

**Sqigwts NKN Climate Change Project – Protocol**  
Coeur d’Alene Tribe and the University of Idaho  
5 February 2015 – Department of Interior, USGS Funded Project  
**Attachment 4A - Traditional Knowledge**  
**Terms & Conditions – Intellectual Property and Traditional Knowledge**

- 1) PRIME RECIPIENT and SUBRECIPIENT hereby acknowledge and agree that the terms and conditions set forth in this Attachment 4A, Traditional Knowledge, shall be “Special Terms and Conditions” under Attachment 4 of the Subaward Agreement. The parties further agree that these terms and conditions are intended to supplement the terms and conditions of the Prime Award and of Attachment 2 of this Subaward Agreement, and that, to the extent that there are conflicts and/or inconsistencies between the terms and conditions of this Attachment 4A and those of the Prime Award and/or Attachment 2, the terms and conditions of the Prime Award and/or Attachment 2 shall control.
  
- 2) Definitions.
  - a. “Background Intellectual Property” means all PRIME RECIPIENT, SUBRECIPIENT, and third party intellectual property, including but not limited to inventions, patents, trademarks, copyrights, computer software, and tangible analysis techniques created and/or first reduced to practice prior to or outside the scope of the Prime Award and/or Subaward.
  - b. “PRIME RECIPIENT Sole Intellectual Property” means individually and collectively all intellectual property that is created and first reduced to practice solely by PRIME RECIPIENT faculty, staff, students, or contractors, excluding SUBRECIPIENT, during the term of and through the performance of the statement of work under the Prime.
  - c. “SUBRECIPIENT Sole Intellectual Property” means individually and collectively all intellectual property that is created and first reduced to practice solely by SUBRECIPIENT employees during the term of and through the performance of the statement of work under this Subaward.
  - d. “Joint Intellectual Property” means individually and collectively all intellectual property which is created and first reduced to practice jointly by PRIME RECIPIENT and SUBRECIPIENT during the term of and through the performance of the statement of work under the Prime Award and/or Subaward.
  - e. “Confidential Information” means any data or information having commercial value which may include but not be limited to data, databases, product plans, strategies, forecasts, research procedures, marketing techniques and materials, customer names and other information related to customers, price-lists, pricing policies, and financial information which the Parties consider sensitive and which is not generally known to the public. With respect to SUBRECIPIENT, “Confidential Information” shall also include Traditional Knowledge of SUBRECIPIENT, which may include, but is not limited to, religious, cultural, or ceremonial information.

- f. Traditional Knowledge means knowledge that is:
- i. generated, preserved and transmitted in a traditional and intergenerational context;
  - ii. distinctively associated with a tribe which preserves and transmits it between generations; and
  - iii. integral to the cultural identity of SUBRECIPIENT tribe, which holds the knowledge through a form of custodianship, guardianship, collective ownership, or cultural responsibility. This relationship may be expressed formally or informally by customary or traditional practices, protocols or laws

Such knowledge should be intergenerational in character, should have an objective link with the SUBRECIPIENT tribal community of origin, and should have a subjective association within that tribal community, so that it forms part of the tribal community's own self-identity. Traditional Knowledge may be contributed by SUBRECIPIENT, SUBRECIPIENT's employees, or individual members of SUBRECIPIENT tribe.

### 3) Intellectual Property Rights.

- a. Background Intellectual Property Rights. Except as otherwise expressly provided by this Agreement, the Background Intellectual Property of each Party is and shall remain the separate intellectual property of the PRIME RECIPIENT or SUBRECIPIENT, as applicable, and is not affected by this Agreement. This Agreement shall not be construed as implying that either Party shall have the right to use the Background Intellectual property of the other Party, except as provided herein.
- b. Sole Intellectual Property Rights.
  - i. All right, title, and interest to all PRIME RECIPIENT Sole Intellectual Property shall be owned solely and exclusively by and vest entirely in PRIME RECIPIENT.
  - ii. All right, title, and interest to all SUBRECIPIENT Sole Intellectual Property shall be owned solely and exclusively by and vest entirely in SUBRECIPIENT.
- c. Joint Intellectual Property Rights. All right, title, and interest to all Joint Intellectual Property shall be jointly owned by PRIME RECIPIENT and SUBRECIPIENT.

### 4) Licensed Intellectual Property Rights.

- a. Project Intellectual Property. Each Party grants to the other a non-exclusive, fee-free and royalty-free, irrevocable, nontransferrable, world-wide license, without the right to sublicense, to its Background Intellectual Property used in the project or Sole Intellectual Property, which licensed rights shall be used only in the performance of the statement of work of the Prime Award or Subaward; provision of any deliverable to the Awarding Agency; or for non-commercial

purposes, including but not limited to research and educational purposes. Traditional Knowledge of SUBRECIPIENT shall be governed by the license granted to PRIME RECIPIENT under Section 4(b).

- b. Traditional Knowledge. SUBRECIPIENT grants to PRIME RECIPIENT a non-exclusive, fee-free and royalty-free, nontransferrable, world-wide license, without the right to sublicense, to its Traditional Knowledge that it has contributed to this project, which licensed rights shall be used only in the performance of the statement of work of the Prime Award or Subaward; provision of any deliverable to the Awarding Agency; or for non-commercial purposes, including but not limited to research and educational purposes.

This license to rights in Traditional Knowledge shall be subject to the limitations set forth below and may be terminated by SUBRECIPIENT in the event that PRIME RECIPIENT breaches its obligations under these limitations.

- i. License Limitations.

1. Initial Consultation. PRIME RECIPIENT and SUBRECIPIENT shall, prior to performing the statement(s) of work under the Prime Award and/or Subaward, use reasonable efforts to identify, in writing, Traditional Knowledge that is likely to be contributed to the project and that SUBRECIPIENT deems to be sensitive in nature. Any Traditional Knowledge designated through this initial consultation as "sensitive" or "confidential" shall be treated by PRIME RECIPIENT as Confidential Information of the SUBRECIPIENT; the confidential status of such sensitive Traditional Knowledge shall be further evaluated through the coordinated, ongoing review of Traditional Knowledge by the designated representative[s] of PRIME RECIPIENT and SUBRECIPIENT, as described in Section 4(b)(i)(2)(b).
2. Ongoing Consultation.
  - a. Designated representatives of PRIME RECIPIENT and SUBRECIPIENT shall meet at regular intervals during the course of the performance of the statement(s) of work to evaluate whether Traditional Knowledge gathered or contributed after initiation of the research should be designated as Confidential Information of the SUBRECIPIENT; the status of Traditional Knowledge identified as Confidential Information by SUBRECIPIENT during the initial consultation shall also be evaluated at each meeting.
  - b. PRIME RECIPIENT shall consult with SUBRECIPIENT regarding any use of Traditional Knowledge subject to the license granted in Section 4(b), when such use is not in furtherance of the statement(s) of work of the Prime

Award or Subaward or in satisfaction of obligations of the Parties under the Prime Award or Subaward. Such consultation shall be for purposes of confirming that the proposed use under the granted license is non-commercial in nature and adequately protects the confidentiality of identified sensitive Traditional Knowledge. This consultation may be part of, but does not supersede, the research approval process of SUBRECIPIENT or review by the Institutional Review Board of PRIME RECIPIENT.

3. Unauthorized Disclosure of Confidential Traditional Knowledge. Disclosure by PRIME RECIPIENT of Traditional Knowledge that has been gathered by PRIME RECIPIENT or SUBRECIPIENT and/or contributed by SUBRECIPIENT to this project, has been identified by SUBRECIPIENT, in writing, as Confidential Information, and is subject to the obligations for Confidential Information set forth in Section 6 unless authorized in writing by SUBRECIPIENT, shall, at SUBRECIPIENT's discretion, result in termination of the license to Traditional Knowledge granted in Section 4(b).

Notwithstanding the foregoing limitations on the license granted in this Section 4(b), PRIME RECIPIENT and SUBRECIPIENT agree that PRIME RECIPIENT shall have an irrevocable license to any Traditional Knowledge incorporated into and integral to a deliverable under the Prime Award and/or Subaward; the underlying Traditional Knowledge shall remain the property of the SUBRECIPIENT.

- 5) Federal Statutes and Regulations Applicable. The disposition of intellectual property rights and obligations of confidentiality under this Attachment 4A shall be subject to rights claimed by and obligation to the government of the United States in the Prime Award and by otherwise applicable federal statutes and regulations, including but not limited to 37 C.F.R. §401, 2 C.F.R. §215, and 2 C.F.R. §200.315.
- 6) Confidentiality.
  - a. In the course of performing under this Agreement, SUBRECIPIENT may disclose to PRIME RECIPIENT SUBRECIPIENT Confidential Information, and PRIME RECIPIENT may disclose to SUBRECIPIENT PRIME RECIPIENT Confidential Information pursuant to proposing to or soliciting from the other Party research proposals and performing statement(s) of work of the Prime Award and Subaward (hereinafter referred to as "Purpose").
  - b. PRIME RECIPIENT agrees to hold in confidence and not disclose any and all SUBRECIPIENT Confidential Information received from SUBRECIPIENT hereunder. SUBRECIPIENT agrees to hold in confidence and not disclose any and all PRIME RECIPIENT Confidential Information received from PRIME RECIPIENT hereunder.

The confidentiality obligations of each Party receiving Confidential Information shall extend for three (3) years from the date of disclosure, when such disclosure is made consistent with Section 6(c); with respect to Traditional Knowledge designated as Confidential Information, such information shall be maintained in confidence by PRIME RECIPIENT indefinitely. Unless otherwise permitted by this Agreement, each Party shall use the Confidential Information only for and to the extent required to accomplish the Purpose. The Parties shall only disclose the Confidential Information to those faculty, staff, or students that have a legitimate business need for such information and only for and to the extent required to accomplish the Purpose or to exercise the rights granted herein. Either Party may disclose the other Party's Confidential Information to its affiliates, contractors, and consultants that are under a written obligation of confidentiality no less restrictive than contained herein to the extent necessary to accomplish the Purpose.

- c. Written information exchanged hereunder shall be clearly marked with an appropriate stamp or legend "Confidential Information." Markings such as "Confidential Information." Markings such as "In Confidence," "Confidential," "PRIME RECIPIENT Use Only," or "SUBRECIPIENT Use Only" shall also be sufficient. Non-written information exchanged hereunder shall only be considered Confidential Information if, at the time of such disclosure, the Confidential Information being disclosed is identified as confidential and the disclosing Party provides the receiving Party within thirty (30) days after such disclosure, with a writing which affirms the confidential nature of the disclosed information and clearly identifies the nature and content of the disclosed information. Notwithstanding the forgoing, non-written Traditional Knowledge shall be treated as Confidential Information until such time that PRIME RECIPIENT and SUBRECIPIENT have had the opportunity to review disclosed Traditional Knowledge, consistent with the consultation process described in Section 2(a), and SUBRECIPIENT has described in writing any disclosed Traditional Knowledge to be treated as Confidential Information under this Section. After such consultation, any non-written Traditional Knowledge reviewed by SUBRECIPIENT but not described and affirmed in writing as confidential, shall not be treated as Confidential Information.
- d. Neither Party shall be liable to the other Party for the disclosure of Confidential Information that:
  - i. is published or otherwise in the public domain through no fault of the receiving Party; or
  - ii. can be demonstrated by the receiving Party to have been in its possession prior to receipt under this Agreement; or
  - iii. is obtained by the receiving Party without restriction from a third party; or
  - iv. is independently developed by the receiving Party by individuals who have not had either direct or indirect access to such information; or

- v. is disclosed by the receiving Party to a third party with the written approval of the disclosing Party without any restriction; or
    - vi. is required to be disclosed under operation of law, including but not limited to the Idaho Public Records Law, Idaho Code §§9-337 through 9-350.
    - vii. is reasonably ascertained by PRIME RECIPIENT or SUBRECIPIENT to create a risk to a trial subject or to public health and safety.
  - e. In furnishing any information hereunder, the disclosing Party makes no warranty, guarantee, or representation, either expressed or implied, as to its adequacy, accuracy, sufficiency, or freedom from defects or that the use or reproduction of any information shall be free from any patent, trade secret, trademark, or copyright infringement. The disclosing Party shall not be liable for damages of whatever kind or for any costs, expenses, risks, or liabilities as a result of the other Party's receipt or use of or reliance on any such information furnished hereunder.
  - f. The provisions of this Section shall survive termination of this Subaward.
- 7) Publication and Presentation. PRIME RECIPIENT, or its employees or students, may issue publications or give presentations based on the statement(s) of work of the Prime or Subaward, excluding the Confidential Information of SUBRECIPIENT. PRIME RECIPIENT will provide SUBRECIPIENT an opportunity for thirty (30) days prior to the proposed submission of any publication or the delivery of any presentation to review such publication and, if necessary, request PRIME RECIPIENT to delete any reference to SUBRECIPIENT'S Confidential Information. Furthermore, SUBRECIPIENT shall have the right to request a delay in publication or presentation for up to thirty (30) additional days, if necessary, to allow for filing of patents if such publication or presentation contains patentable subject matter. The right of review SUBRECIPIENT has under this Section shall terminate twelve (12) months from completion of the Subaward, except with respect to any review required consistent with Section 2(b). In no event shall any of SUBRECIPIENT'S Confidential Information be included in any publication or presentation without written authorization from SUBRECIPIENT.
- 8) Disputes Resolution. The Parties agree to make all reasonable informal efforts among themselves to resolve any dispute related to the performance, by either Party, of any of the terms of this Subaward. If informal efforts to resolve a dispute are unsuccessful, the Party asserting non-compliance with the agreement shall serve written notice on the other Party. The notice shall identify the specific provision alleged to have been violated and shall specify the factual basis for the alleged non-compliance. The designated representative of the Parties, identified in Section 9(a), shall thereafter meet within ten (10) working days in an effort to resolve the dispute.
  - a. In the event of a dispute between the Parties to this Subaward, the Parties agree that the dispute shall, prior to engaging in any legal action, be submitted for resolution to the Vice President for Research and Economic Development, acting

on behalf of the PRIME RECIPIENT, and to the Administrative Director, acting on behalf of SUBRECIPIENT, who shall use their best efforts to resolve the dispute to the mutual satisfaction of the Parties. Should these efforts not resolve the dispute within sixty (60) days after such submission of the dispute for mediation, either party may seek legal remedy as described in Section 9(b).

- b. PRIME RECIPIENT shall bring any complaint against SUBRECIPIENT arising from this Subaward in the Coeur d'Alene Tribal Court, court which shall construe this Subaward in accordance with the laws of the Coeur d'Alene Tribe as applicable, and in the absence of such laws, the trier of fact shall utilize the laws of the State of Idaho.
  - c. SUBRECIPIENT shall bring any complaint against PRIME RECIPIENT arising from this Subaward in the state and federal courts of or for the State of Idaho, County of Latah, including the related appellate courts in any such action or proceeding, which courts shall construe this agreement in accordance with the laws of the State of Idaho.
- 9) Nothing in this Agreement shall be deemed to affect PRIME RECIPIENT or SUBRECIPIENT's obligations under the Freedom of Information Act (FOIA) or PRIME RECIPIENT's Obligations under the Idaho Public Records Law (IRPL) or PRIME RECIPIENT or SUBRECIPIENT's ability to assert exemptions with regard to FOIA or IPRL requests, as applicable.
- 10) Nothing in this Agreement shall be construed as a waiver or diminishment of the inherent sovereign immunity of the Coeur d'Alene Tribe or of the sovereign immunity of the State of Idaho or of the University of Idaho, a public corporation, state educational institution, and a body politic and corporate organized and existing under the constitution and laws of the state of Idaho.