



# Non-Disclosure Agreement

This **NON-DISCLOSURE AGREEMENT** ("Agreement"), effective as of the date of execution by both parties (the "Effective Date"), is between Worcester Polytechnic Institute ("WPI"), located at 100 Institute Road, Worcester, Massachusetts 01609 and \_\_\_\_\_ (the "Recipient") with offices located at \_\_\_\_\_.

The parties have entered into discussions concerning a potential project, relationship or transaction (the "Project") and, to further these ends, WPI may disclose Proprietary Information (as defined below) to the Recipient to assist the Recipient in evaluating the potential Project. This Agreement covers information disclosed by either party before, on or after the Effective Date.

1. **Proprietary Information.** In the course of evaluating the Project, and if consummated, performing in accordance with the terms to be negotiated for the Project, the Recipient will have access to, among other things, certain of WPI's confidential and proprietary information, in tangible or intangible form. Such information shall be referred to hereinafter as "Proprietary Information" and shall also include any and all other confidential and proprietary information relating to the operations, research, business or plans of WPI; provided, however, that the following information shall not be deemed Proprietary Information: (i) information that has become publicly available (unless made publicly available by breach hereunder by either the Recipient or a Representative (as defined below) of the Recipient; (ii) information that was rightfully received by the Recipient from a source not under obligation of confidentiality to WPI; (iii) information in the possession of the Recipient, in written or other recorded form, prior to disclosure by WPI; (iv) information that is developed by the Recipient independent of any Proprietary Information; and (v) information that WPI has approved in writing for release by the Recipient without restriction. Notwithstanding the foregoing, it shall not be a breach of this Agreement for the Recipient to disclose WPI's Proprietary Information if required to do so under law or in a judicial or other governmental investigation or proceeding, provided the Recipient has been given prior notice to WPI and WPI has sought all available safeguards against widespread dissemination prior to such disclosure. Proprietary Information may be preliminary or incomplete and relate to ideas, technology or products under development or planned for development. PROPRIETARY INFORMATION IS PROVIDED "AS IS." NO WARRANTIES ARE MADE BY WPI. WPI ACCEPTS NO RESPONSIBILITY FOR ANY EXPENSES, LOSSES OR ACTIONS INCURRED OR UNDERTAKEN BY THE RECIPIENT AS A RESULT OF THE RECIPIENT'S USE OF PROPRIETARY INFORMATION. The Recipient acquires no intellectual property rights under this Agreement except the limited rights necessary to evaluate the Project and to perform thereunder if the Project is consummated.

2. **Non-Use and Non-Disclosure.** The Recipient shall hold the Proprietary Information in secrecy and confidence in accordance with the provisions of this Agreement and shall use the Proprietary Information solely for the purpose of evaluating whether to enter into the Project and to perform thereunder if the Project is consummated. The Recipient shall not (i) reverse engineer, decompile or disassemble, or attempt to reverse engineer, decompile or disassemble any product or software code disclosed to the Recipient, or (ii) disclose, divulge, provide or otherwise make available any Proprietary Information, or any portion or summary thereof, to any person, firm, corporation or other entity other than to Recipient's officers, directors, employees, shareholders, accountants, attorneys and agents ("Representatives") on a need-to-know basis, if such persons are bound in writing to the Recipient by confidentiality obligations at least as restrictive as the terms of this Agreement, in order to permit those people to assist the Recipient to evaluate the Project and to perform thereunder if the Project is consummated. In the event that WPI requests in writing, the Recipient shall deliver to WPI all documents and other recordings containing Proprietary Information supplied to the Recipient and all copies thereof and agrees to destroy all notes, summaries, analyses and compilations prepared by the Recipient or for the Recipient's use containing or reflecting any such Proprietary Information.

3. **Ownership of Proprietary Information.** All Proprietary Information shall remain the exclusive property of WPI and nothing in this Agreement, or any course of conduct between the parties shall be deemed to grant to the Recipient any rights in or to the Proprietary Information of WPI, or any part thereof, other than as expressly granted herein.

4. **Remedies.** It is specifically understood and agreed that any breach of this Agreement is likely to result in irreparable injury to WPI and that the remedy at law alone will be an inadequate remedy for such breach, and that in addition to any other remedy it may have, WPI shall be entitled to seek the specific performance of this Agreement by the Recipient and to seek both temporary and permanent injunctive relief (to the extent permitted by law) without the necessity of proving actual damages.

5. **Governing Law.** This Agreement shall be construed under and governed by the laws of the Commonwealth of Massachusetts. The Recipient hereby consents to the personal jurisdiction of the Commonwealth of Massachusetts,

acknowledges that venue is proper in any state or Federal court in the Commonwealth of Massachusetts, agrees that any action related to this Agreement must be brought in a state or Federal court in the Commonwealth of Massachusetts, and waives any objection that may exist, now or in the future, with respect to any of the foregoing.

6. **Waiver; Severability.** The waiver by WPI of a breach or a default of any provision of this Agreement by the Recipient shall not be construed as a waiver of any succeeding breach of the same or any other provision, nor shall any delay or omission on the part of WPI to exercise or avail itself of any right, power or privilege that it has, or may have hereunder, operate as a waiver of any right, power or privilege by WPI. No waiver of any provision of this Agreement shall be effective unless in writing and executed by WPI. If any provision of this Agreement, or the application thereof to any person or circumstance shall, for any reason or to any extent, be invalid or unenforceable, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby, but rather shall be enforced to the fullest extent permitted by law.

7. **Definitive Agreement.** Neither party is legally obligated to go forward with the Project or any other project. Either party may terminate discussions or negotiations with the other party at any time. Either party may engage in discussions or negotiations with third parties, even if such discussions or negotiations relate to possible projects similar or identical to the Project.

AGREED TO as of the Effective Date.

## WORCESTER POLYTECHNIC INSTITUTE

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

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

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

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

(COUNTERPARTY) \_\_\_\_\_

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

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

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

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