

**LICENSE AGREEMENT FOR  
SEED TRADEMARKS**

This license agreement (the “Agreement”) is entered into by The Regents of the University of California (“The Regents”), United States Department of Energy (“DOE”) contract-operators of the Ernest Orlando Lawrence Berkeley National Laboratory, 1 Cyclotron Road, Berkeley, CA 94720, (“Berkeley Lab”), and \_\_\_\_\_, a \_\_\_\_\_ corporation (“Licensee”) having its principal place of business at \_\_\_\_\_.

**1. BACKGROUND**

- 1.1. DOE is owner of the SEED Platform™ and Standard Energy Efficiency Data (SEED) Platform™ trademarks, including federal trademark applications as well as common law and state trademark rights in connection with goods and services relating to energy performance of multiple buildings.
- 1.2. DOE has granted The Regents of the University of California a license to use the SEED Platform™ trademarks under the contract between DOE and The Regents of the University of California to operate Berkeley Lab (Contract No. DE-AC02-05CH11231, the “Prime Contract”). Under this license, The Regents of the University of California, through Berkeley Lab, has the right to grant revocable, nonexclusive sublicenses to use the SEED Platform™ trademarks.
- 1.3. Licensee desires a license to use the SEED Platform™ trademarks.

Therefore, the parties agree as follows:

**2. DEFINITIONS**

- 2.1. “Effective Date” means the date of execution by the last signing party.
- 2.2. “Licensed Trademarks” means DOE’s interest in the following:
  - 2.2.1. U.S. Serial Number 86,408,704: SEED Platform (standard character);
  - 2.2.2. U.S. Serial Number 86,408,759: Standard Energy Efficiency Data Platform (standard character);
  - 2.2.3. U.S. Serial Number 86,478,203: SEED Platform U.S. Department of Energy (design plus words); and

2.2.4. U.S. Serial Number 86,478,244: SEED Standard Energy Efficiency Data Platform  
U.S. Department of Energy (design plus words).

2.3. “Field of Use” means use of Licensed Trademarks in connection with SEED computer software and software platforms for managing large datasets about the energy performance of multiple buildings, including to communicate and advertise Licensee’s software and services, including hosting services.

### **3. GUIDELINES**

- 3.1. Licensee accepts the terms and conditions set forth in the separate Guidelines for Official Approved SEED Hosting Providers (the “Guidelines”).
- 3.2. Licensee acknowledges that the Guidelines may change over time, including new requirements being set forth in the Guidelines, and understands and agrees to comply with the most current version of the Guidelines.

### **4. LICENSE GRANT**

- 4.1. Subject to the limitations and other terms and conditions set forth in this Agreement, Berkeley Lab grants to the Licensee a revocable, nonexclusive license under its rights in and to the Licensed Trademarks to use the Licensed Trademarks only within the Field of Use and pursuant to the Guidelines.
- 4.2. Except as otherwise provided for in this Agreement, the license granted under the Licensed Trademarks in Paragraph 4.1 is non-transferable and non-sublicensable. The grant in Paragraphs 4.1 and 4.2 is limited within the Field of Use; for all other uses, the Licensee has no license under this Agreement.
- 4.3. Nothing in this Agreement will be deemed to limit the right of Berkeley Lab to publish or otherwise communicate any part of the Licensed Trademarks and any and all data resulting from any research performed by Berkeley Lab relating to the Licensed Trademarks, and to use, reproduce, make derivative works, enhance, modify, and expand the Licensed Trademarks and to allow others to do so. Berkeley Lab shall be free to make, use, sell, offer to sell, import, practice, and otherwise commercialize and exploit (including but not limited to transferring to, licensing to, or having exercised by third parties any sponsored research performed for or on behalf of commercial entities) the Licensed Trademarks for any purpose whatsoever and in its sole discretion.
- 4.4. No right, express or implied, is granted to Licensee to sublicense or otherwise transfer the right to use the Licensed Trademarks to third parties.

- 4.5. Berkeley Lab makes no representations or warranties with respect to any services or products associated with Licensee, and disclaims any liability arising out of Licensee's use of the Licensed Trademark hereunder.

## 5. TRADEMARK OWNERSHIP AND USE

- 5.1. Licensee acknowledges and agrees that DOE is and shall remain the sole owner of the Licensed Trademark and that Licensee shall do nothing inconsistent with such ownership. Licensee agrees that it shall not, at any time during or after the effective term of this Agreement: (i) dispute or contest, directly or indirectly, DOE's exclusive right and title to the Licensed Trademarks or the validity thereof, or (ii) apply for registration, or seek to obtain ownership, of the Licensed Trademarks or any similar trademark in any nation.
- 5.2. Licensee agrees to only use the Licensed Trademarks within the Field of Use in accordance with the terms of this Agreement and the Guidelines. Licensee agrees it shall provide to Berkeley Lab, upon Berkeley Lab's request, at no expense to Berkeley Lab, a sample of any material that will bear the Licensed Trademarks.
- 5.3. Licensee agrees that the nature and quality of (a) all services rendered by Licensee in connection with the Licensed Trademarks, (b) all goods sold or distributed by Licensee under the Licensed Trademarks, and (c) all related advertising, promotional, and other related uses of the Licensed Trademarks by Licensee, shall be of a high standard and of such style, appearance, and quality as to be adequate and suited to their exploitation to the best advantage and to the protection and enhancement of the Licensed Trademarks and the goodwill pertaining thereto. Licensee agrees that the policy of sale, distribution, and exploitation by Licensee of such services and articles will be of a high standard.
- 5.4. Licensee agrees it shall use the Licensed Trademarks only in the form and manner authorized by this Agreement and the Guidelines and shall not use any other trademark or service mark in an unauthorized combination with the Licensed Trademarks without the prior written approval of Berkeley Lab. Licensee agrees it shall not alter, modify, cut-apart, separate, otherwise distort in perspective or appearance, dilute, or otherwise misuse the Licensed Trademarks.
- 5.5. The license granted under this Agreement is conditioned upon Licensee's full and complete compliance with the provisions of the trademark laws of the United States and any other country in which Licensee will use the Licensed Trademarks.
- 5.6. Licensee shall promptly notify Berkeley Lab of any known use of the Licensed Trademarks by others not duly authorized by Berkeley Lab or DOE. Licensee agrees to fully cooperate with Berkeley Lab and DOE in the enforcement of its trademark rights or prosecution of any action against an infringer relating to the Licensed Trademarks. The U.S. Government shall have the sole and exclusive rights and discretion to file, maintain, or settle any legal proceedings involving the Licensed Trademarks, and shall have the

exclusive right to enforce the Licensed Trademarks by way of infringement suits, opposition or cancellation proceedings, or otherwise.

- 5.7. Licensee agrees not to use the Licensed Trademarks in connection with any content or products or services that denigrate or disparage DOE, Berkeley Lab, The Regents, or any other government body, and their personnel, agents, and affiliates. Licensee agrees not to use the Licensed Trademark in connection with any illegal, offensive, or sexually explicit content. Licensee agrees not to use the Licensed Trademark with any injurious or negligently-made or performed goods, services, or processes.
- 5.8. To facilitate DOE's control of the nature and quality of goods or services sold or rendered by Licensee, Licensee agrees to permit reasonable inspection of Licensee's operations, and to provide the DOE with reasonable inspection access of all uses of the Licensed Trademarks upon request.
- 5.9. Berkeley Lab shall have the right to supervise, in a commercially reasonable manner and upon reasonable advance notice, the manufacture, processing, and packaging of the products and the performance of any service or program at or emanating from Licensee in connection with any use of the Licensed Trademarks, for the purpose of protecting and maintaining the high standards of quality described above in this section for goods, services, or programs sold or marketed under the Licensed Trademarks.

## **6. BOOKS AND RECORDS**

- 6.1. Licensee shall keep books and records accurately showing all products, software, and services associated with Licensed Trademarks manufactured, used, sold, imported, or otherwise disposed of under the terms of this Agreement.

## **7. LIFE OF AGREEMENT**

- 7.1. Unless otherwise terminated by operation of law or by acts of the parties in accordance with the terms of this Agreement, this Agreement is in force from the Effective Date for a period of one year from the Effective Date.
- 7.2. Any termination of this Agreement will not affect the rights and obligations set forth in the following articles:

Article 6	BOOKS AND RECORDS
Article 7	LIFE OF THE AGREEMENT
Article 11	USE OF NAMES AND NONDISCLOSURE OF AGREEMENT

Article 12	LIMITED WARRANTY
Article 13	LIMITATION OF LIABILITY
Article 14	INDEMNIFICATION
Article 15	NOTICES
Article 21	EXPORT CONTROL LAWS
Article 22	MISCELLANEOUS

- 7.3. Termination does not affect in any manner any rights of Berkeley Lab arising under this Agreement before the termination.

## **8. TERMINATION BY BERKELEY LAB**

- 8.1. If Licensee violates or fails to perform any material term of this Agreement or the Guidelines, then Berkeley Lab may give written notice of such default (“Default Notice”) to Licensee. If Licensee fails to cure that default and provide Berkeley Lab with reasonable evidence of the cure within thirty (30) days of the Default Notice, Berkeley Lab may terminate this Agreement and the licenses granted by a second written notice (“Termination Notice”) to Licensee. If Berkeley Lab sends a Termination Notice to Licensee, this Agreement automatically terminates on the effective date of the Termination Notice.
- 8.2. In its own discretion, and without first giving notice, Berkeley Lab may terminate this Agreement at the initiation of any of the following events, or at any time thereafter: (i) DOE instructs Berkeley Lab to terminate this Agreement; (ii) termination or expiration of the Prime Contract.

## **9. TERMINATION BY LICENSEE**

- 9.1. Licensee at any time may terminate this Agreement by giving written notice to Berkeley Lab. Licensee’s termination of this Agreement will be effective upon Berkeley Lab’s receipt of Licensee’s notice.

## **10. EFFECT OF TERMINATION**

- 10.1. No later than 60 days after termination of this Agreement, Licensee agrees to discontinue all use of the Licensed Trademarks and any other trademark or term confusingly similar thereto. Licensee further agrees to cooperate with DOE or its appointed agent to apply to the appropriate authorities to cancel recording of this

Agreement from all government records and no later than 6 months after the receipt of notice to comply with any request by DOE to destroy printed materials bearing the Licensed Trademarks, except for previously distributed goods, products, including software, and documents. All rights in the Licensed Trademarks and the goodwill connected therewith will remain the property of DOE.

## **11. USE OF NAMES AND NONDISCLOSURE OF AGREEMENT**

- 11.1. In accordance with California Education Code Section 92000, Licensee shall not use in advertising, publicity, or other promotional activities the University of California name (including abbreviations) or other designations of the University of California, nor shall Licensee so use “Ernest Orlando Lawrence Berkeley National Laboratory” or “Department of Energy” (including any contraction, abbreviation, or simulation of any of the foregoing) without Berkeley Lab’s prior written consent.
- 11.2. Neither party may disclose the terms of this Agreement to a third party without express written permission of the other party, except when required under either the California Public Records Act or other applicable law or court order. Notwithstanding the foregoing, Berkeley Lab may disclose the existence of this Agreement and the extent of the grant in Article 4 (LICENSE GRANT) but shall not otherwise disclose the terms of this Agreement, except to the DOE.

## **12. LIMITED WARRANTY**

- 12.1. Berkeley Lab warrants to Licensee that it has the lawful right to grant this license.
- 12.2. This license and the associated Licensed Trademarks are provided WITHOUT WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER WARRANTY, EXPRESS OR IMPLIED. BERKELEY LAB MAKES NO REPRESENTATION OR WARRANTY THAT LICENSED TRADEMARKS WILL NOT INFRINGE ANY PATENT, COPYRIGHT, TRADEMARK, OR OTHER PROPRIETARY RIGHT.
- 12.3. IN NO EVENT WILL BERKELEY LAB BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES RESULTING FROM THIS LICENSE.
- 12.4. Nothing in this Agreement may be construed as:
  - 12.4.1. a warranty or representation by Berkeley Lab as to the validity or scope of any of Berkeley Lab’s rights in Licensed Trademarks;

- 12.4.2. a warranty or representation that anything made, used, sold, or otherwise disposed of under any license granted in this Agreement is or will be free from infringement of any patents, copyright, trademark, or other rights of third parties;
- 12.4.3. an obligation to bring or prosecute actions or suits against third parties for trademark infringement; or
- 12.4.4. a grant by implication, estoppel, or otherwise of any license or rights under any patents of Berkeley Lab or other rights of Berkeley Lab other than the rights in Licensed Trademarks granted herein.
- 12.5. Licensee, by execution hereof, acknowledges and agrees that Licensee has not been induced in any way by Berkeley Lab employees or agents thereof to enter into this Agreement, and further warrants and represents that (a) Licensee has conducted sufficient due diligence with respect to all items and issues pertaining to this Agreement; and (b) Licensee has adequate knowledge and expertise, or has used knowledgeable and expert consultants, to adequately conduct such due diligence, and agrees to accept all risks inherent herein.

### **13. LIMITATION OF LIABILITY**

- 13.1. BERKELEY LAB SHALL NOT BE LIABLE TO THE LICENSEE FOR ANY LOST PROFITS, COSTS OF PROCURING SUBSTITUTE GOODS OR SERVICES, LOST BUSINESS, ENHANCED DAMAGES FOR INTELLECTUAL PROPERTY INFRINGEMENT OR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR OTHER SPECIAL DAMAGES SUFFERED BY SUCH PARTY, ITS LICENSEES, SUBLICENSEES, JOINT VENTURES, AFFILIATES OR DEVELOPMENT PARTNERS ARISING OUT OF OR RELATED TO THIS AGREEMENT FOR ALL CAUSES OF ACTION OF ANY KIND (INCLUDING TORT, CONTRACT, NEGLIGENCE, STRICT LIABILITY AND BREACH OF WARRANTY) EVEN IF BERKELEY LAB OR LICENSEE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

### **14. INDEMNIFICATION**

- 14.1. Licensee agrees to indemnify, hold harmless, and defend Berkeley Lab and the U.S. Government and their officers, employees, and agents as well as the sponsors of the research that led to the Licensed Trademarks against any and all claims, suits, losses, damage, costs, fees, and expenses resulting from or arising out of exercise of this license or any sublicense. Licensee shall pay all costs incurred by Berkeley Lab in enforcing this indemnification, including reasonable attorneys' fees.
- 14.2. Licensee, at its sole expense, shall insure its activities in connection with the work under this Agreement and obtain and keep in force Commercial Form General Liability

Insurance (contractual liability and services/products liability included) with limits as follows:

- 14.2.1. Each Occurrence \$1,000,000
- 14.2.2. Products/Completed Operations Aggregate \$5,000,000
- 14.2.3. Personal and Advertising Injury \$1,000,000
- 14.2.4. General Aggregate \$5,000,000

14.3. The coverages and limits referred to in this Article 14 do not in any way limit the liability of Licensee. Licensee shall furnish Berkeley Lab with certificates of insurance, including renewals, evidencing compliance with all requirements at least 30 days prior to the first commercial sale, use, practice or distribution of any good or service that is associated with the Licensed Trademarks.

14.3.1. If such insurance is written on a claims-made form, coverage will provide for a retroactive date of placement on or before the Effective Date.

14.3.2. Licensee shall maintain the general liability insurance specified during: (a) the period that the service or good that is associated with the Licensed Trademarks is being commercially distributed or sold by Licensee or by a sublicensee or agent of Licensee, and (b) a reasonable period thereafter, but in no event less than five years.

14.4. The insurance coverage of Paragraph 14.2 must:

14.4.1. Provide for 30-day advance written notice to Berkeley Lab of cancellation or of any modification.

14.4.2. Indicate that DOE, "The Regents of the University of California" and its officers, employees, students, agents, are endorsed as additional insureds.

14.4.3. Include a provision that the coverages are primary and do not participate with, nor are excess over, any valid and collectible insurance or program of self-insurance carried or maintained by Berkeley Lab.

## 15. NOTICES

15.1. Any notice or other communication this Agreement requires or permits either party to give must be in writing to the appropriate address given below, or to such other address as one party designates by written notice to the other party. The parties deem notice or other communication to have been properly given and to be effective (a) on the date of delivery if delivered in person; (b) on the fourth day after mailing if mailed by first-class mail, postage paid; (c) on the second day after delivery to an overnight courier service



such as Federal Express, if sent by such a service; or (d) upon confirmed transmission by fax or email. The parties' addresses are as follows:

In the case of Berkeley Lab:

Lawrence Berkeley National Laboratory  
Innovations and Partnership Office  
One Cyclotron Road, Bldg. 56A-120  
Berkeley, CA 94720  
Attention: Licensing Manager  
Tel: (510) 486-6467  
Fax: (510) 495-2950  
Email: LicensingManager@lbl.gov

In the case of Licensee:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Tel: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

## 16. ASSIGNABILITY

16.1. This Agreement is personal to the Licensee. The Licensee may not assign or transfer this Agreement, including by merger, operation of law, or otherwise.

## 17. WAIVER

17.1. The waiver of any breach of any term of this Agreement does not waive any other breach of that or any other term.

## 18. FORCE MAJEURE

18.1. If a party's performance required under this Agreement is rendered impossible or unfeasible due to any catastrophes or other major events beyond its reasonable control,

including, without limitation, the following, the parties are excused from performance: war, riot, and insurrection; laws, proclamations, edicts, ordinances, or regulations; strikes, lockouts, or other serious labor disputes; and floods, fires, explosions, or other natural disasters. When such events abate, the parties' respective obligations under this Agreement must resume.

## **19. GOVERNMENT APPROVAL OR REGISTRATION**

- 19.1. If the law of any nation requires that a governmental agency to either approve or register this Agreement or any associated transaction, Licensee shall assume all legal obligations to do so. Licensee shall notify Berkeley Lab if it becomes aware that this Agreement is subject to a U.S. or foreign government reporting or approval requirement. Licensee shall make all necessary filings and pay all costs, including fees, penalties, and all other costs associated with such reporting or approval process.

## **20. COMPLIANCE WITH LAWS**

- 20.1. Licensee shall comply with all applicable international, national, state, regional, and local laws and regulations in performing its obligations hereunder and in its sale, distribution, advertising, use, manufacture, and import (if any) of goods and services incorporating the Licensed Trademarks.

## **21. EXPORT CONTROL LAWS**

- 21.1. Licensee shall observe all applicable United States and foreign laws and regulations with respect to the transfer products or services related to the Licensed Trademarks and related technical data, including, without limitation, the International Traffic in Arms Regulations (ITAR) and the Export Administration Regulations. The export of any technology from the United States, including without limitation the Licensed Products and related technical data, may require some form of export control license from the U.S. Government and, pursuant to U.S. laws, failure to obtain such export control license may result in criminal liability.

## **22. MISCELLANEOUS**

- 22.1. The article headings are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.
- 22.2. This Agreement is not binding upon the parties until it is signed below on behalf of each party.

- 22.3. No amendment or modification hereof will be valid or binding upon the parties unless made in writing and signed on behalf of each party.
- 22.4. This Agreement embodies the entire and final understanding of the parties on this subject. It supersedes any previous representations, agreements, or understandings, whether oral or written.
- 22.5. If a court of competent jurisdiction holds any provision of this Agreement invalid, illegal or unenforceable in any respect, this Agreement must be construed as if that invalid or illegal or unenforceable provision is severed from the Agreement, provided, however, that the parties shall negotiate in good faith substitute enforceable provisions that most nearly effect the parties' intent in entering into this Agreement.
- 22.6. This Agreement must be interpreted under California law, without giving effect to any choice of law rules that would result in the application of laws of any jurisdiction other than California, provided that U.S. federal law regarding substantive trademark matters will govern as applicable.
- 22.7. Any goodwill and similar benefits arising from the use of Licensed Trademarks by Licensee shall inure to the benefit of DOE.

Berkeley Lab and Licensee execute this Agreement in duplicate originals through their duly authorized respective officers in one or more counterparts that, taken together, are but one instrument.

**THE REGENTS OF THE UNIVERSITY  
OF CALIFORNIA, THROUGH THE  
ERNEST ORLANDO LAWRENCE  
BERKELEY NATIONAL LABORATORY**

\_\_\_\_\_

By \_\_\_\_\_  
(Signature)

By \_\_\_\_\_  
(Signature)

By Horst Simon

By \_\_\_\_\_  
(Please Print)

Title Deputy Laboratory Director

Title \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_