

## MUTUAL NON-DISCLOSURE AGREEMENT

This Agreement (“Agreement”) is made effective as of the last date signed below (the “Effective Date”) by and between Rowan University, a New Jersey academic institution with a principal place of business at 201 Mullica Hill Road, Glassboro, NJ 08028, and [REDACTED], (along with any future business entity that might enter into in consequence of the confidential work being protected herein), with a principal place of business at [REDACTED] (hereinafter, each a “Party” and collectively as “Parties”).

WHEREAS for purposes of this Agreement, the Party disclosing its Confidential Information is the “Discloser” and the Party receiving such Confidential Information is “Recipient”.

WHEREAS the Parties have an interest in participating in discussions wherein either Party might share information with the other that the disclosing Party considers to be proprietary and confidential to itself (“Confidential Information”); and the Parties agree that the Recipient shall use the Confidential Information of Disclosure solely in furtherance of the following described purpose (the “Purpose”): [REDACTED]

WHEREAS the Parties are entering into this Agreement to protect the confidentiality of the information being disclosed.

NOW, THEREFORE, the Parties agree as follows:

- Confidential Information: The term “Confidential Information” shall mean any and all technical and non-technical information including but not limited to patent, trademark, trade secret, proprietary information, techniques, sketches, drawings, models, inventions, know-how, processes, apparatus, equipment, algorithms, software programs, software source documents, manuals and documentation related to the software programs, methods and concepts embodied in such software, and formulae related to current and future proposed products and services of each of the parties, including, without limitation, information concerning research, experimental work, development, design details and specifications, engineering, financial information, procurement requirements, purchasing, manufacturing, customer lists, business forecasts, marketing plans and in addition, any information not covered by on the aforementioned categories but which is either (a) marked “Confidential” or “Proprietary” at the time of disclosure or (b) if orally disclosed, designated as confidential or proprietary at the time of disclosure and marked in writing as “Confidential” within 30 days of disclosure.
- Disclosure: A Party receiving Confidential Information shall not disclose such information to any third party without prior, written approval from the disclosing Party, unless such disclosure satisfies an exception under this Agreement. If such disclosure satisfies an exception under this Agreement, the Party shall confer and notify the other Party prior to such disclosure.
- Care: The Recipient shall protect such Confidential Information from inadvertent disclosure to a third party using the same care and diligence that the Recipient uses to protect its own proprietary and confidential information, but in no case less than reasonable care. Recipient agrees to maintain Confidential Information in secure premises and on secure equipment, as applicable, to prevent unauthorized use or disclosure.
- Duty to Hold Confidential Information: Recipient’s duty to hold Confidential Information in confidence shall (i) in the case of Confidential Information that is subject to the “limited” or “restricted” data rights provisions of the Federal Acquisition Regulation (“FAR”) and the Department of Defense Federal Acquisition Supplement (“DFARS”) or other restrictions applicable to commercial software or technical data, survive the expiration or termination of this Agreement for any reason; (ii) In the case of Confidential Information that is subject to the “SBIR data rights” provisions of DFARS 252.227-7018 or FAR 52-227-20 (or any successor clauses) survive the expiration or termination of this Agreement for ten (10) years.
- Authorized Representatives: For the purposes of this Agreement, the “Representatives” of a party shall include, but are not be limited to employees, officers, directors, agents, and affiliates. The term “affiliates” shall mean any person or entity controlling, controlled by or under common control with a Party. The Recipient shall ensure that the Representatives who have access to Confidential Information disclosed under this Agreement (limited to those who have a need to know such Confidential Information) is informed of its proprietary and confidential nature and is required to abide by the terms of this Agreement. The Recipient shall immediately notify the disclosing of any

disclosure of such Confidential Information in violation of this Agreement or of any subpoena or other legal process requiring production or disclosure of said Confidential Information as soon as Recipient learns or becomes aware of it.

6. Ownership: All right, title and interest in and to the Discloser's Confidential Information shall remain with the Discloser. Recipient shall not sell, assign, sub-license, lease, or otherwise transfer the Confidential Information without a request and approval by the other Party. Recipient shall not reverse engineer, decompile or disassemble any software disclosed to the Recipient. Recipient shall not make any copies of the Confidential Information in any form except as needed in furtherance of the Purpose and for unavoidable back up files in the case of Confidential Information transmitted electronically.

7. Return of Confidential Information: The Recipient shall, within (30) thirty business days honor any request from the disclosing Party to return or destroy all copies of Confidential Information disclosed under this Agreement and all notes related to such Confidential Information, excepting that one (1) copy may be retained by the Recipient for-record keeping purposes only.

8. Disclosing Injury/Remedies: The Parties agree that the disclosing Party may suffer irreparable injury if its Confidential Information is made public, released to a third party, or otherwise disclosed in breach of this Agreement and that the disclosing Party may be entitled to obtain injunctive relief against a threatened breach or continuation of any such breach and, in the event of such breach, an award of actual and exemplary damages, including reasonable attorneys fees incurred in enforcing its rights under this Agreement.

9. Limitations: The terms of this Agreement shall not be construed to limit either Party's right to develop independently or acquire products without use of the other Party's Confidential Information. The disclosing Party acknowledges that the Recipient may currently or in the future be developing information internally, or receiving information from other parties, that is similar to the Confidential Information. Nothing in this Agreement will prohibit the Recipient from developing or having developed for it products, concepts, systems or techniques that are similar to or compete with the products, concepts, systems or techniques contemplated by or embodied in the Confidential Information provided that the Recipient does not violate any of its obligations under this Agreement in connection with such development.

10. Exclusions: Notwithstanding the above, the Parties agree that information shall not be deemed Confidential Information and the Recipient shall have no obligation to hold in confidence such information, where such information:

- (a) Is already known to the Recipient, having been disclosed to the Recipient by a third party without such third party having an obligation of confidentiality to the disclosing Party; or
- (b) Is or becomes publicly known through no wrongful act of the Recipient, its employees, officers, directors, or agents; or
- (c) Is independently developed by the Recipient without reference to any Confidential Information disclosed hereunder; or
- (d) Is approved for release (and only to the extent so approved) by the disclosing Party; or
- (e) Is disclosed pursuant to the lawful requirement of a court or governmental agency or where required by operation of law after prompt prior notice to the other Party.

11. No Further Obligations: Nothing in this Agreement shall be construed to constitute an agency, partnership, joint venture, or other similar relationship between the Parties. Additionally, nothing in this Agreement obligates a Party to enter into any further agreements or arrangements, or to furnish any Confidential Information or any other information or materials. Neither Party acquires any licenses of any kind to the other Party's intellectual property rights under this Agreement.

12. Notice: Any notice, approval, request, authorization, direction, or other communication under this Agreement shall be given in writing and shall be deemed to have been delivered and given all purposes (i) on the delivery date if delivered personally to the Party to whom the same is directed; (ii) one (1) business day after deposit with a commercial overnight carrier, with written verification of receipt, or (iii) five (5) business days after the mailing date, whether or not actually received, if sent by U.S. mail, return receipt requested, postage and charges

prepaid or any other means of rapid delivery for which a receipt is available. All notices shall be given to the Party.

13. Instructions if Disclosure is permitted: If Recipient or any of its licenses, agents or assignees is authorized to deliver or disclose to any third party, including the Government, any Confidential Information, Recipient shall ensure that such delivery or disclosure is made in accordance with the application markings requirements under the then current FAR or the then current DFARS. Recipient shall confer with Discloser regarding the applicable marking requirement.

14. Public Announcements: Neither Party will, without prior written approval of the other Party, make any public announcement of or otherwise disclose the existence or the terms of this Agreement.

15. Assignment: Neither Party shall have the right to assign or transfer this Agreement or any rights or obligations hereunder to any third party without the prior written consent of the other Party. Any non-consented assignment shall be null and void. Subject to the foregoing, this Agreement shall be binding upon each Party, its permitted transferees, successors and assigns.

16. Warranty: Each Party understands that any and all Confidential Information is being provided to it "as is" by the other Party without any representation or warranty, express or implied, as to the accuracy or completeness of the Confidential Information.

17. Entire Agreement: This Agreement contains the entire agreement between the Parties and in no way creates an obligation for either Party to disclose information to the other Party or to enter into any other agreement.

18. Term: Either Party may terminate this Agreement at any time during the term of this Agreement by giving written notice to the other Party of its desire to terminate this Agreement. The requirement to protect Confidential Information disclosed under this Agreement shall survive termination of this Agreement for a period of three (3) years from the Effective Date of termination.

19. Jurisdiction: This Agreement and the performance hereof shall be construed and governed in accordance with the laws of the State of New Jersey. Any judicial proceeding arising out of this Agreement shall be brought in any State court in Gloucester County, New Jersey or in the United States District Court for the District of New Jersey and each of the Parties accepts the exclusive jurisdiction of such courts in connection with this Agreement.

20. Severability: If any provision of this Agreement shall be held by a court of competent jurisdiction to be unenforceable, the remaining provisions shall remain in full force and effect.

21. Counterparts: This Agreement may be executed in counterparts and delivered by facsimile transmission, each of which shall be deemed an original and both of which together shall constitute one and the same document.

22. Amendments: All additions or modifications to this Agreement must be made in writing and signed by the representative of each Party.

23. Nonwaiver: Any failure by Discloser to enforce Recipient's strict performance of any provision of this Agreement will not constitute a waiver of its rights to subsequently enforce such provision or any other provision of the Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized officers as of the Effective Date.

**(OTHER PARTY)**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

**ROWAN UNIVERSITY**

By: \_\_\_\_\_

Name: \_\_ Tabbetha Dobbins\_\_

Title: \_ VP for Division of Research \_

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