

This **BILATERAL NON-DISCLOSURE AGREEMENT** (“Agreement”), effective as of \_\_\_\_\_ (“Effective Date”), is entered into by and between Rochester Institute of Technology, a New York not-for-profit educational institution having a principal place of business at One Lomb Memorial Drive, Rochester, NY 14623 (“RIT”) and \_\_\_\_\_ [Company Name], having a place of business at \_\_\_\_\_ [Company Address] (“Company”).

## RECITALS:

- a) RIT and Company wish to exchange confidential, important, and/or proprietary information concerning \_\_\_\_\_.
- b) The parties will endeavor to conduct as much of this exploration as is feasible by the exchange of non-confidential information.
- c) In order to complete this exploration, one or both parties (“Receiver”) may require access to certain confidential information of the other party (“Discloser”).
- d) Each party is willing to disclose certain of its confidential (as Discloser) to the other (as Receiver) on the terms and conditions set forth herein.

**NOW, THEREFORE** in consideration of the premises and mutual covenants set forth in this Agreement, the parties agree as follows:

## 1. Confidential Information

- 1.1. Identification** – Discloser will designate information it discloses under this Agreement and considers confidential (“Confidential Information”). Discloser will clearly label Confidential Information disclosed in a tangible form as “confidential” or “proprietary” or with a similar marking, and if disclosed initially in any other form, Discloser will identify the information as confidential at the time of disclosure and confirm it as confidential in a written notice to Receiver within twenty (20) business days of the initial disclosure.
- 1.2. Disclosure Period** – This agreement applies to Confidential Information exchanged by the parties only between the Effective Date and two (2) years from the Effective Date (“Disclosure Period”). This Agreement creates no obligation on either party to disclose any of its Confidential Information.
- 1.3. Authorized Agents** - The parties designate the individuals below to administer the disclosure and/or receipt of Confidential Information:

RIT: \_\_\_\_\_

Company Name: [NAME of Person]

- 1.4. Exclusions** – Confidential Information will not include any information that:

- a) is already in the possession of Receiver;
- b) becomes publicly available through no fault of Receiver;
- c) is independently developed by Receiver without reliance on the Confidential Information of Discloser;
- d) is received without the obligation of confidentiality from a third party with no known duty of confidentiality to Discloser; or
- e) is required to be disclosed by a government authority or a court, including (without limitation) pursuant to any request from an administrative agency, provided, however, that Receiver will promptly notify Discloser of such request or order and will cooperate with Discloser to limit the disclosure of Confidential Information thereunder.

- 1.5. Usage** – Confidential Information will remain the property of Discloser. No license under any patents, copyrights, trademarks or other proprietary rights is granted by the disclosure of, or access to, Confidential Information under this Agreement. Additionally, neither party acquires any patent, copyright, mask work or trademark rights under this Agreement. Receiver acquires no rights to manufacture, license, or otherwise to use or disclose the Confidential Information except for the purpose of discussing and evaluating a possible research or project arrangement with Discloser. This Agreement neither creates nor implies an obligation for either party to enter into a subsequent contract nor project arrangement, nor to otherwise purchase goods nor services from the other.
- 1.6.** Receiver understands and acknowledges that Discloser makes no representation or warranty, expressed or implied, as to the accuracy or completeness of the Confidential Information, and neither Discloser nor any of its officers, directors, employees, owners or agents will have any liability to Receiver resulting from the Receiver's use of the confidential information.
- 1.7.** Upon Discloser's request and option, Receiver must return any and all of Discloser's Confidential Information (including all copies in whole or in part) to Discloser or certify its secure disposal in writing.
- 2. Non-Disclosure** – For a period of two (2) years following the Disclosure Period, Receiver must maintain the strict confidentiality of the Confidential Information with not less than the same degree of care it uses to protect its own confidential information and must not disclose it to any third parties, other than any specifically contracted third-party agents of Receiver hired to perform work on a subsequent research project agreed to by the Parties involving the Confidential Information, without the written approval of Discloser. Receiver must use reasonable care in the selection of individuals with access to the Confidential Information and remind them of their contractual obligations to protect the confidentiality of the Confidential Information.
- 3. Termination and Survival** – Prior to the end of the Disclosure Period, either party may terminate this Agreement by providing thirty (30) days' written notice to the other party. Such termination will apply only to the disclosure of Confidential Information hereunder; the obligation to protect Confidential Information under Paragraph 2 will survive the termination for any reason of this Agreement.
- 4. Export Control** – Both parties agree that any technology or technical data received under this Agreement will not be exported or disclosed to any foreign national, firm or country, including foreign nationals employed by or associated with either party, without first complying with all applicable export control regulations of the United States of America, including the International Traffic in Arms Regulation (ITAR) and the Export Administration Regulation (EAR). The Parties understand that no exchange of export controlled information is contemplated at this time.

However, within twenty (20) business days of disclosure, Company will inform RIT in writing of the US Department of Commerce Export Control Classification Number and/or the US Department of State Munitions List Categorization (if any) of any technology or technical data that Company discloses to RIT or permits RIT to utilize under this Agreement. If Company learns of an export classification by the US or another government during the course of the discussions, Company shall promptly inform RIT.
- 5. Entire Agreement** – This Agreement contains the entire agreement between the parties regarding the exchange and protection of Confidential Information on the topic identified herein and supersedes all prior or contemporaneous proposals, agreements, representations and understandings, whether written or oral, with respect to the subject matter. This Agreement may not be amended or modified except in writing signed by each of the parties to the Agreement. This Agreement shall be construed as to its fair meaning and not strictly for or against either party. The headings hereof are descriptive only and not to be construed in interpreting the provisions hereof.
- 6. Governing Law** – This Agreement will be governed and construed pursuant to the laws of the State of New York without regard to its conflicts of law principles. Any action to enforce this Agreement must be brought in a court situated in, and the parties hereby consent to the jurisdiction of courts situated in Monroe County, New York. Each Party hereby waives the right to claim that any such court is an inconvenient forum for the resolution of such action.

7. **Counterparts/Electronic Signature** - The parties agree this Agreement may be stored electronically and may be executed in counterparts, each of which will be deemed an original, and all of which constitute one and the same instrument. Each party will execute and promptly deliver to the other party a copy of this Agreement bearing an Original Signature. "Original Signature" in this context means a copy of an actual signature of a party that is reproduced or transmitted via email of a readable electronic file (PDF preferred), photocopy, facsimile, or other process of complete and accurate reproduction and transmission.

**WHEREAS**, this Agreement has been accepted by the duly authorized representatives of the parties as of the dates written below.

**COMPANY**

**ROCHESTER INSTITUTE OF TECHNOLOGY**

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

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

Name:

Name:

Title:

Title:

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

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