

**Marquette University  
Mutual Confidentiality Agreement  
Exchange of Proprietary Information**

To explore possible business relationships between the parties identified below, it is necessary and desirable that the parties disclose to each other confidential and proprietary information, including scientific, technical, research, engineering, manufacturing, product, marketing and trade secret information ("**INFORMATION**").

To protect this INFORMATION, the parties agree that it is necessary that the INFORMATION be kept confidential. Therefore, the parties agree as follows:

- (1) Term. The exchange of INFORMATION will extend for a period of twelve (12) months from the date of signature of the last to sign, unless modified by the parties in writing ("**Term**"). The receiving party's obligations not to disclose or improperly use INFORMATION received during the Term will continue for a period not to exceed five (5) years from the date of disclosure, except for information identified by the disclosing party as a trade secret, in which case the receiving party's obligations will continue indefinitely after this Agreement terminates.
- (2) Identification. The INFORMATION will be either:
  - (a) written and marked "Confidential," "Proprietary" or with words of similar import; or
  - (b) if INFORMATION is orally disclosed, identified as confidential information by the disclosing party at the time of disclosure and confirmed in writing within thirty (30) days of the disclosure.
- (3) Exclusions. INFORMATION subject to the protections in this Agreement will not include any information that:
  - (a) was in the public domain at the time the INFORMATION was received or subsequently falls within the public domain without breach of this Agreement;
  - (b) was known by the receiving party at the time received as can be proven by written documents;
  - (c) is disclosed to others on a non-restricted basis by the disclosing party;
  - (d) is received from a third party having the right to share the information on a non-restricted basis;
  - (e) is independently developed by the receiving party without use or reference to the INFORMATION of the disclosing party; or
  - (f) is required by a statute or court of law to be disclosed.
- (4) Obligations of Receiving Party. The receiving party will:
  - (a) hold and maintain the INFORMATION in strictest confidence for the sole and exclusive benefit of the disclosing party;
  - (b) carefully restrict access to INFORMATION to employees, contractors and third parties who have a need to know, and will require those persons to sign nondisclosure restrictions at least as protective as those in this Agreement;
  - (c) not, without prior written approval of disclosing party, use any INFORMATION for receiving party's own benefit, including any use that would circumvent or compete with Discloser on any research, development or business opportunity, publish, copy, or otherwise disclose to others, or permit the use by others for their benefit or to the detriment of disclosing party;

- (d) apply at least the standard of care for protection of the INFORMATION that the receiving party uses to protect its own similar INFORMATION; and
  - (e) upon request, all written, recorded, graphical, or other tangible INFORMATION, including copies and notes summarizing the INFORMATION, must be returned to the Discloser or destroyed by the Recipient. At the request of the Discloser, the Recipient will furnish a certificate, signed by an officer of the Recipient, certifying that any Confidential Information not returned to the Discloser has been destroyed.
- (5) Confidentiality of Source. If confidentiality does not extend to all or a portion of the INFORMATION disclosed under this Agreement, neither party will have the right to disclose the other party as the source of the excepted INFORMATION unless that right is extended in writing by the disclosing party.
- (6) No License Granted. INFORMATION remains the property of the disclosing party. No license under any patents or proprietary rights in the INFORMATION are granted or implied by the disclosure of INFORMATION under this Agreement.
- (7) Choice of Law. This Agreement will be construed in accordance with the laws of the State of Wisconsin and represents the entire agreement between the parties and will supersede all prior agreements between the parties concerning the INFORMATION.
- (8) Relationship of the Parties. Nothing in this Agreement will be construed as creating an agency, joint venture, partnership or other formal business relationship or association between the parties.
- (9) No Warranties. The parties acknowledge that this Agreement does not obligate either party to disclose any INFORMATION to the other party. Further, the parties agree that all INFORMATION disclosed under this Agreement is provided "AS IS," without any warranty (express, implied or otherwise) regarding its accuracy, completeness or usefulness for any purpose. Each party agrees to rely upon its own investigation, due diligence and analysis in evaluating and satisfying itself regarding INFORMATION disclosed to it by the other party. Neither the disclosing party nor any of its representatives will have any liability to the receiving party, the receiving party's representatives, or to any third parties, directly or indirectly, resulting from or arising out of disclosure to or use by the receiving party of any INFORMATION provided by the disclosing party.
- (10) Right to Enjoin Disclosure. The parties acknowledge that a Recipient's unauthorized disclosure or use of Confidential Information may result in irreparable harm. If there is a breach or threatened breach of this Agreement the Discloser may seek a temporary restraining order and injunction to protect its Confidential Information. This provision does not in any way limit any other remedies available to Discloser in law or in equity.
- (11) Binding Effect. The parties agree that the obligations of confidentiality arising out of this Agreement will be binding upon and inure to the benefit of each party's respective successors or assigns. Moreover, the parties specifically agree that upon a change of control of a party, the party's obligations of confidentiality hereunder remain binding upon that party, and INFORMATION may not be disclosed to that party's new affiliates or parent without the disclosing party's prior express written consent.
- (12) Export Compliance. Each party will comply with the applicable United States' export laws and regulations for any technical data exchanged under this Agreement.
- (13) Assignment. This Agreement may not be assigned in whole or in part without the written consent of the parties. This Agreement may not be amended, nor any obligation waived, except by writing and signed by duly authorized representatives of the parties. All requests for amendments or waivers will be addressed to the respective party's administrative contact identified below.

- (14) Counterparts. This Agreement may be signed in counterparts and an executed original of this Agreement may be delivered by facsimile or electronic mail, which will be binding as an original. The undersigned represent that they are authorized and empowered to sign on behalf of, and bind, their respective party.

<p><b>MARQUETTE UNIVERSITY:</b></p> <p>By: _____          Dr. Carmel Ruffolo          Date: _____          Associate Vice President for Research and Innovation          Zilber Hall          PO Box 1881          Milwaukee, WI 53201-1881          Phone: (414) 288-6925</p>	<p>_____:</p> <p>By: _____          Name: _____          Date: _____          Title: _____          Department: _____          Street Address: _____            City, State, ZIP: _____          Phone: (____) _____          Fax: (____) _____          E-mail: _____</p>
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