

DATA USE AGREEMENT

This Data Use Agreement (the "Agreement") is effective on the date of the authorized signature below (the "Effective Date") by the party named below ("Company"), and ratified by the Arizona Board of Regents, University of Arizona ("University") upon granting access to the Data Platform (defined below) to Company. Company and University (each a "Party," and jointly, the "Parties") hereby agree as follows:

1. Data Platform

1.1. Background. University has—pursuant to a grant for "Open Source Evaluation Framework for Solar Forecasting (Solar Forecast Arbiter)" (the "Research Project") under DOE Award Number DE-EE0008214—developed a Data Platform. The "Data Platform" means a cloud software platform developed by the University for solar forecast evaluations, in connection with the Research Project.

1.2. Permitted Use. Upon being granted access to the Data Platform, Company may—through its employees, leased workers, and authorized agents (each an "Authorized Agent")—access and use the Data Platform to:

- Enter its own, and/or information authorized by its affiliates, information or data ("**Company Project Data**") into the Data Platform, and allow either unrestricted access by other users of the Data Platform ("**Open Project Data**") or restricted access to specific, Company-specified users or groups of users ("**Limited Project Data**"), using the features of the Data Platform. Company will have the option to grant specific users or groups of users access to its "Limited Project Data" within the Data Platform.
- Access data that is available in the Data Platform, including Open Project Data and certain Limited Project Data of other users, and download such data only for its internal business purposes. Company will not share any data it receives from the Data Platform outside Company (including Company's authorized affiliates) and will keep it confidential in accordance with its customary business practices.

Company agrees to use Data Platform in accordance with information security best practices and in compliance with all applicable federal and state laws, regulations and policies. Company is not obligated by this Agreement to either upload any specific data to the Data Platform or grant access of Limited Project Data to other users of the Data Platform.

1.3. Ownership of Data Platform. University retains all right, title, and interest in and to the Data Platform. No rights in the Data Platform are conveyed to Company other than the limited use rights set forth above. Company will use the Data Platform only as contemplated by its design and features, and as agreed in this Agreement.

1.4. Ownership of Data. Company retains ownership of all Company Project Data. Company permits the University and other users to use Company Project Data as contemplated by the Data Platform. University agrees not to data mine or otherwise examine Limited Project Data except when required for service issues, technical issues, quality assurance, and quality control.

1.5. Publication. Company acknowledges that University may present or otherwise publish Company Project Data submitted by Company through the Data Platform as follows:

- **For Open Project Data:** University has an unrestricted right to publish, and University will provide attribution and notification to Company of any such publication.
- **For Limited Project Data:** University will only publish anonymous platform summary statistics (e.g., platform usage, volume of data transferred, and other similar information) generated from such data. In addition, University may include documents, charts, graphs, and tables, etc. of anonymous platform summary statistics—**which have been generated by University** from Limited Project Data—in its presentations or publications. University owns copyright for such presentations or publications, provided that Company retains a license for internal research purposes of such presentations or publications which have been generated using their Limited Project Data.
 - University may only publish Limited Project Data when shared by Company with University researchers (using the data sharing features of the Data Platform) and upon written approval of Company. University will not otherwise publish Limited Project Data.

- 1.1. Company Obligations. Company represents that it has all necessary rights to upload the Company Project Data into the Data Platform, and to grant the rights set out in this Agreement. Company agrees to notify University of any use or disclosure of Project Data not authorized by or contrary to this Agreement of which it becomes aware, including without limitation, any disclosure to an unauthorized agent, within five (5) business days of its discovery.

Company agrees not to: (a) allow access to the Data Platform by anyone other than its Authorized Agents; (b) use the Data Platform to provide processing services to third parties, or otherwise use the Data Platform on a 'service bureau' basis.

2. Term and Termination

- 2.1. Term. This Agreement will take effect on the Effective Date and will remain in force until the earlier of (a) the University is no longer hosting or maintaining the Data Platform, either because the Research Project terminated or for some other reason; or (b) the Agreement is terminated as permitted below.
- 2.2. Termination. This Agreement may be terminated by either Party upon thirty (30) days' prior written notice to the other Party, with or without cause. It is up to Company to extract any Company Project Data it desires from the Data Platform prior to Company's termination, and University will have no liability or responsibility with respect to any Company Project Data incorporated into the Data Platform. After thirty (30) days, all data will be securely deleted by University in accordance with standard industry practices and cannot be retrieved.

3. Disclaimer

THE DATA PLATFORM IS PROVIDED "AS IS," WITHOUT WARRANTY OR SUPPORT OF ANY KIND. UNIVERSITY SPECIFICALLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, REGARDING OR RELATING TO DATA PLATFORM, OR ANY MATERIALS OR SERVICES FURNISHED OR PROVIDED TO COMPANY. UNIVERSITY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE DATA PLATFORM AND COMPANY'S USE THEREOF. UNIVERSITY DOES NOT WARRANT THAT THE DATA PLATFORM WILL (I) ACHIEVE ANY SPECIFIC RESULTS, (II) OPERATE WITHOUT INTERRUPTION, OR (III) BE ERROR FREE. NO

EMPLOYEE, AGENT, REPRESENTATIVE OR AFFILIATE OF UNIVERSITY HAS AUTHORITY TO BIND UNIVERSITY TO ANY ORAL REPRESENTATIONS OR WARRANTY CONCERNING THE DATA PLATFORM. ANY WRITTEN REPRESENTATION OR WARRANTY NOT EXPRESSLY CONTAINED IN THIS AGREEMENT WILL NOT BE ENFORCEABLE.

COMPANY PROVIDES COMPANY PROJECT DATA "AS IS" WITHOUT WARRANTY OF ANY KIND. COMPANY MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO THE ACCURACY OR COMPLETENESS OF ANY COMPANY PROJECT DATA OR THAT THE COMPANY PROJECT DATA PROVIDED IS SUITABLE FOR ANY INTENDED PURPOSE OR RESULT.

COMPANY AGREES THAT IN NO EVENT WILL UNIVERSITY BE LIABLE FOR ANY LOSS OF PROFITS, LOSS OF USE, BUSINESS INTERRUPTION, LOSS OF DATA, COST OF COVER OR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND IN CONNECTION WITH OR ARISING OUT OF THE FURNISHING, PERFORMANCE OR USE OF THE DATA PLATFORM, WHETHER ALLEGED AS A BREACH OF CONTRACT OR TORTIOUS CONDUCT, INCLUDING NEGLIGENCE, EVEN IF UNIVERSITY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ADDITION, UNIVERSITY WILL NOT BE LIABLE FOR ANY DAMAGES CAUSED BY DELAY IN DELIVERY OF THE DATA PLATFORM. UNIVERSITY'S LIABILITY UNDER THIS AGREEMENT FOR DAMAGES WILL NOT, IN ANY EVENT, EXCEED ONE THOUSAND DOLLARS (\$1,000).

4. Public Statements; Use of Names and Logos

Press Releases. The Parties agree that each Party may use factual information regarding the existence and purpose of the relationship that is the subject of this Agreement to satisfy any reporting and funding obligations, or as required by applicable law or regulation without written permission from the other Party so long as any such use is a statement of fact and does not infer an endorsement of a Party for any particular purpose. In any such statement, the relationship of the Parties shall be accurately and appropriately described.

5. General Provisions

- 5.1. Applicable Law and Venue. This Agreement will be governed by and construed in accordance with the laws of the state of Arizona. The Parties agree that all actions and proceedings arising from or related to this Agreement will be litigated in local, state or federal courts located in Pima County, Arizona. The Parties hereby acknowledge that this Agreement may be subject to arbitration in accordance with applicable law and court rules. The State of Arizona may cancel this Agreement for conflicts of interest on the part of individuals negotiating contracts on behalf of the state of Arizona, in accordance with Arizona Revised Statutes Section 38-511.
- 5.2. Non-Discrimination. The parties agree to be bound by state and federal laws and regulations governing equal opportunity and non-discrimination and immigration.
- 5.3. Assignment. This Agreement may not be assigned or transferred (either directly or indirectly, by operation of law or otherwise, including by way of a merger, acquisition or other sale event) without the prior written consent of the other Party, which consent will not be unreasonably withheld. This Agreement is binding upon and will inure to each Party's respective permitted successors in interest.
- 5.4. Severability; Headings. If any portion of this Agreement is judged to be illegal, invalid, or

unenforceable, such portion will be given effect to the maximum extent possible by narrowing, or enforcing in part, such portion to the extent necessary to make it enforceable. Any such invalidity or unenforceability will not affect the remainder of the Agreement, which will continue in full force and effect. The section headings in this Agreement are inserted for convenience only, are not substantive, and shall not be interpreted to define, describe, modify or otherwise limit the interpretation or scope of the provision under the section heading or of the Agreement as a whole.

- 5.5. Independent Contractors. Nothing contained in this Agreement shall be construed to make either University or Company partners, joint-venturers, principals, agents or employees of the other. Neither Party shall have any right, power or authority, express or implied, to bind the other.
- 5.6. Notices. Any notices required or permitted to be given under this Agreement shall be in writing and either delivered personally or sent by courier or e-mail to a designated representative of the other Party and shall be effective on the day of receipt of the notice if received during normal business hours of the addressee, and if not received during such normal business hours, then on the first business day of the addressee after receipt. Until notified otherwise in writing, the representatives are designated as follows:

If to University:

Sponsored Projects & Contracting Services

The University of Arizona

888 N. Euclid Ave. Rm. 515

Tucson, AZ 85719

Phone: (520) 626-6000

E-mail: sponsor@email.arizona.edu

If to Company:

Phone: _____

E-mail: _____

With Copy to (if any):

Phone: _____

E-mail: _____

- 5.7. Entire Agreement; Modifications. This Agreement contains the entire understanding of the Parties with respect to its subject matter and supersedes all prior and contemporaneous negotiations, discussions, understandings, inducements, conditions, and agreements, whether written, oral, express, or implied, related to such subject matter. There are no additional or supplemental agreements related to the subject matter hereof. No modification, amendment, or waiver of any provision of this Agreement will be binding or valid unless agreed to in writing by both Parties. Failure to enforce any provision of this Agreement will not be construed as a waiver thereof, or prevent either Party from thereafter enforcing the same, or any other, provision of this Agreement.
- 5.8. Force Majeure. Neither Party shall be liable to the other for failure or delay of performance hereunder due to causes beyond its reasonable control. Such delays include, but are not limited to, earthquake, flood, storm, fire, epidemics, acts of government, governmental agencies or officers, war, riots, or civil disturbances.
- 5.9. Liability. Each Party shall be responsible for its own acts or omissions in the performance of its duties hereunder, and shall be financially and legally responsible for all liabilities, costs, damages, expenses and attorneys' fees resulting from, or attributable to its acts or omissions. Provided, however, that neither Party shall be responsible to the extent of the other Party's negligence or willful misconduct. Neither Party shall have any obligation to indemnify the other Party or its agents, employees or representatives.
- 5.10. Electronic Signatures. The Parties agree that any xerographically or electronically reproduced copy of this fully executed agreement will have the same legal force and effect as any copy bearing original signatures of the Parties.

IN WITNESS THEREOF, Company executes this Agreement as of the day and year written below by its duly authorized signatory.

Company: _____

Address: _____

Signature: _____

Name: _____

Title: _____

Date: _____