

## **NON-DISCLOSURE AGREEMENT**

This **NON-DISCLOSURE AGREEMENT** (this “Agreement”) dated as of the 18<sup>th</sup> day of August, 2021 by and between Poriferous, LLC (Poriferous”), a Georgia Limited Liability Company, and \_\_\_\_\_ with principle offices or residence at \_\_\_\_\_ (each a “Party”, and collectively, the “Parties”).

**WHEREAS**, Poriferous is in the business of developing devices, materials, processes, methods and systems, including but not limited to, medical devices, materials, processed, methods and systems (the “Poriferous Business”).

**WHEREAS**, the Parties desire to exchange certain Confidential Information (defined below) for a limited purpose of entering into a business relationship with each other (the “Purpose”)

**WHEREAS**, the Party disclosing information shall be referred to as Discloser and the Party receiving information shall be referred to as Recipient. Recipient recognizes that Discloser will not disclose its Confidential Information unless Discloser has received certain assurances from Recipient that Recipient will not use or disclose the Confidential Information except as permitted by Discloser and unless Recipient agrees to and acknowledges its obligation to safeguard such Confidential Information against unauthorized use or disclosure; and

**WHEREAS**, in the course of the discussions and negotiations, it has been and will be necessary and desirable for Discloser to disclose (directly or indirectly) to Recipient certain non-public financial, technical and operational information, much of which is considered to be proprietary.

**WHEREAS**, Recipient and Discloser agree as follows:

1. **CONFIDENTIAL INFORMATION.** For the purposes of this Agreement “Confidential Information” shall include all information, processes, systems, methods, inventions (including chemical formulations and processes), technology, technological architecture, diagrams, drawings, descriptions, marketing methods, financials, strategies, marketing and business plans and strategies related to the Discloser’s Business. Confidential Information shall not include any information with respect to which the Recipient can demonstrate by written records that:

a. is generally known to the public at the time of disclosure or become generally know without the Recipient or any of its Representatives violating or breaching any confidentiality obligations under this Agreement.

b. is in the Recipients' or its Representatives' possession at the time of disclosure free of any confidential obligations to any party;

c. becomes known to the Recipient or its Representatives through disclosure by sources other than Discloser without such sources violating any confidentiality obligations to Discloser or any third party; or

d. is independently developed by the Recipient or its Representatives without reference to or reliance upon Discloser 's Confidential Information.

2. **USE AND DISCLOSURE OF CONFIDENTIAL INFORMATION.** The Recipient shall use the Confidential Information received from Discloser only for the Stated Purpose and shall not use it for any other purpose without the prior written consent of Discloser. Recipient shall not disclose Confidential Information to anyone, provided however, that the Confidential Information may be disclosed to the Recipient's officers, directors, employees, counsel, agents, and other advisers (each a "Representative," and collectively, the "Representatives") who have a need to know such information in connection with the Purpose and then only if each such Representative is informed by the Recipient of the confidential nature of such information and agrees to be bound by the undertakings of the Recipients contained herein. The Recipient and its Representatives shall treat the Confidential Information with the same degree of care that they treat their own confidential information of a similar nature and value, which shall not be less than a commercially reasonable standard of care. The Parties shall be responsible for any breach of this Agreement by any of their Representatives. For the avoidance of doubt, "Representatives" shall include Affiliates of Recipient, as well as their respective officers, directors, agents, employees, counsel, and advisers, but shall not include Affiliates of Poriferous. The obligations of confidentiality and non-use contained in this paragraph shall expire pursuant to paragraph 7 of this Agreement.

Recipient shall not share or disclose any information (whether such information falls within Confidential Information or not) that it learns under this Agreement with another manufacturer or company in order to attempt to design or otherwise develop a same or similar product as that envisioned by the Purpose of this Agreement, or that relates to any Poriferous product. Any such sharing or disclosure of information would constitute a breach of this Agreement and would cause irreparable harm to the Discloser and its business. The parties acknowledge that in such event, the Discloser has full availability of all legal remedies to address such breach.

3. **OWNERSHIP OF CONFIDENTIAL INFORMATION.** Recipient acknowledges that Discloser's Confidential Information is and shall remain the sole property of Discloser (including any copyright, trade secret or other intellectual property right therein). The Recipient agrees that it shall not receive any right, title or interest in, or any license or right to use Discloser 's Confidential Information or any patent, copyright, trade secret, trademark or other intellectual property rights therein, by implication or otherwise. Each of the Parties hereto represents,

warrants, and covenants that the Confidential Information that it discloses to the other Party has not been stolen or misappropriated, or otherwise obtained or converted without authorization.

**4. RETURN OF CONFIDENTIAL INFORMATION.** The Recipient shall, upon the written request of Discloser, return to Discloser all Confidential Information received by the Recipient or its Representatives (and all copies and reproductions thereof). Alternatively, upon written permission of Discloser, the Recipient shall destroy all Confidential Information received from Discloser, including all copies and reproductions that are maintained in any medium (e.g., hard copy or electronic form). In addition, the Recipient shall destroy: (i) any notes, reports or other documents created by or on behalf of the Recipient that contain Confidential Information of Poriferous; and (ii) any Confidential Information of Discloser (and all copies and reproductions thereof) which is in electronic form or cannot otherwise be returned to Poriferous. Notwithstanding the return or destruction of the Confidential Information, the Recipient and its Representatives will continue to be bound by their obligations of confidentiality and other obligations hereunder. The Recipient's legal counsel may retain one copy of the Discloser's Confidential Information for archival purposes only.

**5. COMPUTER BACK-UP.** The Recipient may reproduce Confidential Information in the process of backing up computer systems in the normal course of business.

**6. REQUIRED DISCLOSURE.** Notwithstanding anything contained in this Agreement to the contrary, the Recipient is permitted to disclose Confidential Information of Discloser pursuant to a court order or other requirement of a judicial, administrative, or governmental proceeding, or otherwise to the extent required for the Recipient to comply with applicable laws and regulations, provided that, in each instance, the Recipient (i) notifies Discloser of the court order or other requirement promptly after the Recipient becomes aware of the court order or other requirement (unless such notification would be unlawful); (ii) cooperates with Discloser in seeking a protective order or similar relief to protect the confidentiality of the information to be disclosed; and (iii) limits the disclosure to that which is required by the court order or other requirement.

**7. TERM.** This agreement shall be valid for a minimum period of three (3) years from the date of the agreement, and for two (2) years after completion of each transaction or exchange of information, whichever occurs later, with an additional two (2) years automatic roll-over/renewal at the close of each transaction or exchange of information, and thereafter at the end of any roll-over period, without the need for advisement, unless mutually agreed in writing to be terminated by all the Parties, which termination can occur at any moment, and must be acknowledged by notice through certified mail. If notice is not given by a Party within ten (10) days after the beginning of a new roll-over period, it shall be construed that the agreement is in full force, and in effect between the Parties for another two (2) years.

Recipient's duties hereunder to protect Discloser's Confidential Information shall survive expiration or termination of this Agreement and shall expire ten (10) years from the date of disclosure of such Confidential Information by Discloser, or the longest period permitted by applicable law. Expiration of this Agreement and/or of Recipient's duties as set forth above, shall not affect Discloser's proprietary rights in the Confidential Information, all of which are retained herein.

Recipient acknowledges and agrees that its obligations under this Agreement with regard to the trade secrets shall remain in effect for as long as such information remains a trade secret under applicable law.

**8. RETURN OF TANGIBLE INFORMATION.** Recipient will return to Discloser any and all tangible (including without limitation in electronic form) Confidential Information provided to it hereunder by Discloser, and any documents or materials containing or embodying the Confidential Information, including but not limited to all computer programs, specifications, diagrams, documents, notes, plans, drawings, and all copies thereof (whether in its possession or in the possession of any person or entity to whom it disclosed or delivered the Confidential Information), to Discloser upon termination of discussions regarding the proposed business venture or immediately upon Discloser's written request, whichever occurs, first.

**9. ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement between the Parties with respect to the Confidential Information disclosed herein and in connection herewith and supersedes all prior or contemporaneous oral or written agreements concerning such Confidential Information.

**10. SEVERABILITY.** Should any provision of this Agreement be declared or be determined by any court to be illegal or invalid, the validity of the remaining parts, terms, or provisions shall not be affected thereby and said illegal or invalid part, term, or provision shall be deemed not to be a part of this Agreement.

**11. BINDING NATURE OF AGREEMENT.** This Agreement shall obligate the Recipient and its partners, associates, employers, affiliates, subsidiaries, parents, company, nominees, representatives, employees, successors, clients, and assigns, jointly and severally for the terms and conditions stated and agreed to herein. This Agreement shall inure to the benefit of Poriferous and its successors and permitted assigns.

**12. NO REPRESENTATION OR WARRANTY.** The Recipient understands and acknowledges that Poriferous is not making any representation or warranty as to the accuracy or completeness of any Confidential Information furnished by or on behalf of Poriferous. The Recipient agrees that, except as may otherwise be provided for in a definitive agreement regarding the proposed business arrangement, and subject to the terms and conditions of such definitive agreement, neither Discloser nor its Representatives shall have any liability to the Recipient or any of its Representatives resulting from the use of the Confidential Information or

any errors therein or omissions therefrom.

**13. NOTICES.** Any notices, requests for consents, consents or other communications in relation to this Agreement shall be made in writing and addressed to the applicable Party at the address set forth on the signature page of this Agreement, or such other address as either Party may designate to the other in accordance with this section. Any such notice or other communication shall be deemed received upon personal delivery, confirmed facsimile delivery, or on the second day after delivery by reputable courier.

**14. GOVERNING LAWS AND JURISDICTION.** This Agreement shall be governed in accordance with the substantive laws of the State of Georgia, without reference to conflict of laws principles. Any disputes arising out of or related to this Agreement shall be adjudicated exclusively in the federal or state courts located in Coweta County, Georgia.

**15. EXECUTION IN COUNTERPARTS.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**IN WITNESS WHEREOF,** the Parties execute this Agreement as of the date first set forth above.

**X** \_\_\_\_\_

**PORIFEROUS, LLC**

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

Title: \_\_\_\_\_, Poriferous LLC

Address: 535 Pine Road, Suite 206, Newnan, Georgia 30263

**X** \_\_\_\_\_

**RECIPIENT**

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

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

Address: \_\_\_\_\_