



# ENERGYPLUS™ EXECUTABLE DISTRIBUTION LICENSE AGREEMENT



EnergyPlus™ Version: 7.x

**THIS EXECUTABLE DISTRIBUTION LICENSE AGREEMENT (“AGREEMENT”) IS A LEGAL AGREEMENT BETWEEN YOU (IN YOUR CAPACITY AS AN INDIVIDUAL AND AS AN AGENT FOR YOUR COMPANY, INSTITUTION OR OTHER ENTITY) (COLLECTIVELY, “YOU” OR “LICENSEE”) AND THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, UNITED STATES DEPARTMENT OF ENERGY CONTRACT-OPERATORS OF THE ERNEST ORLANDO LAWRENCE BERKELEY NATIONAL LABORATORY (“BERKELEY LAB”). DOWNLOADING, INSTALLING, USING, OR COPYING OF THE SOFTWARE (AS DEFINED BELOW) BY YOU OR BY A THIRD PARTY ON YOUR BEHALF INDICATES YOUR AGREEMENT TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THESE TERMS AND CONDITIONS, DO NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE**

*The EnergyPlus™ building energy simulation computer program has been developed by Berkeley Lab and its collaborators under funding from the U.S. Department of Energy. Licensee desires to obtain, and Berkeley Lab is willing to grant, the right to use and commercially distribute in executable form only the specified version of the Software (as defined below), pursuant to the terms and conditions of this Agreement.*

The parties now agree as follows:

**1. DEFINITIONS**

1.1 “Product” means a computer software program or package that includes the Software (or derivative work of the Software) in executable form only, and which Licensee intends to distribute to, or enable internet access or usage by, Licensee’s end users or other licensees of Licensee. A “Product” shall consist of the Software (or derivative work thereof) in executable form only, either in stand-alone form, or as incorporated into and compiled with, or otherwise bundled with, other computer software owned or licensed by Licensee.

1.2 “Software” means the version of the EnergyPlus™ program noted above, together with any associated media, printed materials, and on-line or electronic documentation (if any).

**2. LICENSE GRANT & REPORTING REQUIREMENTS**

2.1 Right to Use. Subject to receipt by Berkeley Lab of any required U.S. Department of Energy approvals, Berkeley Lab hereby grants Licensee, and Licensee hereby accepts, the non-exclusive, paid-up right to install, use, and copy the Software, in object code and executable form only, and distribute and sublicense the Product, subject to the following terms and conditions:

- (a) Licensee will only distribute Products under sublicense to those who have entered into a written license agreement in compliance with the attached Exhibit A;
- (b) Licensee may distribute Products via physical or electronic means, including but not limited to allowing end users to download from the internet;
- (c) Licensee may use the Product in conjunction with internet-based applications and may allow third parties to access and use the Product via the internet. So long as end users are not permitted to download the Product from the internet, mere access to or use of the Product via the internet shall not be considered a distribution of the Product for purposes of Section 2.1(a) of this Agreement;
- (d) Licensee will reproduce onto any copies of the Software or Product all titles, trademarks, disclaimers, and copyright and restricted rights notices, and all copies of the Software, in

whole or in part, shall be subject to the terms and conditions of this Agreement; and

- (e) Licensee will not modify, alter, or create derivative works of the Software in any manner.

**2.2 Ownership of Software and Product.**

- (a) Ownership of Software. Subject to receipt by Berkeley Lab of any required U.S. Department of Energy approvals: (i) Licensee hereby acknowledges that the Software is protected by United States copyright law and international treaty provisions; (ii) Berkeley Lab and its licensors hereby reserve all rights in and to the Software which are not explicitly granted to Licensee herein; (iii) without limiting the generality of the foregoing, Berkeley Lab and its licensors retain all title, copyright, and other proprietary interests in the Software and any copies thereof, and Licensee does not acquire any rights, express or implied, in the Software, other than those specifically set forth in Section 2 of this Agreement.

- (b) Ownership of Product. Subject to the underlying copyright in the Software by Berkeley Lab and its licensors as stated above, Licensee, and its licensors (if any), retains all other title, copyright, and other proprietary interests in the Product, and any copies thereof, and Berkeley Lab does not acquire any rights, express or implied, in such Product.

2.3 No Maintenance or Support. Berkeley Lab is under no obligation whatsoever to: (i) provide maintenance or support for the Software, or (ii) to notify Licensee of bug fixes, patches, or upgrades to the Software (if any). If, in its sole discretion, Berkeley Lab makes a Software bug fix, patch, or upgrade available to you without separately entering into a written license agreement with you relating to such bug fix, patch or upgrade, then it shall be deemed incorporated into the Software and subject to this Agreement. Licensee shall use commercially reasonable efforts to notify and/or disseminate such Software bug fixes, patches, or upgrades to its end users.

2.4 Notice. The U.S. Government has been granted for itself and others acting on its behalf a paid-up, nonexclusive, irrevocable, worldwide license in the Software to reproduce, prepare derivative works, and perform publicly and display publicly.

Beginning five (5) years after the date permission to assert copyright is obtained from the U.S. Department of Energy, and subject to any subsequent five (5) year renewals, the U.S. Government is granted for itself and others acting on its behalf a paid-up, nonexclusive, irrevocable, worldwide license in the Software to reproduce, prepare derivative works, distribute copies to the public, perform publicly and display publicly, and to permit others to do so.

### 3. TERM AND TERMINATION

3.1 Term. Unless otherwise terminated pursuant to this Section 3, this Agreement shall remain in full force and effect in perpetuity.

3.2 Termination by Licensee. Licensee may terminate this Agreement at any time upon written notice to Berkeley Lab.

3.3 Termination by Berkeley Lab. Berkeley Lab may terminate this Agreement upon written notice to Licensee if Licensee breaches the terms and conditions of this Agreement and fails to correct such breach within thirty (30) calendar days of receipt of written notice specifying such breach.

3.4 Effects of Termination. Upon termination of this Agreement for any reason whatsoever, Licensee shall immediately cease using the Software and all of the rights granted to Licensee pursuant to this Agreement shall immediately cease. Licensee shall promptly, at Berkeley Lab's option, either return all copies of the Software to Berkeley Lab, or destroy or erase all copies of the Software and furnish Berkeley Lab with written notice, signed by an officer of Licensee, certifying that all copies of the Software have been destroyed or erased.

3.5 Preservation of Remedies. All remedies hereunder, including, without limitation, the termination of this agreement, injunctive relief, and all other remedies provided at law or in equity (and not specifically excluded pursuant to the terms of this Agreement) shall be deemed cumulative and not exclusive.

3.6 Survival. Notwithstanding any provision of this Section 3, Sections 3, 4, and 5 shall survive termination of this Agreement.

### 4. DISCLAIMERS, LIMITATIONS & INDEMNITY

4.1 Warranty Disclaimer. THE SOFTWARE IS SUPPLIED "AS IS" WITHOUT WARRANTY OF ANY KIND. BERKELEY LAB, ITS LICENSORS, THE UNITED STATES, THE UNITED STATES DEPARTMENT OF ENERGY, AND THEIR EMPLOYEES: (1) DISCLAIM ANY WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT, (2) DO NOT ASSUME ANY LEGAL LIABILITY OR RESPONSIBILITY FOR THE ACCURACY, COMPLETENESS, OR USEFULNESS OF THE SOFTWARE, OR ANY DEVELOPED WORKS THEREOF, (3) DO NOT REPRESENT THAT USE OF THE SOFTWARE WOULD NOT INFRINGE PRIVATELY OWNED RIGHTS, (4) DO NOT WARRANT THAT THE SOFTWARE WILL FUNCTION UNINTERRUPTED, THAT IT IS ERROR-FREE OR THAT ANY ERRORS WILL BE CORRECTED.

4.2 Limitation of Liability. IN NO EVENT WILL BERKELEY LAB OR ITS LICENSORS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES OF ANY KIND OR NATURE, INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS OR LOSS OF DATA, FOR ANY REASON WHATSOEVER, WHETHER SUCH

LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), OR OTHERWISE, EVEN IF BERKELEY LAB OR ITS LICENSORS HAS BEEN WARNED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES. IN NO EVENT SHALL BERKELEY LAB'S OR ITS LICENSORS' LIABILITY FOR DAMAGES ARISING FROM OR IN CONNECTION WITH THIS AGREEMENT EXCEED THE AMOUNT PAID BY LICENSEE FOR THE SOFTWARE.

4.3 Indemnity. Licensee shall indemnify, defend, and hold harmless Berkeley Lab, its Software licensors and sponsors, the U.S. Government, and their agents, officers, and employees, against any and all claims, suits, losses, damage, costs, fees, and expenses arising out of or in connection with this Agreement. Licensee shall pay all costs incurred by Berkeley Lab in enforcing this provision, including reasonable attorney fees.

### 5. MISCELLANEOUS

5.1 Use of EnergyPlus™ Name. If Licensee (i) distributes the Software in stand-alone form without changes from the version obtained under this Agreement, or (ii) Licensee makes a reference solely to the Software portion of its Product, Licensee must refer to the Software as "EnergyPlus version X" software, where "X" is the version number Licensee obtained under this Agreement and may not use a different name for the Software. Except as specifically required in this Section 5.1, Licensee shall not use in a company name, a product name, in advertising, publicity, or other promotional activities any name, trade name, trademark, logo, or other designation of "EnergyPlus", "E+", "e+" or confusingly similar designation, without Berkeley Lab's prior written consent.

5.2 Governing Law. This Agreement, and any disputes arising out of or in connection with this Agreement, shall be governed by and construed in accordance with the laws of the State of California, excluding its rules governing conflicts of laws.

5.3 Notices. Berkeley Lab's address for purposes of notice shall be:

Lawrence Berkeley National Laboratory  
Technology Transfer and Intellectual Property Management  
One Cyclotron Road, MS 56A-120  
Berkeley, CA 94720  
Attention: Licensing Manager  
Email: LicensingManager@lbl.gov  
Tel: 510/486-6467

5.4 Relationship of the Parties. The parties undertake their respective obligations under this Agreement as independent contractors. This Agreement will not create a(n) employee, agency, or partner relationship nor a partnership or joint venture between the parties for any purpose.

5.5 U.S. Export Controls. Licensee will observe all applicable United States and foreign laws and regulations (if any) with respect to the export, re-export, diversion or transfer of the Software, related technical data and direct products thereof, including, without limitation, the International Traffic in Arms Regulations (ITAR) and the Export Administration Regulations.

5.6 Approvals. Licensee will, at its own expense, make, obtain, and maintain in force at all times during the term of this Agreement, all filings, registrations, reports, licenses, permits and authorizations (collectively "Approvals") necessary or appropriate to perform its obligations under this Agreement. Should Licensee

fail to maintain any such Approvals during the term of this Agreement, Berkeley Lab shall have the right to terminate this Agreement upon written notice to Licensee.

5.7 No Endorsement. References in the Software or this Agreement to any specific commercial products, process, or service by trade name, trademark, manufacturer, or otherwise, does not constitute or imply its endorsement, recommendation, or favoring by the U.S. Government, the University of California, Berkeley Lab or its licensors. In accordance with California Education Code Section 92000, Developer shall not use in advertising, publicity or other promotional activities any name, trade name, trademark, or other designation of the University of California; nor shall Developer so use "Ernest Orlando Lawrence Berkeley National Laboratory" or "United States Department of Energy" (including any contraction, abbreviation, or simulation of any of the foregoing) without Berkeley Lab's prior written consent.

5.8 Waiver. The failure of either party to assert any of its rights under this Agreement shall not be deemed to constitute a waiver of that party's right thereafter to enforce each and every provision of this Agreement in accordance with its terms.

5.9 Headings. The headings and subheadings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

5.10 Severability. The invalidity or unenforceability of any provision of this Agreement shall in no way affect the validity or enforceability of any other provision of this Agreement.

5.11 Assignment. This Agreement is binding upon and shall inure to the benefit of Berkeley Lab, its successors and assigns. Upon written notice to Berkeley Lab, Licensee may assign this Agreement to its wholly owned subsidiary or to an entity that acquires substantially all of the assets of the business to which this Agreement pertains. Any other attempt by Licensee to assign or otherwise transfer this Agreement is void.

5.12 Entire Agreement. This Agreement, together with Exhibit A attached hereto, constitutes the full, complete, and entire agreement between the parties with respect to the subject matter hereof and supersedes all other prior agreements and understandings between the parties, whether written or oral, relating to the same subject matter. No modification or amendment of this Agreement shall be effective unless in writing and executed by a duly authorized representative of each party.

5.13 Counterparts. This Agreement may be executed in two counterparts, each of which will be deemed an original, but both of which together constitute one and the same instrument.

**BY DOWNLOADING, INSTALLING, OR USING THE SOFTWARE, AND/OR CLICKING THE "AGREE" BUTTON, YOU ARE INDICATING YOUR ACCEPTANCE OF THE TERMS AND CONDITIONS HEREIN.**

## **EXHIBIT A REQUIRED TERMS FOR END USER LICENSE AGREEMENT**

Capitalized terms shall have the meanings as in the main body of the Agreement.

### **1. LICENSE GRANT RESTRICTIONS.**

- (a) Licensee shall restrict its end users from modifying, altering, or creating derivative works of the Software in any manner; and
- (b) Insofar as Licensee permits its end users to copy the Software, Licensee shall require that: (i) end users must reproduce all copyright notices and other proprietary notices on any copies of the Software and must not remove or alter those notices; (ii) all copies of the Software shall be subject to Licensee's end user license agreement; and (iii) end users shall not use in a company name, a product name, in advertising, publicity, or other promotional activities any name, trade name, trademark, logo, or other designation of "EnergyPlus", "E+", "e+" or confusingly similar designation except specifically as follows: if end user distributes the Software in stand-alone form without changes from the version Licensee obtained from Berkeley Lab, the end user may refer to it as "EnergyPlus version X" software, where "X" is the version number Licensee obtained under the Agreement

### **2. MANDATORY PROVISIONS.** The following provisions must be included in any end user license agreement:

**U.S. GOVERNMENT RIGHTS NOTICE.** This software contains EnergyPlus™ (developed under funding from the U.S. Department of Energy) or a derivative work thereof. Consequently, the U.S. Government retains certain rights as follows: the U.S. Government is granted for itself and others acting on its behalf a paid-up, nonexclusive, irrevocable, worldwide license in the EnergyPlus™ software and related documentation to reproduce, prepare derivative works, and perform publicly and display publicly. Beginning five (5) years after the date permission to assert copyright is obtained from the U.S. Department of Energy, and subject to any subsequent five (5) year renewals, the U.S. Government is granted for itself and others acting on its behalf a paid-up, nonexclusive, irrevocable, worldwide license in such portions of the EnergyPlus™ software and related documentation to reproduce, prepare derivative works, distribute copies to the public, perform publicly and display publicly, and to permit others to do so.

**WARRANTY DISCLAIMER.** WITH REGARD TO THE ENERGYPLUS™ SOFTWARE, THE REGENTS OF THE UNIVERSITY OF CALIFORNIA (THROUGH LAWRENCE BERKELEY NATIONAL LABORATORY), ITS LICENSORS, THE UNITED STATES, THE UNITED STATES DEPARTMENT OF ENERGY, AND THEIR EMPLOYEES: (1) DISCLAIM ANY WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT, (2) DO NOT ASSUME ANY LEGAL LIABILITY OR RESPONSIBILITY FOR THE ACCURACY, COMPLETENESS, OR USEFULNESS OF THE ENERGYPLUS™ SOFTWARE, OR ANY

DERIVATIVE WORKS THEREOF, (3) DO NOT REPRESENT THAT USE OF THE ENERGYPLUS™ SOFTWARE WOULD NOT INFRINGE PRIVATELY OWNED RIGHTS, (4) DO NOT WARRANT THAT THE ENERGYPLUS™ SOFTWARE WILL FUNCTION UNINTERRUPTED, THAT IT IS ERROR-FREE OR THAT ANY ERRORS WILL BE CORRECTED.

**LIMITATION OF LIABILITY.** WITH REGARD TO THE ENERGYPLUS™ SOFTWARE, IN NO EVENT WILL THE REGENTS OF THE UNIVERSITY OF CALIFORNIA (THROUGH LAWRENCE BERKELEY NATIONAL LABORATORY), OR ITS LICENSORS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES OF ANY KIND OR NATURE, INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS OR LOSS OF DATA, FOR ANY REASON WHATSOEVER, WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), OR OTHERWISE, EVEN IF THE REGENTS OF THE UNIVERSITY OF CALIFORNIA (THROUGH LAWRENCE BERKELEY NATIONAL LABORATORY), OR ITS LICENSORS HAS BEEN WARNED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES.

## EnergyPlus™ Executable Distribution License Agreement

### Registration Information for the EnergyPlus V7.x Executable Distribution License Agreement.

You need to abide by the agreement in the preceding pages.

In order to give you access to the EnergyPlus information about executable distribution information, you need to fill out the following information, at minimum, the starred (\*\*) items and use the email button to send the information to the support site. Instructions about downloading or other information will be emailed to your email address.

Company/Institution ("Licensee"): \_\_\_\_\_

\*\*Name of responsible Licensee / employee: \_\_\_\_\_

Title or position: \_\_\_\_\_

Department (if applicable): \_\_\_\_\_

Address: \_\_\_\_\_

City / State / Postal Code / Country: \_\_\_\_\_

\*\*E-Mail: \_\_\_\_\_ Tel: \_\_\_\_\_

Fax: \_\_\_\_\_

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

Please indicate "Yes" in the area below that you will abide by the terms of the license.

(Select Yes or No) We agree to follow/abide by the terms of the license agreement.

Comments:

The following is an email button to send the preceding information to the support site for access to the executable distribution information. (Note if you do not say "yes" to the agreement, you will not get appropriate access. If, for some reason, you cannot figure this out or have questions you can contact:

[info@fortlawrie.com](mailto:info@fortlawrie.com)

***This form seems to work with Adobe Acrobat Reader on multiple platforms. If you can't seem to print or email, you might try the actual Reader app. See following note as well.***

The following is a print button that should allow you to print both this information page as well as the rest of the agreement document, for your records.

***The print button to the left can be used if you are in the Acrobat Reader apps. If you are using a browser plug-in, use its print button to print the agreement (for your records or whatever)***