborator

Data Universal Numbering System (DUNS) No.:

Taxpayer Identification Number (TIN):

1. **Technical Contacts Other Than PI *(If Applicable)***

USGS

Collaborator

Other

Technical contacts are persons, other than the PI, who might be providing technical expertise.

1. **Third-Party Participants *(If Applicable)***

For USGS

For Collaborator

1. **References (if desired)**

**Appendix B. Resources (Staffing, Funding, and Materials/Equipment) Provided by the USGS and the Collaborator**

Develop a separate budget worksheet and have a link to it here. The budget worksheet link must be removed prior to signature to avoid showing outdated calculations, because the burden rate may change annually, and to prevent the accidental release of personally identifiable information (PII, such as grades and names). However, the Center may provide the other Party some budget information. Please contact the U.S. Geological Survey Office of Policy and Analysis (OPA) for additional guidance.

The USGS will provide scientific staff and other support necessary to conduct the research and other activities described in the Statement of Work (Appendix A). The USGS estimates that $ Click or tap here to enter text (estimate of salary, as dollars, per year) will be required to complete the CRADA research. The USGS also anticipates provision of an in-kind amount of $ Click or tap here to enter text per year toward the CRADA research.

The Collaborator will provide scientific staff and other support necessary to conduct the research and other activities described in the SOW. The Collaborator estimates that $Click or tap here to enter text (estimate of salary, as dollars, per year) will be required to complete the CRADA research. The Collaborator also anticipates provision of an in-kind amount of $Click or tap here to enter text in equipment, travel, and shipping charges and an in-kind amount of $ Click or tap here to enter text in software per year toward the CRADA research.

OPTION 1: The Collaborator agrees to provide funds in the amount of $ Click or tap here to enter text per year of the CRADA for the USGS to use to acquire technical, statistical, and administrative support for the research activities, as well as to pay for supplies and travel expenses.

OPTION 2: No direct funds to USGS will be provided by the Collaborator.

*Materials/Equipment*

The USGS will provide to the Collaborator the following USGS Materials for use under this CRADA:

* Provide a list here, if applicable

The Collaborator will provide to the USGS the following Collaborator Materials for use under this CRADA:

* Provide a list here, if applicable

If either Party decides to provide additional Materials for use under this CRADA, those Materials will be transferred under a cover letter (email) that identifies them and states that they are being provided under the terms of the CRADA. Equipment that will be transferred by the Parties will be documented by a mutually developed fully signed amendment to this Agreement.

# Appendix C. Submitter Notice

# [letterhead]

# DOI FOIA Handbook Sample Exemption 4—Submitter Notification—Initial Submitter Letter—[*43 C.F.R. §§ 2.27*](http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&sid=0fc3ab3499768eebc2e3691c8cf88dec&rgn=div5&view=text&node=43:1.1.1.1.2&idno=43#43:1.1.1.1.2.6.5.2)*,* [*.28*](http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&sid=0fc3ab3499768eebc2e3691c8cf88dec&rgn=div5&view=text&node=43:1.1.1.1.2&idno=43#43:1.1.1.1.2.6.5.3)

In Reply Refer To: [date]

U.S. Geological Survey

Attention: [OAG representative]

Address

City, State Zip

Mr./Ms.

company

address

City, State, Zip

The letter is addressed to the Submitter (the company or entity who won the award, received a contract, submitted a bid or a proposal, etc…). **DO NOT SEND THE SUBMITTER NOTICE TO THE FOIA REQUESTER**

***Via*** [PICK ONE: “***Certified Mail/Return Receipt***”or “***Facsimile***” or “***Electronic Mail***”]

Re: Executive Order 12600 Submitter Notice, Freedom of Information Act (FOIA) Tracking # 20\_\_-00xxx

Dear Mr./Ms. XXX:

This letter concerns a [Date] Freedom of Information Act (FOIA) request that [name of the FOIA Requester] submitted to the U.S. Geological Survey. This FOIA request was assigned control number USGS-20\_\_-00xxx and seeks the following records: “[Quote the request].”

Information responsive to this request may be protected under FOIA Exemption 4, which protects from disclosure “trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential.” [5 U.S.C. § 552(b)(4)](http://www.justice.gov/oip/amended-foia-redlined.pdf). Accordingly, [Executive Order 12600](http://www.archives.gov/federal-register/codification/executive-order/12600.html) and our FOIA regulations, [*43 C.F.R. Part 2*, *Subpart F*,](http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&sid=0fc3ab3499768eebc2e3691c8cf88dec&rgn=div5&view=text&node=43:1.1.1.1.2&idno=43#43:1.1.1.1.2.6) require us to provide you, as the submitter of the information, with written notice of the FOIA request and to seek your views on the disclosure of the information.

We have enclosed the exact language of the request as well as [PICK ONE: “a description of the possibly confidential information located in response to the request” or “a copy of the responsive records, or portions of responsive records, containing possibly confidential information.”] If you wish to object to the release of this information, the regulations require you to provide a written statement setting forth the specific and detailed justification for withholding any portion of the information. [*43 C.F.R. § 2.30*](http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&sid=0fc3ab3499768eebc2e3691c8cf88dec&rgn=div5&view=text&node=43:1.1.1.1.2&idno=43#43:1.1.1.1.2.6.5.5) *to* [*§ 2.31(a)*](http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&sid=0fc3ab3499768eebc2e3691c8cf88dec&rgn=div5&view=text&node=43:1.1.1.1.2&idno=43#43:1.1.1.1.2.6.5.6)*.*

Send a document with the exact language of the request, the name of the requester, the organization (if any) and the FOIA request tracking number. The purpose is to ensure no PII, like personal email addresses, that may be in the body of the FOIA request are not released.

Please note that this is your chance to let us know why some of the information you submitted should be protected.  Please review the guidance below carefully and be very clear and specific about your concerns and rationales.

Information may qualify for protection under Exemption 4 as a “trade secret” if it is information that is “a secret, commercially valuable plan, formula, process, or device that is used for the making, preparing, compounding, or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort.” *Public Citizen Health Research Group v. FDA*, 704 F.2d 1280, 1288 (D.C. Cir. 1983). This definition requires there be a direct relationship between the information at issue and the productive process. *See id.* Should you wish to object to the disclosure of any of the information in the records because it is a trade secret, your specific and detailed discussion must explain how *each category* of information the objections are related to qualifies for protection under Exemption 4 as a trade secret. The explanation must also identify a direct relationship between the information and the productive process.

Alternatively, information may qualify for protection under Exemption 4 if it is privileged or confidential commercial or financial information. {NOTE: Review [*43 C.F.R. § 2.31*](http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&sid=0fc3ab3499768eebc2e3691c8cf88dec&rgn=div5&view=text&node=43:1.1.1.1.2&idno=43#43:1.1.1.1.2.6.5.6)to see if you would like to inform the submitter that not all of the information below will be necessary. **Remember you cannot waive the certification requirement**.} Should you wish to object to the disclosure of any of the information in the records because it is privileged or confidential commercial or financial information, your specific and detailed discussion must explain how *each category* of information the objections are related to qualifies for protection under Exemption 4 as privileged or confidential commercial or financial information.

In determining whether information is commercial or financial, the terms are given their “ordinary meanings.” *Nat’l Ass’n of Home Builders v. Norton*, 309 F.3d 26, 38 (D.C. Cir. 2002). You therefore must provide a specific and detailed explanation of how the information relates to your commercial or financial interest and either the commercial/financial function the information serves or the commercial/financial nature of the information.

The test to determine if information is “privileged” or “confidential,” on the other hand, is less straightforward and depends on whether you were required to provide the information to the government. *Bartholdi Cable Co. v. FCC*, 114 F.3d 274, 281 (D.C. Cir. 1997). If you voluntarily provided information to the government, the information will be considered confidential for the purposes of Exemption 4 if it is the kind of information that you would not customarily release to the public. *See id*. Alternatively, where the government required you to provide the information, the information will be considered confidential for the purposes of Exemption 4 if disclosure “is likely to have either of the following effects: (1) to impair the government’s ability to obtain necessary information in the future; or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained.” *Nat’l Parks & Conservation Ass’n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974).

You therefore must discuss whether you voluntarily provided the information in question. If you assert that you did, you must also explain how the information in question fits into a category of information that you customarily do not release to the public. If, on the other hand, you assert that the government required you to submit the information, you must explain how the information’s release would likely impair the government’s ability to obtain necessary information in the future and/or cause you substantial competitive or other business harm.

To demonstrate that disclosure is likely to cause substantial competitive harm, you must explain how: 1) you face actual competition in the relevant marketplace; and 2) substantial competitive injury would likely result from disclosure. *See People for the Ethical Treatment of Animals v. United States Dep’t of Agric.*, No. 03 C 195-SBC, 2005 U.S. Dist. LEXIS 10586, at \*15-\*16 (D.D.C. May 24, 2005).) This must include a detailed explanation of who your competitors are and the nature of the competition. You must also explain with specificity how disclosure of each category of information would provide your competitors with information that could enable them to obtain an unfair advantage. *See, e.g.*, *Judicial Watch, Inc. v. Export-Import Bank*, 108 F. Supp. 2d 19, 29 (D.D.C. 2000) (discussing how releasing the information in question could give a competitor valuable insights into the submitter’s future operations and negotiating positions).

Finally, as required by the regulations, you must certify that any information you object to disclosing is confidential, you have not disclosed the information to the public, and the information is not routinely available to the public from other sources. *See* [*43 C.F.R. § 2.31(a)(3)*](http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&sid=0fc3ab3499768eebc2e3691c8cf88dec&rgn=div5&view=text&node=43:1.1.1.1.2&idno=43#43:1.1.1.1.2.6.5.6).

{NOTE: If the submitter designated the material as confidential commercial or financial information 10 or more years before the request, include the following language: “We are aware that you have already designated the material as confidential commercial or financial information. However, as this designation occurred 10 or more years before the request, we request your views on whether you still consider the information to be confidential by providing the information requested above.”}

{NOTE: If the submitter is an Indian tribe or nation, include the following language: “Please note that if you have shared this material with other entities (such as state or local governments), those entities may also have received a request for this material. You may wish to reach out to them to discuss whether this is the case.”}

Please be aware that the FOIA requires that “any reasonably segregable portion of a record” must be released after appropriate application of one of the FOIA’s nine exemptions. *See* [5 U.S.C. § 552(b)](http://www.justice.gov/oip/amended-foia-redlined.pdf) (discussion after exemptions). Where a record contains both exempt and nonexempt material, the bureau will generally separate and release the nonexempt information. *See* [*43 C.F.R. § 2.25*](http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&sid=0fc3ab3499768eebc2e3691c8cf88dec&rgn=div5&view=text&node=43:1.1.1.1.2&idno=43#43:1.1.1.1.2.5.5.5). You should be mindful of this segregability requirement in formulating any objections you may have to the disclosure of the records.

Should you wish to object to disclosure of any of the information at issue here, we must receive all of the information requested above **by no later than** XXXX \_\_, 20\_\_ [NOTE: The least amount of time that you can give is 10 workdays after the Submitter’s receipt of this letter, but you can give additional time if you wish].

You may send the documentation via email to [OAG representative email address], fax at [Number], or mail to [Address]. If you do not submit the requested detailed written statement on or before the deadline set above, we will presume that you do not object to the disclosure of the information in question and will proceed with processing the FOIA request accordingly. *See* [*43 C.F.R. § 2.30(b)*](http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&sid=0fc3ab3499768eebc2e3691c8cf88dec&rgn=div5&view=text&node=43:1.1.1.1.2&idno=43#43:1.1.1.1.2.6.5.5).

Also, please note that any comments you submit to us objecting to the disclosure of the records may themselves be subject to disclosure if the Department receives a FOIA request for them. If your comments contain commercial or financial information and a requester asks for the comments under FOIA, we will notify you and give you an opportunity to comment on the disclosure of such information.

Finally, please note that we are responsible for deciding what will be released or withheld. *See* [*43 C.F.R. § 2.28(f)*](http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&sid=0fc3ab3499768eebc2e3691c8cf88dec&rgn=div5&view=text&node=43:1.1.1.1.2&idno=43#43:1.1.1.1.2.6.5.3). However, if you object to the disclosure of information and we decide to release it over your objections, we will notify you before we release the records. *See* [*43 C.F.R. § 2.33*](http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&sid=0fc3ab3499768eebc2e3691c8cf88dec&rgn=div5&view=text&node=43:1.1.1.1.2&idno=43#43:1.1.1.1.2.6.5.8).

You may find both the regulations and Executive Order 12,600 at <http://www.doi.gov/foia/news/guidance/index.cfm>. {NOTE: Also include if applicable: “We have also enclosed the following [PICK AT LEAST ONE: “bureau guidance” or “related regulations”] to aid you in your review of this matter.”}

If you have any questions, you may contact [Name of OAG representative] by phone at [Number], by fax at [Number], by email at [Address], or by mail at [Address].

Sincerely,

[Name]

[Bureau]

[Title]

Enclosure