

# VISITING SCHOLAR/AFFILIATED FACULTY AGREEMENT

**THIS VISITNG SCHOLAR AGREEMENT** ("Agreement") is made as of the Effective Date specified at the end of this agreement by and between:

**Visiting Scholar/Affiliated Faculty Name** ("Visiting Scholar/Affiliated Faculty"):

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Address:

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and,

**New Jersey Institute of Technology** ("NJIT"), a public research university located at University Heights, Newark, New Jersey 07102 (USA).

**WHEREAS**, references to the Visiting Scholar/Affiliated Faculty herein shall include the undersigned Home Institution (hereinafter "Home Institution") unless otherwise referred to separately.

**WHEREAS**, Visiting Scholar/Affiliated Faculty, Home Institution and NJIT shall collectively be referred to herein as "the Parties".

**NOW, THEREFORE**, the Parties hereby agree as follows:

## Article 1 - Purpose

The subject of this Agreement is to establish guidelines for the Visiting Scholar/Affiliated Faculty appointment by NJIT. The Parties understand that the other may be involved in similar or related research on behalf of itself and others. Nothing contained in this Agreement shall be construed to limit or impair the freedom of the Parties (or its researchers) to conduct research on their own behalf or for third-parties or to grant the Parties the right to such other research or intellectual property.

## Article 2 - Use of Facilities, Infrastructure and Services

(a) NJIT will grant Visiting Scholar/Affiliated Faculty non-exclusive access to its facilities, technological infrastructure and services for the realization of research activities of mutual interest to the Parties. NJIT will have sole and absolute authority to determine the time and manner of all such use. NJIT provides its facilities "as-is" and without warranty, express of implied, of any kind.

(b) Visiting Scholar/Affiliated Faculty understands that he/she may be working with or in close proximity to dangerous equipment or materials while conducting his/her experiments. Visiting Scholar/Affiliated Faculty agrees that he/she will not operate any equipment or handle dangerous/toxic materials without NJIT permission and supervision. Visiting Scholar/Affiliated Faculty agrees to assume the risk and agrees to hold harmless, defend and indemnify NJIT and its employees with respect to such operation or handling by Visiting Scholar/Affiliated Faculty.

(c) Facility use by Visiting Scholar/Affiliated Faculty shall comply with all applicable laws, ordinances, rules, regulations, and orders, and guidance documents of any federal, state, or local governmental body having jurisdiction over environmental issues and the health and safety of persons or property or for the protection of them or the environment from damage, injury or loss, and all NJIT policies, procedures or directives.

### **Article 3 - Financial Support**

For the activities defined in this Agreement, economic compensation for Visiting Scholar/Affiliated Faculty will be established and paid for solely by Home Institution. NJIT makes no promise, representation or guarantee of compensation to Visiting Scholar/Affiliated Faculty by entering into this Agreement. Visiting Scholar/Affiliated Faculty shall not be entitled to any benefits applicable to employees of NJIT or any reimbursement of expenses by NJIT. This Agreement does not create any employment relationship between Visiting Scholar/Affiliated Faculty and NJIT.

### **Article 4 - Applicable Regulations**

The Parties acknowledge that technology, software, services, and commodities provided under this Agreement may be subject to laws or regulations restricting their export, re-export, transfer or release to certain entities or destinations, including those laws and regulations administered by the U.S. Department of Commerce (Bureau of Industry and Security) and the U.S. Department of the Treasury (Office of Foreign Assets Control). With respect to any export, re-export, transfer, or release otherwise permitted under this Agreement, the Parties will comply with all applicable U.S. government requirements, including but not limited to the U.S. Export Administration Regulations.

### **Article 5 - Confidentiality**

(a) The Parties undertake to preserve the confidentiality of any document, information, knowledge, pre-existing know-how or other material communicated to them in relation with any activity conducted in the context of this Agreement. Disclosure of information to third parties shall not be allowed unless explicit consent is given in writing. In order to be treated as confidential or proprietary information, the Parties must identify the same in writing, by appropriate stamp, legend, or otherwise.

(b) The confidentiality obligations of this Agreement shall not apply to information that: (i) is in the public domain at the time of its disclosure; (ii) is known to the receiving party prior to the time of disclosure; (iii) becomes public information or generally available to the public except by an unauthorized act or omission of the receiving party; (iv) is lawfully obtained by the receiving party from a third party having no preexisting relationship, obligation or commitment to the disclosing party and having the legal right to disclose same; (v) is independently developed by the receiving party without access to information of the disclosing party which is subject this Agreement; or (vi) is required by any federal or state law, regulation or statute and/or court or administrative order to be disclosed.

(c) In the event this Agreement is terminated, the receiving party shall cease to make use of the confidential information received from the disclosing party and, upon the disclosing party's written request, shall promptly destroy or return such confidential information. The obligation of confidentiality created by this Agreement shall survive termination and remain in effect for five (5) years from the date of termination or expiration of this Agreement. With respect to trade secrets, the obligation shall last for so long as the information remains a secret.

### **Article 6 – Background Intellectual Property Rights**

By no means shall this Agreement be understood as a transfer of any preexisting intellectual property rights associated to any document, information, knowledge, know-how or other material communicated and liable to be commercially exploited.

### **Article 7 – Project Intellectual Property Rights**

(a) All rights and title to all inventions and intellectual property, including U.S. and foreign patent applications, created (conceived or reduced to practice) solely by Visiting Scholar/Affiliated Faculty while using NJIT facilities shall belong jointly to NJIT and Home Institution (or jointly between NJIT and Visiting Scholar/Affiliated Faculty if required by Home Institution's applicable law).

(b) All rights and title to all inventions and intellectual property, including U.S. and foreign patent applications, created (conceived or reduced to practice) jointly by NJIT representatives and Visiting Scholar/Affiliated Faculty shall belong jointly to NJIT and Home Institution (or jointly between NJIT and Visiting Scholar/Affiliated Faculty if required by Home Institution's applicable law).

(c) All rights and interests of the Parties to jointly owned inventions and intellectual property are subject to any and all rights belonging to any research sponsor, including but not limited to private or governmental third parties. The Parties shall cooperate fully with one another regarding joint patent filing, prosecution, maintenance, defense/enforcement, and commercialization efforts. Visiting Scholar/Affiliated Faculty represents that he/she is not under any consulting or other obligations to any third person, organization or corporation in respect to rights in inventions which are, or could be reasonably construed to be, in conflict with this Agreement.

(d) The parties agree to negotiate with one another in good faith with respect to the apportionment of all reasonable costs and expenses related to filing, prosecuting and/or maintaining joint patents and to apportion any sale, licensing, sublicensing and/or optioning income derived from the same. NJIT shall have the right of first refusal with respect to the filing, prosecuting and/or maintaining all jointly owned patent applications and for selling, licensing, sublicensing, optioning and/or administering such patent rights. However, nothing herein shall obligate NJIT to file and/or pay for any patent application.

(e) Neither Party shall license and/or commercialize joint patents without the prior written consent of the other, which consent shall not be unreasonably denied. Visiting Scholar/Affiliated Faculty agrees to promptly disclose in writing to NJIT any intellectual property created (conceived and/or reduced to practice) as a result of his/her activities at NJIT. Visiting Scholar/Affiliated Faculty also agrees not to file for any patent(s) related to his/her activities at NJIT or related to any proprietary and confidential material provided by NJIT, without the written permission of NJIT.

(f) Each Party's researchers and/or inventors, including Visiting Scholar/Affiliated Faculty, shall share in any Party's respective portion of royalties resulting from commercialization under each Party's applicable policies and practices.

#### **Article 8 – Publications**

(a) Visiting Scholar/Affiliated Faculty agrees to furnish to NJIT copies of any proposed publication or presentation involving any research and/or invention related to this Agreement at least thirty (60) days in advance of the submission of the same to a journal, editor, or other third party to permit NJIT to: (i) make written comments on said publication; (ii) object in writing to such proposed presentation or proposed publication because there is patentable subject matter which needs protection; or (iii) or because the publication contains an inadvertent disclosure of solely owned confidential information of NJIT. NJIT shall provide Visiting Scholar/Affiliated Faculty with such commentary or objection within thirty (30) days of receiving a proposed publication or forever waive its rights in this regard.

(b) In the event that NJIT makes a timely objection to a proposed publication due to patentable subject matter contained within the same, Visiting Scholar/Affiliated Faculty shall refrain from making such publication or presentation for a maximum of sixty (60) days from the date of receipt of such objection in order for NJIT to file U.S. and/or foreign patent applications.

(c) In the event that NJIT makes a timely objection to a proposed publication due to confidential and/or proprietary information belonging to NJIT patentable subject matter being contained within the same, Visiting Scholar/Affiliated Faculty shall remove such confidential and/or proprietary information from such publication or presentation. The Parties will cooperate to insure that nothing will be disclosed or done that will interfere with patent filings or jeopardize the rights of the Parties with respect to the same.

#### **Article 9 – Duration/Termination**

(a) This Agreement shall continue for a period of twelve (12) months following the Effective Date, unless terminated earlier in accordance with Article 9 (c) below.

(b) The Parties may extend the term of this Agreement through mutual written consent (there is no right to a renewal of the Visiting Scholar/Affiliated Faculty status at the end of the term). Notwithstanding the Parties' failure to execute a formal written extension, the Parties agree to be bound by any and all terms and/or provisions of this Agreement during all subsequent periods in which Visiting Scholar/Affiliated Faculty performs any research and/or activities at NJIT.

(c) This Agreement may be terminated upon: (i) mutual agreement between the Parties; (ii) any Party incurring in breach-of-contract circumstances; and (iii) for any or no reason by NJIT upon written notification to the Visiting Scholar/Affiliated Faculty made at least ten (10) days in advance.

#### **Article 10 - Amendments**

Any agreement to change the terms of this Agreement in any way shall be valid only if the change is made in writing and executed by authorized representatives of the Parties hereto.

#### **Article 11 - Independent Contractors**

The Parties shall be deemed to be independent contractors of one another. No Party is authorized or empowered to act as agent for the other for any purpose and shall not on behalf of the other enter into any contract, warranty, statement, commitment or representation as to any matter. No Party shall be bound by the acts or conduct of the others.

#### **Article 12 – Assignment**

No party may assign this Agreement or any rights under the same to any third party without the prior written consent of the other parties who shall not unreasonably deny any such request.

#### **Article 13 - Settlement of Disputes**

The Parties shall endeavor to settle disputes amicably. In case of disagreement, this Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey (USA), without resort to its choice or conflict of laws principles. Any dispute shall be resolved exclusively in the appropriate division of the Superior Court of New Jersey, Essex County.

#### **Article 14 – Visa Status**

If Visiting Scholar/Affiliated Faculty is not a citizen or Legal Permanent Resident of the U.S., he/she may not conduct the activities covered under this Agreement in B-1 (Visitor for Business) or B-2 (Visitor for Pleasure) status or under the Visa Waiver Program. NJIT will sponsor Visiting Scholar/Affiliated Faculty for J-1 status in the appropriate category, if Visiting Scholar/Affiliated Faculty is eligible for the same. If Visiting Scholar/Affiliated Faculty arrives at NJIT in B-1/B-2 status or under the Visa Waiver Program, this Agreement shall be deemed invalid.

#### **Article 15 – Survival**

Any provision of this Agreement that by its nature is intended to survive termination and/or expiration of this Agreement, including but not limited to Articles 5, 6, 7, 8 and 13, shall survive termination and/or expiration of this Agreement.

#### **Article 16 – Force Majeure**

No Party shall be responsible to the other for failure to perform any of the obligations imposed by this Agreement, provided such failure shall be occasioned by fire, flood, explosion, lightning, windstorm, earthquake, subsidence of soil, failure or destruction, in whole or in part, of machinery or equipment or failure of supply of materials, discontinuity in the supply of power, governmental interference, civil commotion, riot, war, strikes, labor disturbance, transportation difficulties, labor shortage, or any other conditions of whatsoever nature or description beyond their reasonable control.

**Effective Date:** The date of the last signatory below.

**The undersigned parties hereby consent and agree to the contents of this Agreement:**

**Home Institution  
(Individually)**

**Visiting Scholar/Affiliated Faculty**

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

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

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

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

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

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

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

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

**New Jersey Institute of Technology (NJIT)**

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

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

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

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