



**Rochester Institute of Technology  
NON-DISCLOSURE AGREEMENT**

This **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 \_\_\_\_\_ [Individual/Recipient Name], (“Recipient”).

**WHEREAS**, in the course of \_\_\_\_\_, RIT may disclose to Recipient confidential, important, and/or proprietary information concerning \_\_\_\_\_.

**WHEREAS**, Recipient agrees to maintain the confidentiality of the information provided by RIT.

**NOW, THEREFORE** the parties agree to enter into a confidential relationship with respect to the disclosure by RIT to Recipient of certain information as follows:

**1. Confidential Information**

**1.1. Definitions** – For purposes of this Agreement, Confidential Information shall include all information or material disclosed to or made available to Recipient by or through RIT or RIT’s representatives or agents before or after the date of this Agreement in connection with \_\_\_\_\_.

For purposes of this Agreement, the term “Recipient” shall include Recipient and its employees, affiliates, and representatives.

**1.2. Exclusions** – Confidential Information does not include any information that Recipient can demonstrate:

- a) was in Recipient’s possession prior to its being furnished to Recipient, provided the source of that information was not known by Recipient to be bound by a confidentiality agreement with or other contractual, legal or fiduciary obligation of confidentiality to RIT;
- b) is now, or hereafter becomes, through no act or failure to act on the part of the Recipient, generally known to the public;
- c) is rightfully obtained by Recipient from a third party, whose (and whose direct and remote sources) obtaining, possession and transmission of the information was and is without breach of any obligation to RIT; or
- d) is independently developed by Recipient without use of or reference to the Confidential Information.

**1.3. Usage** – Recipient shall use the Confidential Information solely for the purpose of providing services to RIT and shall not in any way use the Confidential Information to the detriment of RIT. Nothing in this Agreement shall be construed as granting any rights to Recipient, by license or otherwise, to any of RIT’s Confidential Information. RIT makes no representation or warranty, expressed or implied, as to the accuracy or completeness of the Confidential Information, and neither RIT nor any of its officers, directors, employees, owners or agents will have any liability to Recipient resulting from the Recipient’s use of the Confidential Information.

**1.4.** Upon RIT’s request, Recipient shall return the Confidential Information, and any copies made thereof, to RIT together with a certification that Recipient is no longer in possession of the Confidential Information.

**2. Confidentiality** – Recipient shall not disclose any of the Confidential Information in any manner whatsoever, except as provided in paragraphs 3 and 4 of this Agreement, and shall hold and maintain the Confidential Information in strictest confidence. Recipient hereby agrees, to the fullest extent permitted by law, to defend, indemnify and hold harmless RIT against any and all losses, damages, claims, expenses, and attorneys’ fees incurred or suffered by RIT as a result of a breach of this Agreement by Recipient.

3. **Permitted Disclosures** - Recipient may disclose RIT's Confidential Information to Recipient's employees, affiliates, and representatives with a bona fide need to know such Confidential Information, but only to the extent necessary to evaluate or carry out the course of activities and/or provide services for RIT and only if such persons are advised of the confidential nature of such Confidential Information and the terms of this Agreement and are bound by a written agreement or by a legally enforceable code of professional responsibility to protect the confidentiality of such Confidential Information.
4. **Required Disclosures** – Recipient may disclose RIT's Confidential Information if and to the extent that such disclosure is required by court order, provided that Recipient provides RIT a reasonable opportunity to review the disclosure before it is made and to interpose its own objection to the disclosure.
5. **Protection** – Recipient shall be responsible for any breach of this Agreement by any of its employees, affiliates, and representatives, and shall, at its sole expense, take all necessary measures (including but not limited to court proceedings) to restrain such from prohibited disclosure or use of the Confidential Information.
6. **Irreparable Harm** – Recipient understands and acknowledges that any breach of this Agreement may cause RIT irreparable harm, the amount of which may be difficult to ascertain, and therefore agrees that RIT shall have the right to apply to a court of competent jurisdiction for specific performance and/or an order restraining and enjoining any such further breach and for such other relief as RIT shall deem appropriate. Such right of RIT is to be in addition to the remedies otherwise available to RIT at law or in equity. Recipient expressly waives the defense that a remedy in damages will be adequate and any requirement in an action for specific performance or for the posting of a bond by RIT.
7. **Survival** – This Agreement shall continue in full force and effect at all times.
8. **Successors and Assigns** – This Agreement and each party's obligations hereunder shall be binding on the representatives, assigns, and successors of such party and shall inure to the benefit of the assigns and successors of such party; provided, however that the rights and obligations of Recipient hereunder are not assignable.
9. **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, Recipient 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 Recipient discloses to RIT or permits RIT to utilize under this Agreement. If Recipient learns of an export classification by the US or another government during the course of the discussions, Recipient shall promptly inform RIT.

10. **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.
11. **Governing Law** – This Agreement and all claims arising out of, or relating to 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.

**12. 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.

This Agreement has been accepted by the duly authorized representatives of the parties as of the dates written below.

**RECIPIENT**

**ROCHESTER INSTITUTE OF TECHNOLOGY**

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

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

Name:

Name:

Title:

Title:

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

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