

A MEMORANDUM OF AGREEMENT

between the

NATIONAL OCEANIC and ATMOSPHERIC ADMINISTRATION

U.S. DEPARTMENT OF COMMERCE

and

**FOR THE PURPOSE OF SHARING, ARCHIVING, AND
DISTRIBUTING CERTAIN DATASETS CREATED AND OWNED
BY _____**

NOS MOA 202X-XXX/YYYYY

I. PARTIES AND PURPOSE

- A. This Memorandum of Agreement (“Agreement”) is entered into by and between the United States Department of Commerce’s National Oceanic and Atmospheric Administration (“NOAA”) and _____, individually and collectively referred to herein as “Party” or “Parties.”
- B. The purpose of this Agreement is to provide a framework for _____ to share with NOAA physical and biological information and data in waters subject to U.S. jurisdiction, and for NOAA to share its publicly available data with _____.
- C. This Agreement shall not create legally enforceable rights and cannot be the basis of any legal claim between the Parties.

II. BACKGROUND[*MODIFY PARAGRAPHS TO SUIT*]

- A. The nation’s needs for *secure and sustainable energy* [edit as appropriate] require quality data and science to better understand and predict the ecological, economic, and societal consequences of particular management choices, as well as the effectiveness of strategies for minimizing environmental impacts and maximizing *energy efficiency*, particularly in waters subject to U.S. jurisdiction.
- B. This better understanding can be achieved through actions such as robust field observations, data synthesis, and environmental modeling of physical and biological characteristics in ocean and coastal waters. Recognizing that no single agency or entity has adequate resources to meet the task, collaboration and data sharing are essential.
- C. _____ relies on, and collects, physical and biological ocean data used in its project analysis, development, construction and/or operation. These data and information resources are used to plan and ensure the effective deployment, the safe, reliable and sustainable operation and maintenance, and the efficient use of *weather-dependent and oceanic renewable energy* technologies and infrastructure.¹

¹<https://www.energy.noaa.gov/renewable-energy/files/DOE-NOAA-Energy-MOU.pdf>

- D. NOAA's mission is to understand and predict changes in climate, weather, oceans, and coasts; to share that knowledge and information with the public; and to conserve and manage coastal and marine ecosystems and resources.
- E. Data shared through this Agreement will assist _____ in its science needs and NOAA in meeting its mission and goals related to climate adaptation and mitigation, weather-readiness, healthy oceans, and resilient coastal communities and economies.

III. AUTHORITIES

- A. The authorities for NOAA to participate in this Agreement include:
 - 1. the Coast and Geodetic Survey Act, 33 U.S.C. §§ 883a *et seq.*, including:
 - a) 33 U.S.C. § 883d, which authorizes NOAA to increase engineering and scientific knowledge by conducting developmental work for the improvement of surveying and cartographic methods, instruments, and equipment; and to conduct investigations and research in geophysical sciences (including geodesy, oceanography, seismology, and geomagnetism); and
 - b) 33 U.S.C. § 883e, which authorizes NOAA to, among other things, enter into cooperative agreements, or any other agreements, with any State or subdivision thereof, any Federal agency, or any public or private organization, or individual, for surveys or investigations authorized herein, or for performing related surveying and mapping activities, including special-purpose maps, and for the preparation and publication of the results thereof.
 - 2. the Marine Mammal Protection Act (MMPA), 16 U.S.C. §§ 1361 *et seq.*, which provides for the protection of marine mammals, with the primary objective of maintaining the health and stability of the marine ecosystem and which authorizes the Secretary of Commerce to enter into such contracts, leases, cooperative agreements, or other transactions as may be necessary to carry out the purposes of subchapter II or subchapter V of the MMPA and on such terms as the Secretary deems appropriate with any Federal or State agency, public or private institution, or other person;

3. the Endangered Species Act, 16 U.S.C. §§ 1531, *et seq.*, which provides a means for the conservation of the ecosystems upon which endangered and threatened species depend and a program for the conservation of such species, which authorizes the Secretary of Commerce to, among other things, designate critical habitat, monitor and evaluate species status, and develop and implement recovery plans for listed species;
4. the National Weather Service Organic Act, 15 U.S.C. § 313, which authorizes the Secretary of Commerce to have charge of, among other duties, the forecasting of weather, the issue of storm warnings, the display of weather and flood signals, the collection and transmission of marine intelligence for the benefit of commerce and navigation, the distribution of meteorological information in the interests of agriculture and commerce, and the taking of such meteorological observations as may be necessary to establish and record the climatic conditions of the United States.

IV. TERMS AND CONDITIONS

- A. To meet the purposes of this Agreement, the Parties intend to engage in collaborative data sharing activities. _____ intends to share with NOAA data concerning *its project areas*. NOAA intends to share with _____ publicly available data concerning waters subject to U.S. jurisdiction. The Parties intend to share data pertaining to the following data themes [*add or strike as appropriate*]:
 1. Air quality, water quality, and emissions;
 2. Biological communities;
 3. Meteorology;
 4. Coastal and ocean currents, circulation, and waves;
 5. Hydrographic services and mapping; and
 6. Physical oceanography.
- B. In addition to collaborative data sharing activities related to the foregoing themes, the Parties intend to agree upon the methodology and procedure by which NOAA will synthesize and store in a NOAA data repository information NOAA receives from _____ under this Agreement.
 1. Appendix A contains guidelines to follow while contributing data and related metadata to NOAA data repositories, which may

include certified regional information coordination entities. These guidelines are not a requirement for data sharing execution; rather, they serve as best practices to help ensure that _____ data are understandable and accessible to NOAA, and to maximize its value for reuse and long-term preservation.

- C. The Parties intend to work collaboratively to develop, execute, and implement this Agreement. If the Parties decide that Annexes are necessary to facilitate the sharing, archiving, and distribution of particular data, the Parties intend that each Annex will, at minimum, be structured according to Section IV. D. and include the following detail on each theme noted above:
1. Description of the data to be disclosed to NOAA;
 2. Ownership of the data;
 3. Actions to be taken by the Parties related to such data;
 4. Timing of data disclosure to NOAA;
 5. Terms of Confidentiality subject to federal law (e.g., the Freedom of Information Act (5 U.S.C. § 552) and the Privacy Act (5 U.S.C. § 552a), and federal whistleblower protections (5 U.S.C. § 2302(b)(13)); and
 6. Data maintenance
 - a) Location of repository for storing data;
 - b) Data access terms and conditions; and
 - c) Data protection and security, as necessary.
- D. Party representatives will work together to develop each Annex under this Agreement. Each Annex will follow the outline below to incorporate the following information:
1. Parties and Purpose;
 2. Authorities;
 3. Terms and Conditions, including incorporating the terms of this overarching Agreement;
 4. A Statement of Work, if appropriate;
 5. Contact Information;
 6. Duration of Annex, including procedures for amending or terminating the Annex;
 7. Claims and Liabilities;
 8. Dispute Resolution; and
- Appropriate approval/signature blocks for each Party's respective signatory officials.

E. NOAA's National Ocean Service (NOS), as the lead NOAA line office for this Agreement, will be responsible for tracking, assigning control numbers to, and obtaining required clearance for all subsequent annexes and amendments to this Agreement.

F. Under this Agreement and its Annexes, NOAA may provide to _____:

1. Data stewardship and archival expertise through NOAA's data repositories;
2. In-kind and personnel assistance to facilitate data transfers;
3. Publicly available information regarding planned NOAA scientific projects or studies relevant to waters subject to U.S. jurisdiction; and/or
4. Publicly available physical and biological datasets.

G. Under this Agreement and its Annexes, _____ may provide to NOAA:

1. Physical and biological datasets for data analysis and archive at suitable and publicly accessible NOAA data repositories;
2. Notification of planned scientific projects, studies or activities relevant to NOAA operations and coastal ocean science; and/or
3. In-kind and personnel assistance to facilitate data transfers.

H. To the extent legally permissible, and subject to and in accordance with any terms of confidentiality established under of this Agreement (section IV.C.5.) and any Annexes, NOAA will make available to the public information NOAA obtains from _____, NOAA will comply with applicable federal laws and policies, including but not limited to the White House Office of Management and Budget (OMB) Guidelines and NOAA Guidelines (last updated Oct. 30, 2014) implementing the Information Quality Act (Section 515 of Public Law 106-554), as well as the NOAA Scientific Integrity Policy, prior to the dissemination of such information to the public through NOAA's data repository discovery portals, platforms and products.

- I. Each Party intends, as determined appropriate by that Party in its sole discretion, to use its knowledge, experience, and authority to add value to the data sharing conducted under this Agreement and any Annexes.
- J. The Parties recognize that this is a non-exclusive arrangement, and that NOAA and _____ may enter into similar arrangements with other entities without the consent or approval of the other. This Agreement does not affect the rights and obligations the Parties have under any other agreement or applicable law, nor does it preclude other arrangements between the Parties.
- K. The Parties agree to recognize each other as the source of any Information used in presentations, reports, peer-reviewed literature, newsletters, and Web communications.
- L. NOAA's participation in any activity under this Agreement and subsequent annex(es) is subject to the availability of appropriated funds.
- M. In implementing this Agreement and its Annexes, the Parties shall not discuss with one another any matter, procedural or otherwise, relating to any aspect of a consultation, permit, or authorization sought by _____ from NOAA for a specific project pursuant to applicable laws and regulations. This prohibition in implementing this Agreement is not intended to cover general discussions between the Parties on the offshore permitting process, nor limit discussions the Parties may have with other federal agencies regarding _____'s compliance with applicable laws and regulations.

V. CONTACTS

- A. The contacts of each Party to this Agreement are:
 - 1. _____ contact:
 - Name
 - Title
 - Address
 - Email
 - Phone
 - 2. NOAA contact:

NOAA Integrated Ocean and Coastal Mapping Coordinator
1315 EW Hwy SSMC3 Rm 6206
Silver Spring, MD 20910
240.533.0048
iwgocm.staff@noaa.gov

- B. The Parties agree that if there is a change regarding the information in this section, the Party making the change will notify the other Party in writing of such change. A change to this section will not require an amendment to this Agreement.

VI. DURATION OF AGREEMENT, AMENDMENTS, AND TERMINATION

- A. This Agreement will become effective when signed by the Parties and will expire on September 30, 202X.
- B. The Agreement may be amended within its scope, including for the purpose of adding additional parties, and prior to its expiration, by mutual written agreement of the Parties.
- C. Either Party may terminate this Agreement by (1) providing thirty days written notice to the other Party; or (2) mutual written agreement of the Parties.
- D. The Parties will review this Agreement at least once prior to September 30, 202X to determine whether it should be revised or terminated.
- E. Upon termination of this Agreement, data made available to the Parties pursuant to this Agreement and its Annexes shall continue to be available to the Parties unless otherwise specified and, to the extent legally permissible and subject to the confidentiality terms of the relevant Annex, to the public.
- F. Each Party shall be solely responsible for the payment of any expenses it incurs in implementing this Agreement and any Annexes hereto.

- G. In the event this Agreement is terminated prior to its expiration date, each Party shall be solely responsible for the payment of any expenses it has incurred.

VII. DISCLAIMER OF WARRANTIES AND LIABILITIES

- A. _____ hereby represents and warrants that it has the right and authority to disclose the information and data to NOAA (or NOAA’s duly authorized representatives) pursuant to any Annex hereto and subject to the confidentiality terms of such Annex. _____ makes no representations and extends no warranties, express or implied, and assumes no responsibilities whatsoever with respect to:
 - 1. The completeness, utility, or accuracy of any information or data provided to NOAA;
 - 2. The merchantability or fitness for a particular purpose of any information, data or technology provided by _____ pursuant to this Agreement; and
 - 3. The freedom from infringement of any patent, trade secret and/or copyright by NOAA’s use of information, data, or technology provided by _____.

- B. _____ will seek to include a Disclaimer of Liability in its metadata for any datasets provided to NOAA.
 - 1. Example: “DISCLAIMER of LIABILITY: The user assumes the entire risk related to use of this data and information. This data was provided to NOAA by a third party "as is," and any and all warranties are disclaimed, whether express or implied, including (without limitation) any warranties of completeness, utility, accuracy, merchantability or fitness of this data for a particular purpose.

- C. The Parties make no warranty regarding data and information disclosed pursuant to this Agreement, expressed or implied, nor does the fact of distribution by NOAA of such data and information constitute such a warranty. The Parties cannot assume liability for any damages caused by any errors or omissions in use or reliance upon such Information, nor as a result of the failure of such Information to function on a particular system.

- D. No provision of this Agreement shall be interpreted as, or constitute, a commitment or requirement that NOAA take action in contravention of the Administrative Procedure Act, or any other law or regulation, either substantive or procedural, with respect to any final agency action.
- E. Nothing in this Agreement shall be construed to limit or modify the discretion accorded to NOAA by the Administrative Procedure Act or any legal authority, or general principles of administrative law, with respect to the procedures to be followed in making any determination regarding any license or permit, or as to the substance of any final determination.
- F. Nothing in this Agreement shall be construed as relieving the Parties of any of their obligations to comply with applicable laws and regulations. Such legal obligations include, but are not limited to, compliance with the Outer Continental Shelf Lands Act, Endangered Species Act, Marine Mammal Protection Act, Magnuson-Stevens Conservation and Protection Act, National Environmental Policy Act, and Coastal Zone Management Act.

VIII. CLAIMS

- A. NOAA agrees to promptly consider and adjudicate any and all claims that may arise out of this Agreement resulting from the actions of NOAA, duly authorized representatives, or contractors of the NOAA, and to pay for any damage or injury as may be required by Federal law. Such adjudication will be pursued under the Federal Tort Claims Act, 28 U.S.C. §§ 2671 *et seq.*, the Federal Employees Compensation Act, 5 U.S.C. §§ 8101 *et seq.*, or such other Federal legal authority as may be pertinent.

IX. RESOLUTION OF DISAGREEMENTS

- A. In the event of a disagreement between the Parties concerning the interpretation of this Agreement, either Party shall provide the other Party with written notice of the ground for the dispute and request a discussion. Within fourteen (14) days of written notice from one Party to the other Party, the Parties shall meet and attempt to resolve their differences. If the dispute is not resolved within fourteen (14) days of such meeting, or such

time thereafter as is mutually agreed upon, either Party may refer the dispute to a higher level of authority within their respective organizations.

X. APPROVALS

ACCEPTED AND APPROVED FOR
U.S. DEPARTMENT OF
COMMERCE
NATIONAL OCEANIC and
ATMOSPHERIC ADMINISTRATION

By:

XXX
NOAA

Date: _____

ACCEPTED AND APPROVED FOR

By:

YYY

Date: _____