

**PARTICIPATION AGREEMENT**  
between  
**THE REGENTS OF THE UNIVERSITY OF CALIFORNIA**  
and  
**INSERT PARTNER'S CORPORATE NAME**

THIS AGREEMENT is made by and between **THE REGENTS OF THE UNIVERSITY OF CALIFORNIA** (“UC Regents”) and **INSERT PARTNER'S CORPORATE NAME** (“Industry Partner”) as follows:

**WHEREAS**, UC Regents 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**, **INSERT PARTNER'S CORPORATE 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**

UC Regents 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 **INSERT MEMBER'S EFFECTIVE DATE**. 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 of a contract year.

### 4. COST OF MEMBERSHIP

4.1 The annual level of support for this membership will be Level **(SELECT 1, 2, or 3)**, as described below:

- a. Level 1: The standard annual membership fee is \$35,000.
- b. Level 2: In the exclusive case of individual architecture, engineering, and/or construction (A/E/C) firms, the annual membership fee is \$12,000.
- c. Level 3: The annual membership fee for AEC Teams is \$35,000.

4.2 For Industry Partners with Effective Dates after April 1, the annual fee for the first partial year shall be prorated. **(ADD COST AND PRORATED TERM IF REQUIRED)**

4.3 Annual payments are due each year on April 1. Checks payable to UC Regents, labeled “CBE Membership” should be sent to:

Extramural Funds Accounting  
ATTN: Cynthia Kane, Manager  
2195 Hearst Avenue, Room 130  
Mail Code 1103  
University of California  
Berkeley, California 94720-1103

### 5. TEAM MEMBERSHIPS

Each AEC 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 AEC 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 (up to a limit of 7) to attend special presentations at CBE, as well as two semiannual meetings in April and October of each year.
- 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 UC Regents. If, for any reason, Edward Arens is unable to serve as Director, and no successor acceptable to both UC Regents and to a majority of CBE's Industry Partners is available, this Agreement shall be terminated.

## **9. RESULTS OF RESEARCH**

UC Regents reserves the right to publish, disseminate, and use, in whatever manner it sees fit, all data and results of the research conducted by UC Regents 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 UC Regents using CBE funds under this Agreement, and all patent rights thereto, will belong to UC Regents.
- 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 UC Regents at the time the license is requested.
- d. UC Regents 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. UC Regents 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 UC Regents, and upon payment of a fee to be determined by UC Regents 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 which 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 UC Regents will seek the recommendation of Industry Partners, determination of whether to file patent applications will be within the sole discretion of UC Regents.

## **11. CONFIDENTIALITY**

1. During the period of Industry Partners' participation in CBE under the terms of this Agreement, UC Regents 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 UC Regents 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 UC Regents;
  - 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 UC Regents;
  - d. is required to be disclosed by operation of law, provided that UC Regents has received advanced written notice of the proposed disclosure by the Industry Partner; or
  - e. is disclosed by UC Regents to a third party without a nondisclosure obligation.
4. To the extent such does not infringe UC Regents' 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 UC Regents CBE Data (the "Residual Information") retained in the unaided memories of Industry Partner's employees. The marketing of products or services which 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 UC Regents.

## **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 UC Regents, provided, however, that UC Regents 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 UC Regents. Industry Partner is authorized to disseminate all such copyrightable works, as well as summaries of research findings or other research results prepared by UC Regents 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**

UC Regents shall grant to the Industry Partner a royalty-free, nontransferable, nonexclusive right and license to use, for internal non-commercial purposes, computer software and its programming documentation which is specified to be developed and delivered under the Statement of Work of a CBE research project. All other license rights, of whatever scope, to computer software developed under the research program, shall be made available to Industry Partners by UC Regents as UC Regents, in its sole discretion, deems appropriate.

### **14. USE OF NAME**

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

## 15. PATENT RIGHTS AND LICENSE TERMS

| Membership Status   | License Issue Fee (LIF) | Research Costs Reimbursement | Patent Costs Reimbursement | 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) | Negotiable         | Life of patent | Non-exclusive (A) |
| (4) Non-Member  | Yes                     | Pro-rata share               | Pro-rata share             | Yes                        | Negotiable         | 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 UC Regents: Lynne Hollyer.  
Industry Contracts Manager,  
Industry Alliances Office  
University of California  
2150 Shattuck Ave.  
Berkeley, CA 94720-1610

For Industry Partner: **INSERT PARTNER’S SIGNATORY INFORMATION**

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”)

**THE REGENTS OF THE UNIVERSITY OF CALIFORNIA** (“UC Regents”)

By: \_\_\_\_\_

By: \_\_\_\_\_

**INSERT PARTNER’S SIGNATORY INFORMATION**

Lynne Hollyer  
Industry Contracts Manager,  
University of California  
Industry Alliances Office  
2150 Shattuck Ave.  
Berkeley, CA 94720-1610

Date: \_\_\_\_\_

Date: \_\_\_\_\_