

MUTUAL NONDISCLOSURE AGREEMENT

This Mutual Nondisclosure Agreement (the “**Agreement**”) is effective as of _____, 2021 and expires three years from the effective date, between _____, a _____ corporation having a place of business at _____ (“**Company**”), and Marquette University, a Wisconsin non-stock, non-profit corporation, having an address at 1250 W. Wisconsin Avenue, Milwaukee, WI 53233 (“**Marquette**”).

1. **Purpose.** Company and Marquette wish to explore or undertake a variety collaborative activities, including research activity in which Company would support Marquette research directed to _____ (the “**Relationship**”). In connection with the Relationship, each party may disclose or provide to the other party its Confidential Information as the term is defined below. This Agreement is intended to allow the parties to discuss, evaluate and undertake the Relationship while protecting a disclosing party’s Confidential Information against unauthorized use or disclosure.

2. **Definition(s).**

(a) **“Confidential Information”** means and includes any oral, written, graphic or machine-readable information relating to any aspect of the disclosing party’s business or research which is either information not known by actual or potential competitors of the disclosing party or is proprietary information of the disclosing party or its employees, customers or suppliers, whether of a technical nature or otherwise, including information that relates to patents, patent applications, research, product plans, products, algorithms, developments, inventions, methods or processes, including information regarding the physical implementation of designs, drawings, engineering, hardware, software, firmware, markets, regulatory information, medical reports, clinical data and analyses, business plans, agreements with third parties, and services, customers, and marketing or finances of the disclosing party. Confidential Information may be embodied in materials, systems, objects, devices, prototypes, samples, and other tangible items provided by the disclosing party or otherwise made accessible to the receiving party.

3. **Use and Disclosure of Confidential Information.**

(a) **Obligations.**

(i) **Designation:** Written, graphic or machine-readable information or other tangible Confidential Information will be designated in writing or labeled as confidential or proprietary and orally disclosed Confidential Information will be confirmed in writing as confidential or proprietary within a reasonable time (not to exceed thirty (30) days) after the oral disclosure unless under the circumstances the information would appear to a reasonable person to be confidential or proprietary.

(ii) **Restrictions:** The receiving party agrees not to use any Confidential Information disclosed to it by the disclosing party for its own use or for any purpose other than to undertake the Relationship or to carry out discussions concerning the Relationship. The receiving party will not disclose nor permit disclosure of any Confidential Information of the disclosing party to third parties and will only share the information with its directors, officers, employees, students, consultants, and agents who are required to have it to carry out the Relationship or discussions regarding the Relationship. The receiving party will inform its directors, officers, employees, students, consultants, and agents who have access to Confidential Information of the disclosing party that they are bound by this Agreement and will take all reasonable measures to prevent the Confidential Information from falling into the public domain or into the possession of persons other than those persons authorized under this Agreement to have it. These measures will include the highest degree of care that the receiving party uses to protect its own Confidential Information of a

similar nature, which will be no less than reasonable care. The receiving party agrees to notify the disclosing party in writing of any actual or suspected misuse, misappropriation or unauthorized disclosure of Confidential Information that may come to the receiving party's attention.

(b) Exceptions. Notwithstanding the above, the receiving party will have no liability to the disclosing party with regard to any Confidential Information that:

- (i)** is or becomes a part of the public domain without a breach of this Agreement by a receiving party;
- (ii)** is legitimately known by the receiving party, without restriction, at the time of disclosure, as demonstrated by files in existence at the time of disclosure;
- (iii)** is disclosed with the prior written approval of the disclosing party;
- (iv)** is independently developed by the receiving party without any use of the Confidential Information of the disclosing party, as demonstrated by files created at the time of independent development; or
- (v)** Is disclosed pursuant to the order or requirement of a court, administrative agency, or other governmental body; provided, however, that the receiving party will provide prompt notice of the court order or requirement to the disclosing party to enable the disclosing party to seek a protective order or otherwise prevent or restrict the disclosure.

(c) Acknowledgement. Each party recognizes that the other party is collaborating and may in the future collaborate with institutions, companies, and other business entities and individuals with respect to projects that study related technologies in fields or disciplines that are the same or similar to the fields or disciplines implicated by the Relationship. Each party agrees that nothing in this Agreement will impair or inhibit those activities provided that the receiving party does not disclose or use any of disclosing party's Confidential Information in connection with these activities. The terms of this Agreement will not be construed to limit either party's right to independently develop or collaborate with entities without disclosure or use of the other party's Confidential Information. This Agreement does not obligate the parties to enter into any additional agreements.

(d) Third Party Information. Each party recognizes that it has received and will receive confidential or proprietary information from third parties subject to a duty to maintain the confidentiality of the information and to use it only for certain limited purposes ("**Third-Party Confidential Information**"). Insofar as a receiving party is aware of confidentiality obligations, each party agrees to hold all Third-Party Confidential Information in the strictest confidence and not to disclose it to any person, firm, or corporation or to use it except as necessary in carrying out the Relationship or discussions pertaining to the Relationship consistent with the disclosing party's agreement with the third party.

4. Return of Materials. Any materials or documents that have been furnished by a disclosing party in connection with the Relationship, including all tangible or written examples of Confidential Information, will be promptly returned by the receiving party, accompanied by all copies, within ten (10) days after (a) the Relationship has been terminated, rejected, or concluded or (b) the written request of the disclosing party. Alternatively, and especially with regard to any electronically stored information incorporating Confidential Information, the disclosing party may request that the receiving party destroy the Confidential Information and provide the disclosing party with written confirmation that destruction has occurred. Notwithstanding the foregoing, each party may keep one (1) secure archival copy of the other party's Confidential Information received in writing for record-keeping purposes. Further, it is acknowledged that copies that reside on a receiving party's computer system backups will not be destroyed, provided that retention of Confidential Information on backup computer systems beyond the period of protection will not relieve a

receiving party of the non-disclosure and non-use obligations it assumes hereunder.

5. No Rights Granted. Nothing in this Agreement will be construed as granting any rights under any patent, copyright or other intellectual property right of a party, nor will this Agreement grant a receiving party any rights in or to the other party's Confidential Information other than the limited right to use the Confidential Information solely for the purposes of undertaking or determining whether to enter into the Relationship.

6. Term and Termination. This Agreement and the Relationship created thereby may be terminated at any time by either party upon written notice, the notice effective when received. Notwithstanding the foregoing, any provision herein that is intended to be observed and performed by the parties after termination, including the obligations of paragraphs 3 and 4, will survive any termination of the Relationship between the parties or of this Agreement. Specifically, with regard to paragraph 3, the obligations of that paragraph will continue for a period terminating on the later to occur of the date (a) five (5) years following the date of this Agreement or (b) three (3) years from the date on which Confidential Information is last disclosed under this Agreement, unless the Confidential Information constitutes a trade secret, in which case the non-disclosure and non-use obligations will apply to the trade secret until the Confidential Information no longer qualifies as a trade secret or until the disclosing party sends written notice to the receiving party releasing the receiving party from this Agreement, whichever occurs first.

7. Remedies. Upon a breach or a threatened breach of the nonuse and nondisclosure provisions of this Agreement, the parties agree that damages to be suffered by the aggrieved party will not be fully compensable in money damages alone, and accordingly, the aggrieved party or any third party owner of Confidential Information, in addition to other available legal or equitable remedies, will be entitled to an injunction against a breach or threatened breach without any requirement to post bond as a condition of obtaining the relief.

8. Independent Contractors. Each party is an independent contractor with respect to the other, and nothing contained in this Agreement will be deemed to constitute a partnership or joint venture neither party is authorized to serve as an agent of the other party for any purpose.

9. General Provisions.

(a) Successors and Assigns. The terms and conditions of this Agreement will inure to the benefit of and be binding upon the respective successors and assigns of the parties, provided that no Confidential Information of the disclosing party may be shared with the receiving party's successors and assigns without the prior written consent of the disclosing party. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and assigns any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

(b) Severability. If one or more provisions of this Agreement are held to be unenforceable under applicable law, the parties agree to renegotiate the provision in good faith. If the parties cannot reach a mutually agreeable and enforceable replacement for a provision, then the provision will be excluded from this Agreement and the balance of this Agreement will be enforceable in accordance with its terms.

(c) Governing Law. This Agreement and all acts and transactions pursuant hereto and the rights and obligations of the parties will be governed, construed and interpreted in accordance with the laws of the State of Wisconsin, without giving effect to principles of conflicts of law.

(d) Amendment and Waiver. Any term of this Agreement may be amended with the written consent of both parties. Any amendment in accordance with this Section will be binding upon the parties and their respective successors and assigns. Failure to enforce any provision of this Agreement by a party will not constitute a waiver of any term hereof by the party.

(e) **Execution; Counterparts; Facsimile; PDF Signatures.** This Agreement may be executed simultaneously in two or more counterparts, each of which will be considered an original and all of which together will constitute one and the same instrument. Facsimile or PDF signatures received by the other party will be sufficient evidence of the execution of this Agreement and will be treated as originals.

(f) **Entire Agreement.** This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof and merges all prior negotiations and drafts of the parties specifically relating to the confidentiality of information and materials shared by the parties.

Agreed to by:

Company**Marquette University**

By: _____

By: _____

Name: _____

Name: Dr. Carmel Ruffolo

Title: _____

Title: Associate Vice President, Corporate Engagement

Date: _____

Date: _____