CONFIDENTIALITY AGREEMENT

THIS CONFIDENTIALITY AGREEMENT (this "Agreement"), effective as of ____________, 20__ (the "Effective Date"), is entered into by and between the undersigned disclosing party (the "Disclosing Party") and Rensselaer Polytechnic Institute, a New York not-for-profit corporation located at 110 8th Street, Troy, New York, 12180-3590 (the "Recipient," and together with the Disclosing Party, the "Parties," and each, a "Party").

WHEREAS, in connection with evaluating a possible sponsored research collaboration (the "Purpose"), the Recipient desires to receive certain information from the Disclosing Party that is non-public, confidential, or proprietary in nature; and

WHEREAS, the Disclosing Party desires to disclose such information to the Recipient, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions set forth herein, the parties agree as follows:

1. Confidential Information. Except as set forth in Section 2 below, "Confidential Information" means all non-public, confidential, or proprietary information disclosed on or after the Effective Date, by the Disclosing Party to the Recipient or its affiliates, or to any of the Recipient's or its affiliates' employees, officers, directors, partners, shareholders, agents, attorneys, accountants, or advisors (collectively, "Representatives"), whether disclosed orally or disclosed or accessed in written, electronic, or other form or media, that the Disclosing Party either:

   (a) clearly labels as "confidential" prior to furnishing it to the Recipient or its Representatives; or

   (b) designates as "confidential" in a written notice to the Recipient within ten (10) days of its disclosure hereunder.

2. Exclusions from Confidential Information.

   (a) Except as required by applicable federal, state, or local law or regulation, the term "Confidential Information" as used in this Agreement shall not include information that:

       (i) at the time of disclosure is, or thereafter becomes, generally available to and known by the public other than as a result of any material breach of this Agreement by the Recipient or any of its Representatives;

       (ii) at the time of disclosure is, or thereafter becomes, available to the Recipient or its Representatives on a non-confidential basis from a third-party source, provided that, to the Recipient's knowledge, such third party is not and was not prohibited from disclosing such Confidential Information to the Recipient by any contractual obligation;
(iii) was known by or in the possession of the Recipient or its Representatives prior to being disclosed by or on behalf of the Disclosing Party pursuant to this Agreement; or

(iv) was or is independently developed by the Recipient or its Representatives without reference to or use of any of the Disclosing Party's Confidential Information.

3. Recipient Obligations. The Recipient shall:

(a) protect and safeguard the confidentiality of all such Confidential Information with at least the same degree of care as the Recipient would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care;

(b) not use the Disclosing Party's Confidential Information, or permit it to be accessed or used, for any purpose other than the Purpose or any related transactions between the Parties;

(c) not disclose any such Confidential Information to any person or entity, except to the Recipient's Representatives who:

   (i) need to know the Confidential Information to assist the Recipient, or act on its behalf, in relation to the Purpose or to exercise its rights under the Agreement;

   (ii) are informed by the Recipient of the confidential nature of the Confidential Information; and

   (iii) are subject to confidentiality duties or obligations to the Recipient that are no less restrictive than the terms and conditions of this Agreement; and

(d) be responsible for any material breach of this Agreement caused by any of its Representatives.

4. Disclosing Party Representations and Warranties. The Disclosing Party represents and warrants that:

(a) the disclosure of Confidential Information to the Recipient will not infringe, violate, or misappropriate the intellectual property rights of any third party. The Disclosing Party has not received any communication, and no action has been instituted, settled or, to the Disclosing Party's knowledge, threatened that alleges any such infringement, violation, or misappropriation;

(b) the disclosure of Confidential Information to the Recipient or its Representatives does not and will not violate any other contract or obligation to which the Disclosing Party is a party, including covenants not to compete and confidentiality agreements; and
(c) it is not legally or contractually prohibited from:

(i) discussing a potential relationship with the Recipient or its Representatives;

(ii) providing information about a potential relationship with the Recipient; or

(iii) entering into a principal agreement with the Recipient.

5. Required Disclosure. Any Disclosure by the Recipient or its Representatives of any of the Disclosing Party's Confidential Information as required under applicable federal, state, or local law, regulation or a under a valid order issued by a court or governmental agency of competent jurisdiction (a "Legal Action") shall be subject to the terms of this Section. Prior to making any such disclosure, the Recipient shall make commercially reasonable efforts to provide the Disclosing Party with:

(a) If legally permissible, prompt written notice of such requirement so that the Disclosing Party may seek, at the Disclosing Party's sole cost and expense, a protective order or other remedy; and

(b) reasonable assistance, at the Disclosing Party's sole cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure.

6. Return or Destruction of Confidential Information. At any time during or after the term of this Agreement, at the Disclosing Party's written request, the Recipient and its Representatives shall promptly return to the Disclosing Party all copies, whether in written, electronic, or other form or media, of the Disclosing Party's Confidential Information, or destroy all such copies and certify in writing to the Disclosing Party that such Confidential Information has been destroyed. In addition, the Recipient shall also destroy all copies of any notes created by the Recipient or its Representatives. Notwithstanding the foregoing, the Recipient may retain any copies of Confidential Information, regardless of whether such copies are in original form:

(a) included in any materials that document a decision not to proceed with a transaction with the Disclosing Party, or otherwise to cease discussions or negotiations with the Disclosing Party;

(b) as may be required to comply with any applicable federal, state, or local law, regulation, or regulatory authority to which the Recipient is subject; or

(c) that are maintained as archive copies on the Recipient's disaster recovery and/or information technology backup systems. Such copies will be destroyed upon the normal expiration of the Recipient's backup files.

The Recipient shall continue to be bound by the terms and conditions of this Agreement with respect to any such Confidential Information retained in accordance with this Section 6.
7. Term; Termination. The term of this Agreement shall commence on the Effective Date and shall expire one (1) year from the Effective Date, provided that either Party may terminate this Agreement at any time by providing written notice to the other Party. Notwithstanding anything to the contrary herein, each Party's rights and obligations under this Agreement shall survive the expiration or termination of this Agreement for a period of one (1) year from the date of such expiration or termination, even after the return or destruction of Confidential Information by the Recipient.

8. No Transfer of Rights, Title, or Interest. The Disclosing Party hereby retains its entire right, title, and interest, including all intellectual property rights, in and to all Confidential Information. Any disclosure of such Confidential Information hereunder shall not be construed as an assignment, grant, option, license, or other transfer of any such right, title, or interest whatsoever to the Recipient or any of its Representatives.

9. No Other Obligation. Neither Party shall be under any legal obligation of any kind whatsoever, or otherwise be obligated to enter into any business or contractual relationship, investment, or transaction, by virtue of this Agreement, except for the matters specifically agreed to herein. Either Party may at any time, at its sole discretion with or without cause, terminate discussions and negotiations with the other Party, in connection with the Purpose or otherwise.

10. INDEPENDENT DEVELOPMENT. The Disclosing Party acknowledges that the Recipient may be currently or in the future developing information internally, or receiving information from other parties, that may be the same as or similar to the Disclosing Party's Confidential Information. Accordingly, nothing in this Agreement will be construed as a representation or agreement, or otherwise give rise to an inference, that the Recipient cannot or will not:

   (a) develop or receive such information;

   (b) develop or have developed for it products, services, concepts, ideas, systems, or techniques that are similar to or compete with the products, services, concepts, ideas, systems, or techniques contemplated by or embodied in the Confidential Information, provided that the Recipient does not breach any of its obligations under this Agreement in connection with such development; or

   (c) restrict any assignment or reassignment of, or in any manner to affect or limit, the Recipient's past, present, and future business activities of any nature, including business activities which may compete with the Disclosing Party.

11. Residual Information. Notwithstanding any other provision of this Agreement, the Recipient shall have the right, at any time during or after the term of this Agreement, to disclose, publish, disseminate, and use Residual Information for any purpose in its business, provided that the Recipient does not, and does not permit its Representatives to, breach its confidentiality obligations under this Agreement in using such Residual Information. For purposes of this Agreement, the term "Residual Information" means any Confidential Information in intangible form (including, without limitation, ideas, concepts, know-how, or techniques) that is obtained without the intent to memorize by and retained in the unaided memory of the Recipient's
Representatives who use or have access to such Confidential Information. The Recipient shall not have any obligation to limit or restrict the work assignments of any of its Representatives or to pay the Disclosing Party any royalties for any work product developed in reliance on or through the use of, in whole or in part, any Residual Information, provided, however, that this Section 11 shall not be deemed to grant to the Recipient any right, title or interest (including, without limitation, any intellectual property rights) in or to any Confidential Information.

12. Remedies. The Recipient acknowledges and agrees that money damages might not be a sufficient remedy for any breach of this Agreement by the Recipient or its Representatives. Therefore, in addition to all other remedies available at law, the Disclosing Party shall be entitled to seek injunctive and other equitable relief as a remedy for any such breach. IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER OR TO ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE, OR PROFIT OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

13. Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the internal laws of the State of New York without giving effect to any choice or conflict of law provision or rule (whether of the State of New York or any other jurisdiction) that would cause the application of Laws of any jurisdiction other than those of the State of New York. Any legal suit, action, or proceeding arising out of this Agreement or the matters contemplated hereunder shall be instituted exclusively in the federal courts of the United States or the courts of the State of New York in each case located in the County of Rensselaer, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding and waives any objection based on improper venue or forum non conveniens. Service of process, summons, notice, or other document by mail to such Party’s address set forth herein shall be effective service of process for any suit, action, or other proceeding brought in any such court.

14. Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder shall be in writing and shall be deemed to have been given: (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile or email (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient; or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the addresses set forth on the first page or signature page, as applicable, of this Agreement (or to such other address that may be designated by a Party from time to time in accordance with this Section).

15. Entire Agreement. This Agreement constitutes the sole and entire agreement of the Parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and
oral, with respect to such subject matter. This Agreement may only be amended, modified, or supplemented by an agreement in writing signed by each Party hereto.

16. Severability. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

17. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

18. Assignment. Neither Party may assign any of its rights or delegate any of its obligations hereunder without the prior written consent of the other Party, provided that either Party may assign any of its rights and delegate any of its obligations hereunder to any person or entity that acquires substantially all of that Party's assets. Any purported assignment or delegation in violation of this Section shall be null and void. No assignment or delegation shall relieve the assigning or delegating Party of any of its obligations hereunder. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

19. Waivers. No waiver by any Party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the Party so waiving. No waiver by any Party shall operate or be construed as a waiver in respect of any failure, breach, or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

[SIGNATURE PAGE FOLLOWS]
IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the Effective Date.

DISCLOSING PARTY:

By_____________________
Name: ____________________
Title: ____________________

Disclosing Party Company Name: _______________________________________________________

Address: ____________________________________________

Address: ____________________________________________

City, State, Postal Code, Country: ____________________

Email address: ________________________________________

RECIPIENT:

RENSSELAER POLYTECHNIC INSTITUTE

By_____________________
Name: ____________________
Title: ____________________
Email address: otc@rpi.edu