PARTICIPATION AGREEMENT
between
THE REGENTS OF THE UNIVERSITY OF CALIFORNIA
and
FIRM NAME

THIS AGREEMENT is made by and between **THE REGENTS OF THE UNIVERSITY OF CALIFORNIA** ("California") and **FIRM NAME** ("Industry Partner") as follows:

WHEREAS, California is operating at the University of California, Berkeley the *Industry/University Cooperative Research Center for the Built Environment (CBE)*, and

WHEREAS, CBE requires additional financial support to sustain its operations; and

WHEREAS, the primary goal of CBE is a broad and timely dissemination of scientific and practical research in the area of energy efficient and green building technologies and indoor environmental quality.

WHEREAS it is expected that industry sources to be designated "Industry Partners" will provide said financial support in order to secure member (sponsor) status including certain preferential benefits derived from the work of CBE (this member status will include subsidiaries of Industry Partner who are at least 50% owned by the Industry Partners); and

WHEREAS, FIRM NAME is desirous of becoming an Industry Partner;

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties hereto agree as follows

1. RESEARCH AREAS

California shall conduct research projects on various topics such as:

a. Methods of evaluating building performance and diagnosing failures, in terms of energy use, environmental quality, and occupant satisfaction, well-being, and productivity

b. Innovative products and design tools for environmental control in buildings

c. International developments in high-performance buildings

d. Approaches to improving building design through academic and professional education.

Topics will vary as the field develops and as suggested by the Industry Advisory Board.

2. TERM OF AGREEMENT

The Effective Date (Effective Date) of this Agreement is **April 1, 20xx October 1, 20xx.** This Agreement will remain in effect for five (5) years from Effective Date or until terminated by either party, whichever occurs first. Either party may terminate the Agreement for convenience by providing written notice of such termination (Notice of Termination). Termination will be effective thirty (30) days from receipt of Notice of Termination.

3. MEMBERSHIP YEAR

A CBE Membership Year (Membership Year) extends from April 1 to March 31 / October 1 to September 30 of a contract year.

4. COST OF MEMBERSHIP

4.1 The annual level of support for this membership will be Level **(TYPE OF MEMBERSHIP),** as described below:

a. Sponsoring Membership: The standard annual membership fee is $35,000.
b. Sponsoring Small Business Membership: The annual membership fee for small businesses and organizations is $17,500. Small businesses are those with annual revenues below $20 million.
c. A/E/C Membership: In the exclusive case of individual architecture, engineering, and/or construction (A/E/C) firms, the annual membership fee is $12,000.
d. A/E/C Small Business Membership: In the exclusive case of individual small architecture, engineering, and/or construction (A/E/C) firms, the annual membership fee is $7000. Small business A/E/C firms are those with revenues of less than $5 million for professional service firms, construction volume of less than $30 million for general contractors, and construction volume of less than $10 million for sub-contractors.
e. A/E/C Team Membership: The annual membership fee for A/E/C Teams is $35,000.

4.2 Annual payments are due each year on April 1 October 1. Checks payable to California, labeled "CBE Membership, PI Edward Arens" should be sent to:

University of California at Berkeley
Extramural Funds Accounting
2195 Hearst Avenue, Room 130, MC 1103
Berkeley, CA 94720-1103

Payments may be made by wire transfer remittance as follows:

Bank Address:
Bank of America
100 West 33rd Street
New York, NY 10001

Bank Contact:
Terry Peach
Voice (800) 233-8820 x 57350
Fax (877) 886-6189
theresa.a.peach@bankofamerica.com

Account Title: Regents of the University of California
Type of Account: Checking Account
Account Number: 0175380001
Wire ABA/Routing Transit Number: 026009593
Swift Code: BOFA US3N

DUNS Number: 124726725
UCB Tax ID Number: 946002123
DFAS Cage Code: 50853

5. TEAM MEMBERSHIPS

Each A/E/C Team must have a lead firm that is signatory to this Agreement. The lead firm is responsible for aggregating the annual payments of the team's member firms into a single annual payment. Each A/E/C Team is entitled to one voting representative on the Industry Advisory Board. The voting representative is chosen by mutual agreement among the team's member firms.

6. MEMBERSHIP BENEFITS

Industry Partner shall be granted the following benefits (Membership Benefits) in consideration of its support. These benefits will extend to subsidiaries of Industry Partner who are at least 50% owned by the Industry Partner.

a. Access to CBE reports and draft publications for gaining early knowledge of new developments prior to their wide dissemination. The right to use internally all data contained therein for research and evaluation purposes.

b. CBE will provide on a semi-annual basis summary-level, non-proprietary project abstracts which can be distributed by Industry Partners without restriction.

c. Representation on CBE's Industry Advisory Board. Industry Partners may propose research topics to be conducted by CBE, contingent on approval by the full board.

d. Invitation to Industry Partner representatives to attend special presentations at CBE, as well as two semiannual conferences in April and October of each year. With the exception of small business memberships described below, partners may have up to seven representatives attend conference plenary sessions, and up to two representatives attend business meetings. Sponsoring Small Business Members and A/E/C Small Business Members may have up to three participants attend plenary sessions, and one representative attend business meetings

e. Preferential access to CBE's Occupant IEQ Survey resources, including survey implementations and use of the Survey Reporting Tools.

f. Preferential access to other software resources developed by CBE.

g. The right to obtain a non-exclusive, royalty-bearing license on preferential terms to any invention conceived and reduced to practice during the period of Industry Partner's support.

h. The limited right to participate in a visitors program.

Industry Partner member benefits will extend to subsidiaries of Industry Partner who are at least 50% owned by the Industry Partner.

7. INDUSTRY ADVISORY BOARDS

a. Industry Partners will have representation on CBE's Industry Advisory Board, (Industry Advisory Board) and thus the opportunity to influence the topics to be studied by CBE. Each Industry Partner has one vote on the Industry Advisory Board, but may have two representatives at the board meetings.

b. AEC Teams are entitled to one voting representative on the Industry Advisory Board. The voting representative is chosen by mutual agreement among the team's member firms.

8. PROGRAM MANAGEMENT

The Center for the Built Environment's Director is Professor Edward Arens of UC Berkeley. He shall be advised by the Industry Advisory Board. A succeeding Director may be appointed pursuant to agreement by the Industry Advisory Board and California. If, for any reason, Edward Arens is unable to serve as Director, and no successor acceptable to both California and to a majority of CBE's Industry Partners is available, this Agreement shall be terminated.

9. RESULTS OF RESEARCH

California reserves the right to publish, disseminate, and use, in whatever manner it sees fit, all data and results of the research conducted by California under this Agreement. Nothing contained herein shall prohibit use of materials, disclosing or describing inventions in publications, theses and dissertations, although reasonable efforts will be made to avoid compromising the patentability of an invention.

10. LICENSING

a. Inventions conceived or first actually reduced to practice in the course of research performed by California using CBE funds under this Agreement, and all patent rights thereto, will belong to California.

b. Each Industry Partner that is a sponsor at the time an invention is conceived and first reduced to practice shall be provided a time-limited (90 days), option to acquire a non-exclusive, royalty-bearing license for the life of any U.S. patent (or patent application) that issues to such invention. The license shall contain reasonable terms and shall take into consideration the membership status and support provided by Industry Partner(s) that contributed toward the development of the invention. Costs for filing and maintaining such patents will be shared equally by all the Industry Partners who elect to exercise their time-limited option. Invention disclosures will be provided as confidential information.

c. Any Industry Partner that had elected not to request a U.S. license at the time an invention or discovery was first disclosed to Industry Partners, and had not agreed to pay a share of patenting costs, may later become entitled to a non-exclusive, royalty-bearing license for the life of the patent by payment of (1) a pro-rated share of the costs of patent procurement and (2) a one-time fee to be negotiated with California at the time the license is requested.

d. California will apply for foreign patents and will grant non-exclusive, royalty-bearing licenses to such patents under the same terms and conditions established for U.S. patent application and license issuance.

e. California may grant organizations not participating as Industry Partners in CBE a partial exclusive or non-exclusive, royalty-bearing license under U.S. or foreign patent applications and patents, upon request for such license made in writing to California, and upon payment of a fee to be determined by California at the time of license negotiations. At a minimum the fee will represent a reasonable share of the cost of the project from which the invention arose. Any such license granted to such organization will bear a royalty rate that is within the normal range for the field of the invention covered by the patent. Organizations that become Industry Partners after an invention has first actually been reduced to practice may obtain non-exclusive licenses under the terms outlined in above.

f. Although California will seek the recommendation of Industry Partners, determination of whether to file patent applications will be within the sole discretion of California.

11. CONFIDENTIALITY

1. During the period of Industry Partners' participation in CBE under the terms of this Agreement, California may provide Industrial Partner certain Prepublication Data and Invention Disclosures (collectively "CBE Data") related to the research activities of CBE. As used herein, Prepublication Data means results of research including but not limited to that presented by CBE to Industrial Partners at CBE meetings and that has not yet been published by the researchers at the time of such presentation. Prepublication Data may be oral, visual, or written, and may also include information provided or delivered by electronic means. If written, it shall be clearly marked "Confidential Prepublication Data." If disclosed orally or visually, the material considered Prepublication Data shall be identified at the time of presentation and shall be so designated in writing to Industry Partner within thirty (30) days of its original disclosure.

2. The Industry Partner will maintain CBE Data in confidence for one (1) year from the date such CBE Data is disclosed, even if Industrial Partner is no longer a member of CBE.

3. Industry Partner agrees not to disclose CBE Data to others (except to its employees, agents, or consultants who are bound to Industrial Partner by a like obligation of confidentiality) without express written permission of California except that Industry Partner shall not be prevented from using or disclosing any CBE Data which:

    a. Industry Partner can demonstrate by written record was in its possession prior to receipt from California;

    b. is now, or becomes in the future, public knowledge other than through acts or omissions of Industry Partner;

    c. is lawfully obtained by Industry Partner from sources independent of California;

    d. is required to be disclosed by operation of law, provided that California has received advanced written notice of the proposed disclosure by the Industry Partner; or

    e. is disclosed by California to a third party without a nondisclosure obligation.

4. To the extent such does not infringe California' valid copyright and patent rights, and subject to Industry Partner's obligation of nondisclosure, Industrial Partner shall be free to use for any purpose any intangible residual ideas, concepts, know-how or techniques (as distinguished from the tangible implementation of such know-how, ideas, concepts and techniques) contained in California CBE Data (the "Residual Information") retained in the unaided memories of Industry Partner's employees. The marketing of products or services that inherently disclose Residual Information shall not be deemed a publication or disclosure of Confidential Information.
5. It is further agreed that the furnishing of CBE Data to Industrial Partner will not constitute any grant or license to Industrial Partner under any legal rights now or hereinafter held by California.

12. RIGHTS TO COPYRIGHTABLE MATERIALS

Title to and the right to determine disposition of all copyrightable works first developed under this Agreement shall remain with California, provided, however, that California shall grant to the Industry Partner a royalty-free, nontransferable, nonexclusive right and license to use, reproduce, display, distribute and perform all such copyrightable materials published by California. Industry Partner is authorized to disseminate all such copyrightable works, as well as summaries of research findings or other research results prepared by California or Industry Partner, with the exception of CBE Data distributed for Industry Partner's review, advice and comment, for the purpose of transferring information to interested parties.

This right and license shall not apply to computer software and its programming documentation developed under the research program

13. RIGHTS TO SOFTWARE

California shall grant to the Industry Partner a royalty-free, nontransferable, nonexclusive right and license to use, for internal purposes, computer software and its programming documentation that is developed by the CBE and made available to its Industry Partners. All other license rights, of whatever scope, to computer software developed by the CBE, shall be made available to Industry Partners by California as California, in its sole discretion, deems appropriate.

14. USE OF NAME

Industry Partner agrees not to use the name of University of California, Berkeley, the Center for the Built Environment or any abbreviation or derivative thereof in any publicity or other release without the prior written consent of California.

15. PATENT RIGHTS AND LICENSE TERMS

Membership Status	License Issue Fee (LIF)	Research Costs Reimburse-ment	Patent Costs Reimburse-ment	Royalty	Licensed Territory	License Term	Type of License
(1) Member at time of invention disclosure & reduction to practice & elects to license within 90 days of notification (C)	None	None	Pro-rata share	50% of non-member rate	World-wide	Life of patent	Non-exclusive (A)
(2) Same as (1) but elects not to license within 90 days of disclosure of invention and reduction to practice (C)	50% of non-member fee	None	Pro-rata share	50% of non-member rate	World-wide	Life of patent	Non-exclusive (A)
(3) Becomes member after disclosure of invention and reduction to practice	Yes	Pro-rata share	Pro-rata share	85% of non-member rate (B)	Nego-tiable	Life of patent	Non-exclusive (A)
(4) Non-Member	Yes	Pro-rata share	Pro-rata share	Yes	Nego-tiable	Life of patent	Non-exclusive (A)

Notes:

(A) A partial exclusive license may also be negotiated for members that restricts licenses to members at the time of invention disclosure and reduction to practice only. In such a case a license will be negotiated restricting further licenses to member category (1) and (2) only. A partial exclusive may be negotiated for non-members that will restrict future licenses to members in the (2) category only. Such a license could only be granted if a category (1) or (2) member had not already exercised their right to license. Therefore, in such a case, only category (2) members would exist, and member terms will be calculated as above using the non-member partial exclusive terms as the basis for LIF and royalty calculation.

(B) If CBE membership is canceled for any reason, other than the dissolution of CBE, Royalty Rates shall revert to those of a non-member as of the date of membership cancellation.

(C) Members who terminate their membership in CBE forfeit their right, upon date of termination, to license patents and copyrighted software not previously licensed, at the preferred terms stated in items (1) and (2).

16. NOTICES

Official notices under this Agreement shall be sent to:

For California:

Lynne Hollyer
Associate Director
University of California
Industry Alliances Office
2150 Shattuck Ave. Suite 950
Berkeley, CA 94704-6701

For Industry Partner:

Contact
Contact Title
Firm Name
Street Address
City, State, Zip

This Agreement shall be interpreted in accordance with the laws of the State of California.

This Agreement states the entire contract between the parties in respect to the subject matter of this Agreement and supersedes any previous, contemporaneous, or subsequent written or oral representations, statements, negotiations or agreements. Industry Partner acknowledges that it has not been induced to enter into this Agreement by any oral or written statements or representations not expressly provided in this Agreement. This Agreement may be modified only by written agreement executed by both parties hereto.

IN WITNESS WHEREOF, the parties hereto caused this Agreement to be executed by their duly authorized representatives.

INSERT PARTNER'S CORPORATE NAME (“Industry Partner”)

By:_____

INSERT PARTNER’S SIGNATORY INFORMATION

Date:_____

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA (“California”)

By:_____

Lynne Hollyer
Associate Director
University of California, Berkeley
Industry Alliances Office
2150 Shattuck Ave. Suite 950
Berkeley, CA 94704-6701

Date:_____