



**MUTUAL
MULTI-PARTY NON-DISCLOSURE AGREEMENT**

This Agreement is made and entered into as of this _____ day of _____, ____ (“Effective Date”) by and between the parties, each individually a “party” and collectively the “parties”:

SOUTH DAKOTA SCHOOL OF MINES AND TECHNOLOGY, an institution of higher education, duly formed under the laws of the South Dakota having a principal place of business at 501 E. St. Joseph Street, Rapid City, SD 57701 (“South Dakota”),

SYRACUSE UNIVERSITY, an institution of higher education, duly formed under the laws of New York having a principal place of business at 211 Lyman Hall, Syracuse, NY 13244 (“Syracuse”).

NORTHEASTERN UNIVERSITY, an institution of higher education, duly formed under the laws of Massachusetts having a principal place of business at 360 Huntington Avenue, Boston, MA 02115 (“Northeastern”).

COMPANY NAME & ADDRESS:

Whereas, South Dakota Mines is the lead institution, Syracuse and Northeastern are partner institutions, and _____ is an advisor for the NSF IUCRC Center for Solid-State Energy Storage (“NSF CEPS”),

Whereas, the parties wish for their mutual benefit, to disclose to each other Confidential Information as defined below; and

Whereas, the parties wish to set forth the conditions and obligations which will govern the use, duplication, and disclosure of any Confidential Information that one party may disclose to the other party.

Now, therefore, the parties agree as follows:

1. It is anticipated that the parties, each a “disclosing party” and a “receiving party,” will disclose to each other certain information, which each deems confidential and/or proprietary relating to the new generation solid-state battery technology as discussed at the CEPS Industry Advisory Board meeting. All such information of a disclosing party is hereinafter referred to as "Confidential Information".

2. The receiving party shall use the Confidential Information provided by the disclosing party solely for the purpose of discussing CEPS membership agreement for the purpose of joining CEPS (the "Purpose"). All parties to this agreement as used herein, shall include, individually and collectively, their officers, directors, consultants, employees and associated researchers. The parties shall not include its undergraduate students.

3. Unless otherwise agreed in writing by the parties, neither party shall disclose the other party's Confidential Information to any third party other than members of the NSF CEPS, specifically SD Mines, Syracuse, and Northeastern Universities who have also signed this agreement nor use the other party's Confidential Information other than for the Purpose. Each party agrees to take reasonable and appropriate measures to keep confidential, to safeguard from theft, or loss, and to limit access to Confidential Information to those officers, directors, employees, and associated researchers within the receiving party's organization who reasonably require access to the Confidential Information for carrying out the Purpose and are bound by confidentiality obligations no less stringent than Recipient's obligations under this Agreement.

4. Confidential Information disclosed hereunder shall be disclosed in written, electronic, or other permanent form and shall be clearly marked as confidential at the time of disclosure. If Confidential Information is disclosed in other than written or other permanent form, it shall be considered Confidential Information as of the time of original disclosure if: a) the disclosing party identifies it as Confidential Information at the time of the original disclosure and b) within thirty (30) days of the non-written disclosure, the disclosing party reduces the information to written or other permanent form, clearly marking the information confidential as indicated above, and transmits it to the receiving party, referencing the place and date of such oral disclosure and identifying the name(s) of the employees or officers of the receiving party to whom it was made.

5. Confidential Information shall not be considered confidential or subject to this Agreement, if the receiving party can establish that the information:

- a. is or becomes a part of the public knowledge or literature without breach of this Agreement by the receiving party; or
- b. was known to be rightfully in the possession of the receiving party prior to the date of disclosure of such Confidential Information as evidenced by competent proof; or
- c. is developed by the receiving party independent of the disclosure made under this Agreement as demonstrated by competent proof; or
- d. is supplied to the receiving party, without restriction on disclosure, by a third party who had a lawful right to disclose it and is under no obligation to either party or to a third party to maintain such Confidential Information in confidence.
- e. is required to be disclosed pursuant to a valid subpoena, court order or other requirement(s) of applicable law.

Confidential Information shall not be deemed to be available to the public or in the possession of the receiving party merely because it is embraced by more general information so available or in the receiving party's possession.

6. Should the receiving party be faced with judicial or United States governmental action to disclose Confidential Information received hereunder, said party shall make reasonable efforts to notify the disclosing party prior to complying with such action.

7. Any reproduction by either party of the other party's Confidential Information shall contain any and all confidential notices or legends which appear on the original, unless otherwise authorized in writing by the disclosing party.

8. The parties shall not provide any export controlled information/materials/technology to another party, in any form, without prior written notice to the receiving party expressing their desire to share export controlled information, and written consent from the receiving party to accept such information. The disclosing party shall indemnify and hold harmless the receiving party against any claims, damages, losses, or costs arising out of disclosing party's breach of this Section 8. Any notice required by this Section shall include pertinent classification and reference to applicable law and/or regulations and said notice and any export-controlled information/materials/technology that receiving party agrees to accept after receiving the required notice, shall be sent to:

South Dakota School of Mines and Technology, 501 East St. Joseph Street, Rapid City, SD 57701

Northeastern University, Research Enterprise Services, 360 Huntington Ave., 540-177, Boston, MA 02115

Syracuse University, Office of Sponsored Programs, 211 Lyman Hall Syracuse, NY 13244

9. The exclusive point of contact with respect to the transmission and control of Confidential Information disclosed hereunder is designated by the respective parties as follows:

South Dakota School of Mines and Technology: PI Dr. Alevtina White Smirnova

Syracuse University : Site PI Dr. Quinn Qiao

Northeastern University: Site PI Dr. Sanjeev Mukerjee

10. Should the receiving party become aware of any breach or threatened breach of this Agreement, the receiving party agrees to promptly notify the disclosing party in writing and the disclosing party shall have the right to immediately terminate this Agreement.

11. Confidential Information, including all tangible media in which Confidential Information is fixed, and copies thereof, shall remain the property of the disclosing party. Neither this Agreement nor the disclosure of Confidential Information hereunder shall be construed as granting any right or license to any invention, patent, or other property now or hereafter owned or controlled by either party, nor shall any such disclosure constitute any representation, warranty, assurance, or guarantee, with respect to non-infringement of any patent or other proprietary rights of others. **WITHOUT RESTRICTING THE GENERALITY OF THE FOREGOING, NEITHER PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES AS TO MERCHANTABILITY OR**

FITNESS FOR USE FOR ANY PURPOSE OF THE INFORMATION DISCLOSED UNDER THIS AGREEMENT, WHICH IS DELIVERED “AS IS”. THE DISCLOSING PARTY SHALL HAVE NO LIABILITY FOR ANY DIRECT OR INDIRECT DAMAGES WHICH MAY ARISE FROM THE RECEIVING PARTY’S USE OF SUCH INFORMATION.

12. Each party shall bear its own costs incurred under or in connection with this Agreement. Nothing in this Agreement shall be construed as an obligation by either party to enter into a contract, subcontract, or other business relationship with the other party.

13. The rights and obligations provided by this Agreement shall take precedence over specific legends or statements associated with Confidential Information when received.

14. The term of this Agreement shall be for one (1) year from the Effective Date. This Agreement may be terminated by either party upon thirty (30) days prior written notice to the other party. Termination or expiration of this Agreement shall not relieve either party of its obligations hereunder to maintain in confidence and not to use Confidential Information received hereunder for a period of three (3) years from the Effective Date.

15. Upon expiration or termination of this Agreement, the receiving party shall cease use of all Confidential Information furnished hereunder and shall, upon written direction of the disclosing party, return to the disclosing party, or destroy, all such Confidential Information, together with all copies made thereof by the receiving party. Upon request, the receiving party shall send the disclosing party a certificate confirming the destruction or return of all Confidential Information delivered hereunder. Notwithstanding the foregoing, Confidential Information in the form of (i) information stored on back-up media for purposes of disaster recovery in the ordinary course of business that is subject to destruction in due course, and (ii) residual or latent data such as resulting from deleted files, automatically created temporary files, printer spool files, and metadata that is generally considered inaccessible without the use of specialized tools or techniques, may be maintained in accordance with the receiving party’s general data back-up and archiving policy; provided, however, that such information and data shall not otherwise be used or copied by the receiving party. Counsel for the receiving party may retain one copy of such Confidential Information for archival purposes only, provided the receiving party notifies the disclosing party in writing and provides the name, firm name and address of such counsel.

16. This Agreement, and the rights and obligations hereunder, may not be transferred or assigned by either party without the prior written consent of the other party.

17. The validity, interpretation, and effect of this Agreement shall be governed by and construed in accordance with the laws of the United States of America. The parties hereby expressly consent to the exclusive personal jurisdiction of the state and federal courts located in the United States of America for any dispute arising from or relating to this Agreement.

18. This Agreement constitutes the entire understanding of the parties with respect to the matters referred to herein and supersedes all prior negotiations, commitments and understandings with respect thereto. No variation or modification of this Agreement or waiver of any terms or provisions hereof shall be deemed valid unless in writing and signed by authorized representatives of both parties.

In Witness Whereof, the parties have caused this Agreement to be executed in duplicate originals by their authorized representatives.

COMPANY NAME:

By: _____
Name: _____
Title: _____
Date: _____

South Dakota School of Mines and Technology

By: _____
Name: _____
Title: _____
Date: _____

Syracuse University

By: _____
Name: _____
Title: _____
Date: _____

Northeastern University

By: _____
Name: _____
Title: _____
Date: _____

Read and understood by: (Names from Section 9)

South Dakota School of Mines and Technology:

Name: Dr. Alevtina White Smirnova
Title: _____
Date: _____

Syracuse University:

Name: Dr. Quinn Qiao
Title: _____
Date: _____

Northeastern University:

Name: Dr. Sanjeev Mukerjee
Title: _____
Date: _____