

## **CONFIDENTIALITY AGREEMENT**

This is a Confidentiality Agreement (the "Agreement") between \_\_\_\_\_ (Company), and the University of Rochester (UR) (each individually a "Party"). It will become effective on the date it has been signed by all parties, as indicated by the latest date appearing opposite or under the parties' signatures at the end of this Agreement.

### **RECITALS**

COMPANY and UR have entered into a business relationship by which UR may transmit to COMPANY certain confidential and legally restricted information concerning UR employees, patients, students, parents, past, current or prospective donors, or alumni. As used in this agreement "Confidential Information" means any information concerning such persons that is legally required to be kept confidential or that a reasonable person would want to keep confidential, and may include but is not limited to name, Social Security Number or any part thereof, date of birth or age, mother's maiden name, UR identification numbers (e.g. employee ID or URID), credit card or other financial institution number, driver's license or non-driver identification card number, home address and home email address, and similar information.

This Agreement is necessary because of laws restricting the use and disclosure of certain elements of Confidential Information and because UR policy requires that third parties who receive confidential or legally restricted information must agree in writing to keep it confidential. COMPANY acknowledges that disclosure of Confidential Information to third parties may have negative financial and reputational consequences to UR and its employees, and therefore that the confidentiality of Confidential Information is of utmost importance to UR.

### **TERMS**

1. **Nondisclosure.**

a. COMPANY shall not disclose any of UR's Confidential Information to any person or organization without the express written consent of UR, except as set forth below. COMPANY shall not use Confidential Information for any purpose except that for which it is disclosed by UR.

b. COMPANY shall use commercially reasonable efforts to maintain the confidentiality of the Confidential Information it receives from UR, whether in paper or electronic form. Such efforts may be greater, but shall be no less than those it uses to protect the confidentiality of its own information that it considers confidential. Such efforts shall include, at a minimum, commercially reasonable technological protections for Confidential Information that is stored or sent by COMPANY electronically, such as encryption, firewalls, and other similar mechanisms now existing or later developed. COMPANY specifically agrees that any Confidential Information stored on a mobile electronic device (including laptops) will be encrypted.

c. Confidential Information may be used by, or disclosed by COMPANY to, only

those of its employees, agents, representatives and contractors who require Confidential Information to perform duties to effect the purposes of the business relationship between the parties, provided that any third party to whom COMPANY discloses or allows access to Confidential information agrees to be bound by this Agreement to the same extent as COMPANY is bound. COMPANY hereby agrees to be jointly responsible for any breach by such third party of the terms of this agreement.

d. COMPANY may disclose Confidential Information to a third party if mandated by law, order, decree, subpoena, or other valid judicial process, after giving UR such advance notice thereof as is practicable.

e. COMPANY shall comply with all laws and regulations that apply to use, transmission, storage, disclosure or destruction of Confidential Information. Such laws include, but are not limited to, New York State laws concerning Social Security Numbers and Personally Identifiable Information, the Health Insurance and Portability Accountability Act (HIPAA), and the federal Family Educational Rights and Privacy Act (FERPA).

f. COMPANY shall promptly notify UR if it discovers the unauthorized disclosure of or access to Confidential Information while in COMPANY's custody or control. In the event of such unauthorized disclosure or access, COMPANY shall take prompt corrective action to cure and mitigate such unauthorized disclosure or access and shall be responsible to effect any notifications, and for the costs thereof, to any persons or government agencies, which are required under then-applicable law, including but not limited to the New York Security Breach Notification Act. COMPANY will work with UR on such notifications and UR will have the right to approve in advance their content and manner of dissemination, which approval will not be unreasonably withheld, conditioned or delayed. COMPANY will also be responsible for the costs of related corrective or mitigating measures, such as credit monitoring protection for those whose data is released without authorization.

2. **Remedies for Breach; Indemnification.** COMPANY acknowledges that UR will be irreparably injured upon a breach of this Agreement, and agrees that in the event of an actual or threatened breach, UR shall be entitled to seek an injunction, in addition to any other available remedy, restraining any person from committing or continuing to commit the breach. In addition, UR shall be entitled to all available remedies, at law or in equity, for losses caused by COMPANY's breach of this agreement. COMPANY will defend and indemnify UR against third party claims for damages resulting from COMPANY's negligence, intentional misconduct or breach of this agreement.

3. **Representation and Warranties.** Each of the parties to this Agreement represents and warrants that it has the authority to execute this Agreement and that it is not restricted or prohibited by law, contract, bylaws, or otherwise, from entering into it.

4. **Jurisdiction; Venue.** The Parties agree that any dispute under this agreement will be resolved in a state or federal court located in Monroe County, New York.

5. **Governing Law.** This agreement shall be governed and construed in accordance with the laws of the State of New York.

6. **Notices.** All notices required by this Agreement shall be in writing and shall be deemed to have been given if personally delivered, or mailed by certified mail, return receipt requested, as follows:

COMPANY:

The University:

University of Rochester

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Notices shall be deemed given on the date actually received.

7. **Term and Return of Confidential Information.** This agreement will remain in effect for so long as COMPANY has custody or control over any Confidential Information received from UR. In the event that the business relationship pursuant to which COMPANY receives Confidential Information from UR comes to an end, COMPANY will promptly return all copies of Confidential Information to UR or confirm the destruction of all Confidential Information to UR's reasonable satisfaction. COMPANY will remain responsible under this agreement for any unauthorized release of or access to Confidential Information that occurs due to COMPANY's failure to return or destroy Confidential Information as required in this paragraph.

8. **Entire Agreement.** This writing constitutes the entire agreement between the parties and supersedes any prior understanding or agreements with respect to the subject matter. No changes, additions or qualifications to the terms of this Agreement shall be made or binding, unless made in writing and signed by both parties to the Agreement.

COMPANY

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

Dated: \_\_\_\_\_

Title:

THE UNIVERSITY OF ROCHESTER

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

Dated: \_\_\_\_\_

Title: