

MUTUAL NON-DISCLOSURE AGREEMENT

THIS AGREEMENT (the “**Agreement**”) is made as of the ____ day of _____, 2022 (the “**Effective Date**”) **BETWEEN:**

_____ of _____
[legal name] [address]

AND:

_____ of _____
[legal name] [address]

BACKGROUND:

The above-named parties (each a “**Party**” and together the “**Parties**”) wish to enter into discussions for the purpose of evaluating a potential business transaction between them (the “**Purpose**”), where a Party may disclose confidential information to the other Party that it may consider to be proprietary (and visa-versa).

AGREEMENT:

For good and valuable consideration, the parties agree as follows:

1. Definitions. The following terms shall have the following meaning:

(a) “**Confidential Information**” means any and all information known, used or developed by the Disclosing Party, that is disclosed or made available by the Disclosing Party to the Recipient, whether written, oral, or electronically recorded, including: (a) information the Disclosing Party designates as being confidential or which under the circumstances surrounding disclosure, the Recipient would be expected to know is treated as confidential by the Disclosing Party; (b) information relating to released or unreleased products or services of the Disclosing Party; (c) documentation and specifications related to the marketing or promotion of the Disclosing Party’s products or services; (d) the Disclosing Party’s business policies, financial information, marketing techniques, client and customer lists, supplier names and contact information, sales plans, and sources of business, and information pertaining to the Disclosing Party’s income, profit, profitability, or pricing; (e) the Disclosing Party’s designs, know-how, trade secrets, formulae, drawings, prototypes, inventions, systems, manuals, schematics, software source documents, copyrighted materials, compilations of information, original work, ideas, methods, processes, studies, plans, diagrams, models, and data; (f) any negotiations or discussions or agreements entered into pursuant to this Agreement; and (g) such other information received from others which Disclosing Party is obligated to treat as confidential. Confidential Information includes information of a confidential nature that is disclosed to the Recipient by the Disclosing Party, its related entities, employees, subcontractors, and agents. Confidential Information does not include any of the foregoing which:

- (i) is or becomes a matter of public knowledge through no fault of the Recipient;
- (ii) at the time of disclosure to the Recipient was known to the Recipient free of restriction as evidenced by documentation in the Recipient’s possession;
- (iii) is independently developed by the Recipient as evidenced by its written records or lawfully received free of restriction from another source having the right to so furnish such information; or
- (iv) the Disclosing Party agrees in writing is free of such restrictions.

(b) “**Disclosing Party**” means a Party when it provides Confidential Information.

(c) “**Recipient**” means a Party when it receives Confidential Information.

2. The Recipient recognizes that it may directly or indirectly obtain Confidential Information from the Disclosing Party and, as a result, the Recipient will adhere to the covenants contained in this Agreement.

3. The Recipient will:

- (a) hold in confidence, keep confidential, and not disclose or make available the Confidential Information to any other person, firm or entity except: (i) with the prior written consent of the Disclosing Party; or (ii) to the Recipient's directors, officers, employees, contractors, consultants, and advisors who have a need to know for the purpose of carrying out the business relationship consistent with the Purpose, and who are bound by confidentiality obligations no less protective of the Disclosing Party than this Agreement;
- (b) not copy, reproduce or otherwise retransmit the Confidential Information except in the best interests of the Disclosing Party and for the purpose of furthering the Purpose;
- (c) not use the Confidential Information on its own behalf;
- (d) safeguard all documents against theft, damage or access by unauthorized persons;
- (e) use the same degree of care with respect to the Confidential Information as it employs with respect to its own proprietary or confidential information of like importance (but no less than a reasonable standard);
- (f) use such Confidential Information only for the Purpose and no other purpose; and
- (g) not contact any employees, contractors, clients, landlords related to the Disclosing Party with respect to the Purpose of Confidential Information, without prior written consent of the Disclosing Party.

4. All Confidential Information shall remain the property of the Disclosing Party. Upon termination of the agreement or request of the Disclosing Party, all Confidential Information shall be automatically destroyed or returned to the Disclosing Party including all parties.

5. Each Party acknowledges and agrees that no warranties, indemnities, guarantees or representations, express or implied, are made with respect to any information (whether or not Confidential Information) disclosed under or in connection with this Agreement.

6. This Agreement shall commence on the Effective Date and shall continue for a period terminating one year after of the Effective Date. Effective Date is the date on which Confidential Information is last disclosed under this Agreement (the "Term"). Termination of this Agreement shall not affect the rights and obligations with respect to Confidential Information disclosed hereunder prior to termination.

7. General

7.1 **No Obligation.** Nothing in this Agreement shall constitute an obligation on either Party to enter into any business relationship.

7.2 **Remedies.** The Recipient agrees that unauthorized disclosure or use of the Confidential Information by the Recipient may cause irreparable harm and result in significant commercial damages to the Disclosing Party and that the harm and the damages may be difficult to ascertain. Therefore, the Recipient agrees that the Disclosing Party may seek an immediate injunction enjoining any breach of this Agreement.

7.3 **Survival.** The covenants of the Recipient contained in this Agreement shall survive the termination of this Agreement and the Parties acknowledge and agree that the provisions of and all restrictions contained in this Agreement are reasonable and necessary for the protection of the Disclosing Party's legitimate interests and proprietary rights and are an essential condition of the agreement by the Disclosing Party to disclose the Confidential Information to the Recipient.

7.4 **Binding Nature.** This Agreement shall be binding on and enure to the benefit of the successors and assigns of all Parties and all persons or corporations succeeding to or acquiring the business now carried on by the Parties.

- 7.5 **Jurisdiction and Forum.** This Agreement shall be construed under and governed by the laws of British Columbia and the Parties agree to attorn to the jurisdiction of British Columbia exclusively.
- 7.6 **Compliance with Laws.** Nothing in this Agreement shall be construed to prevent the Parties from complying fully with all applicable laws and regulations (whether now or hereafter in effect) or decisions of public national or international authorities.
- 7.7 **Entire Agreement.** This Agreement constitutes the entire Agreement between the Parties with respect to the subject matter contained herein, and all other agreements, understandings, representations or provisions relating to the subject matter of this Agreement are of no further force and effect and are declared terminated and cancelled.
- 7.8 **No License.** No license to a Party, under any trademark, patent, copyright, industrial design, or any other intellectual property right, is either granted or implied by the conveying of Confidential Information by any Party to any other Party.
- 7.9 **Enurement.** This Agreement shall enure to the benefit of and be binding upon the parties and, except as otherwise provided or as would be inconsistent with the provisions of this Agreement, their respective heirs, executors, administrators, successors and permitted assigns.
- 7.10 **Counterparts.** This Agreement may be signed by the parties in as many counterparts as may be necessary, each of which so signed shall be deemed to be an original and such counterparts together shall constitute one and the same instrument. This Agreement may be executed and delivered by facsimile or electronic mail. An executed copy of this Agreement delivered by facsimile or electronic mail will constitute valid execution and delivery.

AS EVIDENCE OF THEIR AGREEMENT, the Parties have executed this Agreement as of the date and year first above written.

Vendor:

[legal name]

[signature]

Buyer:

[legal name]

[signature]

Return signed NDA to admin@investinkelowna.ca

Contact Carlo Giusto at: 250.801.2129 or email carlo@investinkelowna.ca if you need clarification on the NDA.