

LICENSE AGREEMENT
For
Use of Space in the Syracuse CoE
Headquarters Building

This sets forth the License Agreement, made as of the _____ day of _____, 200_, (the “Agreement”) between _____ a _____, having an office and place of business at _____ (“Licensee”) and SYRACUSE UNIVERSITY, a New York not-for-profit educational corporation, whose address is the Office of the Vice President for Research, 207 Bowne Hall, Syracuse University, Syracuse, New York 13244 (“Licensor”).

RECITALS

A. Licensor leads the Syracuse Center of Excellence in Environmental and Energy Systems (“SyracuseCoE”), an industry-university collaborative organization that creates innovations in clean and renewable energy, indoor environmental quality, and water resources.

B. Licensor wishes to use its building located at 727 East Washington Street in the City of Syracuse (“SyracuseCoE Headquarters”) to promote and foster industry-university collaborations and make available to its faculty and students additional educational and research opportunities through interaction with other organizations and companies.

C. At the SyracuseCoE Headquarters, Licensor has available certain research facilities and equipment, offices and public spaces that could enhance the ability of other organizations and companies to conduct research and innovate products and services in pursuit of objectives that align with the mission of the SyracuseCoE.

D. Licensee and Licensor have, or contemporaneously with the execution of this License Agreement will, enter into a separate Collaboration Agreement, pursuant to which Licensor and Licensee will collaborate on educational and research projects of the nature described in Sections A, B and C of this Background.

E. In connection with the Collaboration Agreement, Licensee desires to license space at the Syracuse CoE Headquarters and Licensor is willing to grant a license, subject to the terms and conditions of this Agreement.

In consideration of good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. License. Licensor grants to Licensee a non-transferable, non-sublicensable license (the “License”) to use the premises shown on the floor plan annexed to this Agreement as Exhibit A (the “Premises”) solely to: (i) conduct the business of Licensee; (ii) collaborate with Licensor’s faculty and students pursuant to this Agreement; and (iii) collaborate with representatives of other organizations and companies that have agreements with Licensor. Licensee acknowledges that this License does not create a lease or any other property right for the Licensee. Licensor retains all of

the rights and privileges as the property owner that are not inconsistent with the provisions of this Agreement.

2. Common Areas. During the term of the License, Licensee and its employees and invitees are, except as otherwise specifically provided in this Agreement, authorized and privileged to use the common areas in the SyracuseCoE Headquarters for their respective intended purposes in common with other persons, including the loading dock, vending machine/break area and conference rooms as designated by Licensor.

3. Term.

a. Unless terminated earlier in accordance with this Section 3, the term of this Agreement shall commence on _____, 200_ and expire on _____, 20__.

b. This Agreement may be terminated, at the option of either party, with or without cause, upon 30 days prior written notice to the other party. Licensor also may terminate this Agreement immediately for cause by giving written notice to Licensee specifying the cause. Cause shall include, but is not limited to, breach of the SyracuseCoE Mission Statement (a copy of which is attached as Exhibit B) or breach of any provision of this Agreement.

c. Upon any termination of this Agreement, the License shall expire and Licensor shall be entitled to the remedies set forth in Article 7 of the New York Real Property Actions and Proceedings Law.

4. License Fee. Licensee shall pay to Licensor the fees described on Exhibit C annexed to this Agreement. The fees specified in Exhibit C do not include any New York State tax or local property tax. The amount of the License Fee shall be adjusted retroactive to the commencement of the term of this Agreement to the extent of any tax owed should the collaboration activity supported by this Agreement be deemed non-exempt by the applicable taxing authority.

5. Licensee's Obligations. Licensee shall:

- Pay the license fee at the times and in the manner set forth on Exhibit C;
- Comply with the terms of this Agreement;
- Acquire from Licensor Syracuse University key cards for access to the CoE Headquarters for use by Licensee. Acquisition, custody and control of these key cards shall be in accordance with the policies set forth by Syracuse University;

- Acquire, at Licensee's expense, Syracuse University parking passes for staff and/or company vehicles that will be parked in the SyracuseCoE Headquarters parking lot;
- Use the Premises and conduct its business to comply with the SyracuseCoE Mission Statement, all city ordinances, and all county, state and federal law during the term of the Agreement;
- Refrain from making any alterations, changes or improvements to the Premises without prior written consent of Licensor; any signage to be used by Licensee with respect to the Premises must be approved by Licensor, which approval may be withheld or conditioned at Licensor's sole discretion;
- Abide by any Rules and Regulations of the Licensor for the SyracuseCoE Headquarters, which may be amended from time to time at the discretion of the Licensor;
- Take proper care of the common areas made available for use and preserve the Premises in a good, clean, and safe condition; and
- Surrender possession of the Premises upon termination of the Agreement in the same condition as received, normal wear and tear excepted.

6. Licensor's Obligations. Licensor shall:

- Make a reasonable number of parking spaces in the Syracuse CoE Headquarters parking lot available for Licensee;
- Provide secure access to the Syracuse CoE Headquarters;
- Provide building security for the Syracuse CoE Headquarters;
- Supply cooling, heat and other utilities to the Premises at no additional charge to Licensee; and
- Provide general cleaning services for the Premises.

7. LAN Service and Internet Access. Licensor will endeavor to make available to Licensee LAN service and access to the internet. Licensor does not guarantee or warrant the availability of this service. Licensor disclaims all responsibility or obligation for disruption to LAN service and internet access provided under this paragraph and any damage caused to Licensee's computers, equipment, machines, data, business operation, or the like, as a result of any disruption and Licensee waives and releases any and all claims associated with any such disruption. Licensee

agrees and understands that Licensee is responsible to provide for the general security of its internet access, whether through a firewall or other techniques to protect the integrity of Licensor's and Licensee's computer systems. Licensee's security techniques must be discussed with and approved by Licensor prior to being implemented, which approval may be withheld or conditioned in the Licensor's sole discretion.

8. Right of Entry. Licensor, its agents, representatives and employees, at all times shall have access to the Premises without notice in the performance of their responsibilities in overseeing and maintaining the Syracuse CoE Headquarters. Access must also be granted to any authorized governmental regulatory authorities with jurisdiction over operations at the Premises or the Syracuse CoE Headquarters.

9. Licensee Modifications to Premises. Licensee shall not make any modification to the Premises without Licensor's prior written approval, which approval may be withheld or conditioned in the Licensor's sole discretion. Licensee shall bear the cost of any approved modifications to the Premises.

10. Environmental Matters. For purposes of this License Agreement, the term "Hazardous Materials" shall include, but not be limited to, oil, petroleum, grease, biodiesel fuel, crude oil (any fraction thereof), natural gas, natural gas liquids, asbestos, polychlorinated biphenyls, any biohazardous substance or biological material, any flammable, explosive or radioactive material (excluding radon), and those substances defined as "hazardous substances," "hazardous materials," "hazardous wastes," "medical wastes," "hazardous chemicals," "pesticides," "toxic chemicals" or other similar designations in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C.A. § 9601 et seq., the Resource Conservation and Recovery Act, 42 U.S.C.A. § 6901 et seq., the Federal Water Pollution Control Act, 33 U.S.C.A. § 1251 et seq., the Hazardous Materials Transportation Act, 49 U.S.C.A. § 1801 et seq., the Emergency Planning and Community Right-to-Know Act of 1986, as amended, 42 U.S.C.A. § 11001 et seq., the Toxic Substances Control Act, 15 U.S.C.A. § 2601 et seq., the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C.A. § 136 et seq., the New York State Environmental Conservation Law, the New York Navigation Law, the Occupational Safety and Health Act, 29 U.S.C.A. § 651 et seq. and the regulations adopted pursuant thereto, including any existing or future similar law or regulation, any local law, code, ordinance, rule or regulation or order of any regulatory or administrative authority with respect thereof, or the common law (referred to herein collectively as "Environmental Laws"). Licensee shall abide by the terms and conditions governing the management of Hazardous Materials at the Premises and the Syracuse CoE Headquarters and other miscellaneous environmental matters that are set forth in Exhibit D to this Agreement.

11. Independent Contractors. The relationship of the parties is that of independent contractors. Nothing in this Agreement shall be deemed to create any joint venture or principal-agent relationship or partnership between the parties, and neither party is authorized to, and neither party shall act toward third parties or the public in any manner which would indicate any such

relationship; and neither party shall in any way be responsible for the liabilities or obligations of the other party.

12. Business Advice. From time to time, Licensor may provide general advice on business matters. Any such advice is gratuitous and Licensor disclaims responsibility or liability for such advice. Further, Licensee holds Licensor harmless for the results of the use or non-use of the advice.

13. Risk of Loss; Insurance.

a. Licensor is not an insurer of the Licensee's property and it shall provide only that security that is provided for the Syracuse CoE Headquarters generally. Licensee may, at its option, purchase insurance to cover its personal property and equipment. In no event shall Licensor be liable for any damage to or loss of personal property or equipment sustained by Licensee, whether or not it is insured, even if such loss is caused by the negligence of Licensor, its employees, officers, directors, or agents. Any property of any kind brought upon the Premises or the Syracuse CoE Headquarters by Licensee shall be at the sole risk of Licensee and shall be promptly removed at the expiration of the License. Licensor shall have the right to remove from the Premises and the Syracuse CoE Headquarters and premises all property remaining after the expiration of the License term and be reimbursed by Licensee upon demand for all costs that it incurs to remove the Licensee's property.

b. Licensee, at its sole cost and expense, shall procure and maintain during the term of this Agreement, the following policies of insurance:

- New York State statutory Worker's Compensation and Employers Liability as required by law;
- New York State statutory Disability Benefits as required by law;
- On a per designated location basis, Commercial General Liability (2004 ISO Form) written on an occurrence basis with limits of \$1,000,000 per occurrence and a \$2,000,000 aggregate including, but not limited to, coverage for bodily injury, personal injury, property damage, property damage for premises rented to you, ongoing and completed operations, and contractual liability referring to this Agreement;
- Automobile Liability - \$1,000,000 combined single limit for bodily injury or property damage covering vehicles owned, non-owned, hired or otherwise used or furnished for the use of the Licensee, its employees, representatives, contractors or agents; and
- On a designated location basis, environmental liability insurance, including coverage for sudden and accidental release, in the amount of at least \$1,000,000

providing coverage against all claims arising out of the use, creation, generation, storage, release or disposal and dispose of any Hazardous Materials by Licensee or any person claiming under Licensee or any other claim arising out of the Licensee's failure to abide by the terms and conditions of Exhibit D to this Agreement.

- Licensors may require Licensee to secure and maintain additional insurance coverage depending on the nature of Licensee's specified use.

c. Coverages for Commercial General Liability and Automobile Liability (and any excess or umbrella policy) shall include the Licensors (including its trustees, officers, employees and agents) as an additional insured on all liability policies with the insurer's written consent that the Licensee's insurance is primary and non-contributory insurance as to any other valid and collectible insurance in force and carried by the Licensors. On or before the commencement of the term of this Agreement, the Licensee shall provide the Licensors with certificates of insurance evidencing that the Licensee has the insurance coverage required by this Agreement and that the Licensors are additional insureds as required.

d. Licensee's insurance carrier(s) shall have a Best's Insurance Rating of at least A- (Excellent) and a financial size of VIII or higher and be licensed to conduct business in the State of New York.

e. (i) Licensors at its initial cost and expense, during the Term, shall keep the Syracuse CoE Headquarters insured against loss or damage by fire or other perils including, but not limited to, certified and non-certified acts of terrorism under the Terrorism Risk Insurance Act (TRIA) or its amendments, with an All-Risk property insurance policy, including, but not limited to, business interruption for continuing expenses including the Licensee Fee described under Article 4, extra expense, earth movement, building ordinance and increased cost of construction and boiler and machinery coverage, including pressure pipes, steam boiler and other pressure vessels and pipes in the SyracuseCoE Headquarters, with a 100% full replacement cost endorsement.

(ii) Licensee hereby waives any right of recovery from Licensors, its officers, employees and agents and releases and discharges Licensors, its officers, employees and agents from all claims, damages, losses or demands whatsoever which Licensee may have or acquire arising out of damage to or destruction of the SyracuseCoE Headquarters or Licensee's operations at the SyracuseCoE Headquarters caused by fire or other perils even if such loss or damage shall have been caused by the fault or negligence of Licensors, its officers, employees or agents. Licensee agrees to look to its insurance coverage only in the event of any such loss.

(iii) Licensee shall have a waiver of subrogation clause endorsed to and made a part of its insurance policy or policies in the following or equivalent form:

WAIVER OF SUBROGATION CLAUSE

"This insurance shall not be invalid should the insured waive in writing, prior to a loss, any or all rights of recovery against any party for a loss occurring to the property described herein and in the License Agreement between the insured and Syracuse University caused by or resulting from the hazards or perils insured hereunder. Notice is hereby accepted that the insured has agreed in writing, prior to a loss, to waive any and all of its rights of recovery from Syracuse University, its officers, employees and agents."

14. Assignment. Licensee shall not assign, encumber or transfer this Agreement, or any part of it, or its right or interest in it, without Licensor's prior written approval. Licensee shall not in any way obstruct or interfere with the rights of other licensees, occupants or users of the Syracuse CoE Headquarters, nor shall it permit its employees, representatives, or contractors to do so.

15. Indemnification. Licensee shall indemnify and hold Licensor and its trustees, officers, employees and agents harmless from and against any loss, cost (including but not limited to reasonable outside attorney's fees) or damage arising out of any third party claim against Licensor arising out of use of the Premises or the SyracuseCoE Headquarters by Licensee (the "Claims") except to the extent the Claims arise out of Licensor's gross negligence or willful misconduct.

16. Notices.

Any notice required or permitted under this Agreement shall be effective if in writing and delivered to the other party at the following address:

LICENSOR

Mark Lichtenstein
Managing Director
Syracuse CoE
621 Skytop Rd.
Syracuse, NY 13244-4100

LICENSEE

With a copy to:
Real Estate Office
Skytop Office Building
Syracuse, NY 13244-5300

A party may also change its address by giving written notice to the other party.

17. Assertion of Rights Under Agreement. The delay or failure of either party to assert or exercise any right, remedy or privilege in or relating to this Agreement shall not constitute a

waiver of any such right, remedy or privilege. No such waiver shall be effective unless in writing, and then only in the specific instance for which given.

18. Legal Fees. If legal action is instituted by the Licensor as a result of this Agreement, Licensee agrees to pay all reasonable costs and expenses, including reasonable attorney's fees, in connection with enforcement of the terms of this Agreement.

THE LICENSEE'S RIGHTS UNDER THIS AGREEMENT CONSTITUTE ONLY A LICENSE FOR USE OF THE PREMISES AND DO NOT INVOLVE THE GRANT OF ANY INTEREST IN REAL ESTATE.

(Signatures on following page)

IN WITNESS WHEREOF, the parties have caused these presents to be executed in duplicate as of the day and year first above written.

**SYRACUSE
UNIVERSITY**

LICENSEE

By:

By:

Name: Ben Ware, Ph.D.
Title: VP for Research
Date: _____

Name: _____
Title: _____
Date: _____

Exhibit A

[Insert Floor Plan of Premises]

Exhibit B

Mission Statement

The mission of the SyracuseCoE is to create innovations in environmental and energy technologies that improve human health and productivity, security, and sustainability in urban and built environments.

Exhibit C

Licensee: _____

Standard Fees: \$20.00/sf for lab and office, & cube space, per annum
 \$15.00 per person, per day for office cube in shared space, dynamic location
 \$20.00 per person, per day for office cube in shared space, guaranteed location

fees include use of common spaces/corridors

Partial month's are pro-rated

Other fees to be billed and paid separately

<u>Office</u>	<u>Effec. Date</u>	<u>Term Date</u>	<u>Sq./Ft</u>	<u>Rate/sf</u>	<u>Annual Total</u>	<u>Monthly Total</u>
				\$20.00	\$	\$ -
					-	
<u>Cube</u>	<u>Effec. Date</u>	<u>Term Date</u>	<u>Sq./Ft</u>	<u>Rate/day</u>	<u>Annual Total</u>	<u>Monthly Total</u>
Dynamic location				\$15.00		\$
Guaranteed location				\$20.00		
<u>Lab</u>	<u>Effec. Date</u>	<u>Term Date</u>	<u>Sq./Ft</u>	<u>Rate/sf</u>	<u>Annual Total</u>	<u>Monthly Total</u>
				\$20.00	\$	\$ -
					-	
					Total	\$

Licensor:
 Syracuse University

Licensee:

By: _____
 Name:
 Title:

By: _____
 Name:
 Title:

Date: _____

Date: _____

Exhibit D

Environmental Matters

1. If Licensee intends to use, create, store, release, or dispose any Hazardous Material as defined in this Agreement on the Premises or the SyracuseCoE Headquarters (“Hazardous Materials Management Program”), Licensee agrees to provide Licensor with advance written notice that identifies the particular Hazardous Material (s) to be used, stored, created, released or disposed on the Premises or the SyracuseCoE Headquarters, the intended use, including intended methodology and associated hazards for each Hazardous Material, and the amount to be stored onsite (the “Hazardous Material List”). Licensee shall provide the Licensor with an updated Hazardous Material List prior to its receipt of any new Hazardous Material and a Material Safety Data Sheet for any of the Hazardous Materials upon Licensor’s request

2. Licensee must use, create, store, release and dispose of each of its Hazardous Materials in accordance with (i) all Environmental Laws and (ii) all of the administrative policies, procedures and programs of the Environmental Health Office of the Licensor (“EHO Rules”) and require that all of its employees, agents and contractors who use, create, store, release or dispose of any of its Hazardous Materials complete the training required by EHO for their respective duties. Licensee shall ensure that all of its agents, employees, representatives and contractors are properly trained and competently supervised to handle all of its Hazardous Materials and provide Licensor upon request with written documentation, demonstrating that this training requirement has been satisfied. No Hazardous Material may be used, created, stored, released or disposed on the Premises or the SyracuseCoE Headquarters without the Licensor’s prior written approval, which approval the Licensor may withhold or condition in its sole discretion.

3. Licensee shall be responsible for ensuring that all discharges of its Hazardous Materials to the wastewater drainage system at the Premises and the SyracuseCoE Headquarters conform to all Environmental Laws and the requirements of each municipality with jurisdiction over wastewater discharges from the Premises or the SyracuseCoE Headquarters. Licensee shall send its non-wastewater Hazardous Materials off-site for disposal in accordance with the Licensor's Hazardous Materials Management Program, the terms and conditions of which follow:
 - a.. Licensor shall be responsible for making all of the arrangements for off-site disposal of all non-wastewater Hazardous Materials and other solid wastes (the “Wastes”) generated by the Licensee, its agents, employees, representatives or contractors at the Premises and/or SyracuseCoE Headquarters and the Licensor shall be responsible for selecting the method of off-site disposal of the Wastes.

 - b. Licensee shall provide Licensor with all information required by the Licensor or the off-site disposal facility that shall be selected by the Licensor for the disposal of the Wastes.

- c. All Wastes shall be manifested in accordance with applicable EHO Rules and Licensee shall retain responsibility for any claim which may be made under CERCLA or any similar state remedial program that arises out of the off-site disposal of the Licensee's Wastes. That responsibility shall include Licensee's obligation to defend, indemnify and hold Licensor and its trustees, officers, employees and agents harmless as set forth in paragraph 15 of this License.
- d. Licensee shall pay Licensor for the cost of transportation and disposal of its Wastes, payment of which shall be due within twenty (20) days of its receipt of an invoice from Licensor.
4. Licensee shall not permit the Premises or the SyracuseCoE Headquarters to be used or operated in any manner that may cause the Premises and/or the SyracuseCoE Headquarters to be contaminated by any Hazardous Materials. Upon Licensor's written request, Licensee shall restore any area of the Premises and/or the SyracuseCoE Headquarters that has been adversely impacted by its Hazardous Materials to the condition that existed prior to the commencement of the Term of this Agreement (the "Restoration Obligation"). The scope of the Licensee's Restoration Obligation shall include payment of any and all claims, costs, and liabilities, including attorneys' fees and costs, of whatever nature associated with the restoration work.
5. Unless otherwise agreed by the Licensor in writing, the Licensee shall be responsible for obtaining any required permits or authorizations for the use, creation, storage, release or disposal of its Hazardous Materials at the Premises and the SyracuseCoE Headquarters and provide a copy of the application(s) for such permit or authorization to the Licensor for prior written approval, which approval the Licensor may withhold or condition in its sole discretion.
6. The term "Select Agent" means "select agent" under regulations issued by the Centers for Disease Control and Prevention or the United States Department of Agriculture. Licensee shall not possess or use any Select Agent at the Premises or the SyracuseCoE Headquarters without the Licensor's prior written approval, which approval the Licensor may withhold or condition in its sole discretion.
7. Licensee shall not possess or use at the Premises and/or the SyracuseCoE Headquarters any biological materials that represent a potential or known significant hazard to humans, animals or the environment without the Licensor's prior written approval, which approval the Licensor may withhold or condition in its sole discretion.
8. (a) Licensee shall not operate any non-ionizing radiation (lasers, microwaves (excluding consumer microwave ovens), radio frequency, infrared, ultraviolet radiation, etc.) source that may adversely affect equipment outside of the Premises or in any way create a hazard without the prior written approval of Licensor, which approval the Licensor may withhold or condition in its sole discretion. Operation of any non-ionizing radiation must be conducted by Licensee in accordance

with all applicable laws, rules, regulations and ordinances, including but not limited to those requirements set forth in 21 CFR Part 1040 and all subsequent revisions of these standards.

(b) Any operation, referred to in 8 (a) that requires licensing or registration by any governmental entity shall also require prior written approval by Licensor, which approval the Licensor may withhold or condition in its sole discretion. Without the prior written approval by Licensor, no operations by Licensee shall cause non-ionizing radiation above natural background levels at the boundary of the Premises and no transmitting device shall be installed.

9. Licensee shall not possess any non-naturally occurring radioactive materials or other sources of ionizing radiation or operate any radiation producing and/or emitting equipment, (referred to collectively as "Radioactive Sources") without the prior written approval of Licensor, which approval the Licensor may withhold or condition in its sole discretion. Operation and/or possession of a Radioactive Source by Licensee must be conducted in accordance with all applicable laws, rules, regulations and ordinances, including, but not limited to, the regulations of the New York State Department of Health (10 NYCRR Part 16), the New York State Department of Labor (12 NYCRR Part 38) and the New York State Department of Environmental Conservation (6 NYCRR Parts 380, 381, 382 and 383).

10. In addition to the indemnity from the Licensee to the Licensor pursuant to paragraph 15 of the Agreement, the Licensee shall indemnify, defend, and hold harmless the Licensor, and its trustees, officers, employees, and agents against all loss, liability, damage and expense, including, without limitation, costs associated with administrative and judicial proceedings, engineering, consulting and attorneys fees, suffered or incurred by the Licensor on account of (i) the Licensee's failure to comply with any Environmental Law, (ii) any release or threatened release of a Hazardous Material, on, to, or into the Premises and/or SyracuseCoE Headquarters or from the Premises and/or SyracuseCoE Headquarters on, to, or into any adjoining property or other property, (iii) any and all damage to natural resources or real property and/or harm or injury to any person resulting or alleged to have resulted from a failure to comply with an Environmental Law or any release or threatened release of a Hazardous Material, or (iv) any failure to comply with any provision of Exhibit D to this Agreement.

11. Licensee shall maintain insurance coverage for the risks associated with any of the Environmental Matters addressed in this Exhibit D in an amount and form acceptable to the Licensor.

12. Licensee's obligations under Exhibit D of this Agreement shall survive termination or expiration of the Agreement.