

## CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

THIS AGREEMENT entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2020.

### BETWEEN:

**KORITE INTERNATIONAL INC.**, an Alberta corporation (the "**Disclosing Party**")

- and -

[**COMPANY LEGAL NAME, INCLUDING DESCRIPTOR (INC., LTD., CORP.)**], a [corporation/partnership/trust] [incorporated/formed] under the laws of [Province/State] (the "**Recipient**")

- and -

**BDO CANADA LIMITED**, solely in its capacity as the Court appointed monitor of **KORITE INTERNATIONAL INC.**, and not in its personal or corporate capacity (the "**Monitor**", and collectively with the Disclosing Party and the Recipient, the "**Parties**" and each a "**Party**")

### WHEREAS:

- A. pursuant to an order of the Court of Queen's Bench of Alberta (the "**Court**") dated June 30, 2020, as amended and restated from time to time (the "**Initial Order**"): (i) the Disclosing Party was afforded certain protections pursuant to the provisions of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended; and (ii) BDO Canada Limited was appointed the Monitor of the Disclosing Party;
- B. in connection with the Initial Order, on or around July 21, 2020, the Court approved: (i) a sale and investment solicitation process in relation to the assets and/or business operations of the Disclosing Party (the "**SISP**"); and (ii) the retention of Assurgo Enterprises Inc. as the sales agent of the Disclosing Party (the "**Sales Agent**") to carry out the SISP (collectively, the "**SISP Order**");
- C. in connection with the SISP, the Disclosing Party, by way of the Sales Agent and/or the Monitor, wishes to share certain confidential and proprietary information with the Recipient in connection with a potential negotiated transaction between the Disclosing Party and the Recipient (the "**Transaction**"); and
- D. the Disclosing Party has agreed to disclose, and the Recipient wishes to receive, such confidential and proprietary information on the condition that the information be retained in confidence by the Recipient and dealt with according to this Agreement.

**NOW THEREFORE** in consideration of the disclosure of confidential and proprietary information, and of the mutual covenants and agreements of the Parties contained in this agreement and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the Parties agree as follows:

1. In this Confidentiality Agreement (the "**Agreement**"):
  - (a) "**Affiliate**" means, with respect to any specified Person, any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with that specified Person. For the purposes of this definition, "control" (including with correlative meanings, controlling, controlled by and under common control with) means the power to direct or cause the direction of the management and policies of that Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise and, it being understood and agreed that with respect to a corporation or partnership, control shall mean direct or indirect ownership of more than 50% of the voting shares in any such corporation or of the general partnership interest or voting interest in any such partnership.
  - (b) "**Person**" means any individual or entity, including any partnership, body corporate, trust, unincorporated organization, union or governmental entity or authority and any heir, executor, administrator or other legal representative of an individual.
  - (c) "**Related Parties**" means, in reference to a Party, its Affiliates, successors and assigns and each of their respective directors, officers and employees.
  - (d) "**Representatives**" means, in reference to a Party, its and its Related Parties' respective representatives, agents, legal counsel, consultants and advisors, and, for greater certainty, in reference to the Disclosing Party, shall include the Monitor and the Sales Agent.
2. In connection with Recipient's evaluation of a Transaction, the Sales Agent, on behalf of the Disclosing Party, may, in accordance with the terms and conditions of this Agreement, disclose to Recipient certain confidential information relating to the Disclosing Party and its Related Parties. "**Confidential Information**" refers to any and all information acquired by Recipient, its Related Parties, or their respective Representatives from or on behalf of, directly or indirectly, the Disclosing Party, its Related Parties, or their respective Representatives in the course of Recipient's consideration of a Transaction (including information acquired prior to the execution of this Agreement) and related to the Disclosing Party, its Related Parties, or their business, which shall include, without limitation, all agreements, correspondence, financial information, reports, models, data and compilations, client, personal, and financial information, whether provided in oral, written or electronic form, together with analyses, interpretations, compilations, data, studies, notes and any documents prepared by or on behalf of the Recipient, its Related Parties, or their respective Representatives containing or based upon, in whole or in part, information acquired by Recipient, its Related Parties, or their respective Representatives hereunder. Further, and without limiting the generality of the foregoing, the term Confidential Information includes the fact that the Disclosing Party, its Related Parties, and their respective Representatives have furnished information and documents and other materials to the Recipient, its Related Parties, or their respective Representatives, and the existence, nature, content, terms, conditions and status of discussions or negotiations between the Disclosing Party and the Recipient with respect to a Transaction.
3. The Recipient agrees that the Confidential Information shall be kept strictly confidential by itself, its Related Parties, and their respective Representatives, and shall not be sold, traded, published, disclosed or otherwise used in any manner whatsoever, including by means of photocopy or reproduction, without the Disclosing Party's and the Monitor's prior written consent (which consent may be withheld in each of the Disclosing Party's and the Monitor's sole and absolute discretion), except as provided in Sections 4 and 5.

4. Recipient and its Related Parties may disclose Confidential Information without the Disclosing Party's and the Monitor's prior written consent only to the extent that Recipient and its Related Parties can establish that the Confidential Information:
  - (a) is as of the date of this Agreement publicly available or lawfully becomes available to the public other than through the act or omission of Recipient, its Related Parties, or any of their respective Representatives; *provided, however*, that if some portion of the Confidential Information becomes publicly available, the balance of the Confidential Information, whether related or not to said portion, shall not be considered to have become publicly available;
  - (b) is required to be disclosed under applicable law or by court order or by a governmental order, decree, regulation or rule of any stock exchange (provided that Recipient shall give written notice to Disclosing Party prior to such disclosure and shall comply with the requirements of Section 11); or
  - (c) is acquired independently by the Recipient or its Related Parties, without any obligation of confidentiality, from a third party that has the right to disseminate such information without restrictions at the time it is acquired by Recipient or its Related Parties.
5. Recipient shall be entitled to disclose Confidential Information without the Disclosing Party's and the Monitor's prior written consent to the Recipient's Related Parties and their respective Representatives who have a clear need-to-know such information in order to evaluate the Transaction.
6. Recipient shall, upon request, provide the Disclosing Party and the Monitor with a list of all Persons to whom Confidential Information has been provided. Recipient agrees to be responsible for any breach of or failure to adhere to any of the terms of this Agreement by any such Person receiving Confidential Information from the Recipient, its Related Parties or their respective Representatives.
7. Recipient confirms and agrees that it, its Related Parties, and their respective Representatives receiving Confidential Information shall only use or permit the use of the Confidential Information to evaluate the Transaction and determine whether to enter into or continue negotiations concerning the Transaction and for no other purpose whatsoever. Recipient undertakes that none of it, its Related Parties or any of their respective Representatives shall, without the prior written consent of the Disclosing Party and the Monitor (which consent may be withheld in each of the Disclosing Party's and the Monitor's sole and absolute discretion), prior to closing of a Transaction, enter into any discussion or agreement with any Person, other than discussions with the Sales Agent and the Monitor regarding the Transaction, to acquire any separate, joint or subdivided interest in any asset or property potentially forming part of the Transaction.
8. Recipient shall ensure that its Related Parties and their respective Representatives keep all Confidential Information they receive under this Agreement strictly confidential in accordance with the terms of this Agreement, and that no such Person shall disclose or divulge the same to any other Person except in accordance with the terms of this Agreement. In addition to any other rights the Disclosing Party or any of its Related Parties and their respective Representatives may have against Recipient, its Related Parties or their respective Representatives arising by reason of any breach of this Agreement, Recipient shall:

- (a) be liable to the Disclosing Party, its Related Parties and their respective Representatives for all losses, costs, damages and expenses whatsoever which any of them may suffer, sustain, pay or incur; and
- (b) indemnify and hold the Disclosing Party, its Related Parties and their respective Representatives harmless against all actions, proceedings, claims, demands, losses, costs, damages and expenses whatsoever which may be brought against or suffered by any of them or which any of them may suffer, sustain, pay or incur;

as a result of any breach of this Agreement by Recipient, its Related Parties, or their respective Representatives.

- 9. The obligations of the Parties herein shall remain in full force and effect for a period of twenty-four months from the date hereof (notwithstanding that Confidential Information may have been returned or copies or other reproductions thereof destroyed prior to the expiration of such period and whether or not a Transaction is implemented).
- 10. The Recipient agrees that the Disclosing Party and its Related Parties may be irreparably injured by any breach of this Agreement and that the Disclosing Party and its Related Parties or any of them may be entitled to seek equitable relief, including injunctive relief and specific performance, in the event of any breach of this Agreement, without the requirement for the securing or posting of any bond in connection with such relief. Such remedy shall not be deemed to be the exclusive remedy for a breach of this Agreement but shall be in addition to all other remedies available in law or in equity.
- 11. Should any Person seek to legally compel the Recipient, its Related Parties, or any of their respective Representatives receiving Confidential Information to disclose any Confidential Information, Recipient will provide the Disclosing Party and the Monitor with prompt written notice thereof at least five days prior to disclosing any such Confidential Information, so that the Disclosing Party, its Related Parties, and their respective Representatives, or any of them, may seek a protective order or other appropriate remedy. The Recipient shall, and shall cause its Related Parties and any Representative of the Recipient or its Related Parties to, cooperate fully with the Disclosing Party, its Related Parties and their respective Representatives on a reasonable basis to obtain a protective order or other appropriate remedy in response to any attempt by any such Person. In any event, the Recipient or other Person receiving Confidential Information hereunder who is so compelled to disclose will only furnish that portion of the Confidential Information that is legally required to be disclosed.
- 12. To the extent that any one or more of the Recipient, its Related Parties, or their respective Representatives are given physical access to any of the properties or premises owned, leased, used or otherwise held or occupied by any of the Disclosing Party or its Related Parties, Recipient hereby agrees to indemnify, defend and hold harmless the Disclosing Party, its Related Parties and their respective Representatives from and against any and all liabilities, claims and causes of action by Recipient, its Related Parties or their respective Representatives for personal injury, death or property damage occurring on such property or premises as a result of the access to such properties or premises by Recipient, its Related Parties, or their respective Representatives.
- 13. It is understood that neither this Agreement nor the disclosure of any Confidential Information to Recipient, its Related Parties or their respective Representatives shall be construed as granting to any of them any license or rights in respect of any part of the Confidential Information.

14. The Confidential Information shall remain the property of the Disclosing Party and its Related Parties, as applicable, and Disclosing Party, its Related Parties or their respective Representatives may demand the return and/or destruction thereof at any time upon giving written notice to Recipient. Within seven (7) business days of receipt of such notice, Recipient, its Related Parties and their respective Representatives shall return all of the original Confidential Information, destroy all copies and reproductions (both written and electronic) and analyses, interpretations, compilations, data, studies, notes and any documents prepared by or on behalf of Recipient, its Related Parties, or any of their respective Representatives containing or based upon, in whole or in part, Confidential Information, and promptly upon request of the Disclosing Party, Recipient shall cause one of its senior officers to certify such destruction in writing. Notwithstanding the foregoing, the Recipient, its Related Parties and their respective Representatives will not be required to destroy any Confidential Information retained as required by applicable legal, professional or regulatory standards or requirements. Notwithstanding the destruction or return of the Confidential Information, Recipient, its Related Parties and their respective Representatives will continue to be bound by the obligations of confidentiality and all other obligations hereunder during the term of this Agreement.
15. None of the Disclosing Party, its Related Parties, or their respective Representatives make or shall be deemed to make any representations or warranties, express or implied, as to the quality, accuracy or completeness of the Confidential Information disclosed hereunder. The Disclosing Party, its Related Parties, and their respective Representatives expressly disclaim any and all liability for representations or warranties, express or implied, or errors, contained in, or omissions from, the Confidential Information or other material made or to be made as part of the Confidential Information or otherwise. Recipient hereby releases, indemnifies and holds the Disclosing Party, its Related Parties, and their respective Representatives harmless with respect to any use of or reliance upon Confidential Information by Recipient, its Related Parties or their respective Representatives. Recipient acknowledges and agrees that, except as otherwise expressly provided in a written definitive agreement, there are no duties or obligations whatsoever between the Recipient, its Related Parties, or their respective Representatives and the Disclosing Party, its Related Parties, or their respective Representatives, except the duties and obligations expressly provided for under this Agreement. Subject to any definitive agreement entered into, Recipient agrees that it shall rely upon its own investigations, due diligence, assessments and analysis in evaluating the Transaction.
16. No contract or agreement providing for a Transaction to be entered into shall be deemed to exist unless and until a definitive agreement in respect of a Transaction has been executed by the Recipient and the Disclosing Party. Nothing contained herein is intended to confer upon Recipient any right whatsoever to require or force the Disclosing Party to enter into or close a Transaction with Recipient. Recipient understands and agrees that, except as may be otherwise agreed by Recipient and the Disclosing Party in a definitive agreement executed by them in respect of the Transaction:
  - (a) the Disclosing Party and its Representatives shall conduct the process for a possible Transaction in accordance with the SISP Order; and
  - (b) Recipient shall not have any claims whatsoever against the Disclosing Party, its Related Parties or their respective Representatives arising out of or relating to a Transaction.
17. The Recipient shall not, and shall not permit its Related Parties or their respective Representatives to initiate or arrange, directly or indirectly, or maintain contact with:

- (a) any director, officer, employee, contractor or agent of the Disclosing Party or its Related Parties, except for those contacts: (i) which have been identified by the Sales Agent and the Monitor as contacts for the express purpose of facilitating the Transaction and/or the provision of Confidential Information; (ii) made in the ordinary course of business unrelated to the Transaction; or (iii) otherwise with the prior written consent of the Sales Agent and the Monitor; or
  - (b) any customer or supplier of the Disclosing Party or any of its Related Parties regarding the Transaction, the Confidential Information, or any other aspect of the business of the Disclosing Party or its Related Parties, without the prior written consent of the Sales Agent and the Monitor.
- 18. Except to the extent that such solicitation occurs in the context of a Transaction, none of the Recipient, its Related Parties, or any of their respective Representatives shall, for a period of 18 months from the date hereof, directly or indirectly, solicit, for employment or engagement as an independent contractor, any employee, officer, director or contractor (who works exclusively for the Disclosing Party or its Related Parties) of the Disclosing Party or its Related Parties whom the Recipient, its Related Parties or their respective Representatives have become aware of in connection with the Recipient's consideration of the Transaction, except that the foregoing will not prohibit the Recipient from: (a) engaging in general solicitations or advertisements regarding employment; or (b) soliciting or hiring any such person who: (i) responds to any general solicitation placed by the Recipient (including, without limitation, any recruitment efforts conducted by any recruitment agency); or (ii) contacted the Recipient at his or her own initiative without any prior direct solicitation by the Recipient in violation of this Agreement.
- 19. This Agreement and all questions relating to its validity, interpretation, performance and enforcement shall be governed by, and construed, interpreted and enforced in accordance with the laws of the Province of Alberta. The Recipient also hereby irrevocably and unconditionally consents, and shall cause its Related Parties and the Representatives of the Recipient or its Related Parties to irrevocably and unconditionally consent, to submit to the jurisdiction of the courts of competent jurisdiction of the Province of Alberta located in the City of Calgary, Alberta, for any sanctions, suits or proceedings arising out of or relating to this Agreement or the Transaction, and none of the Recipient, its Related Parties, or any of their respective Representatives shall commence any action, suit or proceeding relating thereto except in such courts. The Recipient further agrees that service of process, summons, notice or document by registered mail to the Recipient's address set forth in Section 20 shall be effective service of process for any action, suit or proceeding brought against the Recipient or its Related Parties in any such court. The Recipient hereby irrevocably and unconditionally waives, and shall cause its Related Parties and the Representatives of the Recipient or its Related Parties to irrevocably and unconditionally waive, any objection to the venue of any action, suit or proceeding arising out of this Agreement of the transactions contemplated hereby, in the courts of the Province of Alberta, Canada and hereby further irrevocably and unconditionally waives and agrees, and shall cause its Related Parties and the Representatives of the Recipient or its Related Parties to irrevocably and unconditionally waive and agree, not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum. The Parties expressly waive any right to a jury trial, and shall cause their respective Representatives and Related Parties, and the Representatives of such Related Parties, to expressly waive any right to a jury trial.
- 20. All notices, consents and other instruments which are required or may be given pursuant to this Agreement must be given in writing and delivered personally or by electronic mail as follows:

In the case of the Disclosing Party to:

**Korite International Inc.**

Bay #167  
3953 112<sup>th</sup> Avenue SE  
Calgary, AB T2C 0J4

Attention: Hazel Da Costa  
Tel: (403) 313-5843  
Email: [hazel.dacosta@korite.com](mailto:hazel.dacosta@korite.com)

with a copy to:

**Bennett Jones LLP**

4500 Bankers Hall East  
855 - 2nd Street SW  
Calgary, Alberta T2P 4K7

Attention: Chris Simard/Drew Broughton  
Tel: (403) 298-3317  
Email: [SimardC@bennettjones.com](mailto:SimardC@bennettjones.com); [BroughtonA@bennettjones.com](mailto:BroughtonA@bennettjones.com)

and

**Assurgo Enterprises Inc.**

715 5<sup>th</sup> Ave SW, Suite 1700  
Calgary AB T2P 2X6

Attention: Zsolt Chirvaiu  
Tel: 587-703-6071  
Email: [Zsolt@AssurgoEnterprises.com](mailto:Zsolt@AssurgoEnterprises.com)

In the case of the Monitor to:

**BDO Canada Limited**

110, 5800 – 2nd Street SW  
Calgary, AB T2H 0H2

Attention: Marc Kelly  
Tel: 403-777-9999  
Email: [makelly@bdo.ca](mailto:makelly@bdo.ca)

with a copy to:

**Burnet, Duckworth & Palmer LLP**

Suite 2400  
525-8th Ave SW  
Calgary, Alberta T2P 1G1

Attention: David LeGeyt  
Tel: (403) 260-0210  
Email: [dlegeyt@bdplaw.com](mailto:dlegeyt@bdplaw.com)

In the case of the Recipient to the address set forth on the signature page hereto;

or in accordance with the latest unrevoked instructions delivered by one Party to the other. All notices will be deemed to have been duly given at the time of delivery or, in the case of electronic mail, on the first business day after electronic mailing, as the case may be.

21. Recipient shall not assign this Agreement or any rights and benefits hereunder, in whole or in part to any Person. This Agreement shall enure to the benefit of the Parties and their lawful successors and permitted assigns. The Recipient acknowledges and agrees that the Disclosing Party shall be entitled to assign this Agreement, without notice to, or consent by, the Recipient, to any purchaser of: (a) all or substantially all the assets of the Disclosing Party (whether pursuant to the SISP, or otherwise); or (b) the assets and/or business operations of the Disclosing Party pursuant to the SISP. Any such purchaser shall be entitled to the benefits of this Agreement, whether or not this Agreement is assigned to such purchaser.
22. To the extent that any Confidential Information includes materials subject to solicitor-client privilege or litigation privilege, neither the Disclosing Party nor any of its Related Parties are waiving, and shall not be deemed to have waived or diminished, their solicitor-client privilege, litigation privilege or similar protections and privileges as a result of disclosing any Confidential Information (including Confidential Information related to pending or threatened litigation) to the Recipient, its Related Parties, or any of their respective Representatives.
23. No amendments, changes or modifications to this Agreement shall be valid except if the same are in writing and signed by a duly authorized representative of each of the Parties. No waiver of any provision of this Agreement shall be valid except if provided in writing by a duly authorized representative of the Party proposing to grant the same. Further, no failure or delay by the Disclosing Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof.
24. This Agreement comprises the full and complete agreement of the Parties with respect to the disclosure of the Confidential Information and supersedes and cancels all prior communications, understandings and agreements between the Parties in respect hereof, whether written or oral, expressed or implied. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect. Time is of the essence with respect to this Agreement.
25. The Recipient agrees that Disclosing Party is trustee of the covenants and agreements of Recipient in this Agreement that are for the benefit of the Disclosing Parties' Related Parties and their respective Representatives.



26. This Agreement may be executed and delivered in counterpart and by facsimile or emailed copies, each of which shall be deemed to be an original and all of which, when taken together, shall be deemed to constitute one and the same instrument.

*[Remainder of page left blank. Signature page follows.]*

**IN WITNESS WHEREOF**, the duly authorized representative of each of the Parties has caused this Agreement to be executed on the date first written above.

**Monitor:**

**BDO CANADA LIMITED**

Per: \_\_\_\_\_  
Name: Marc Kelly  
Title: Senior Vice President

**Disclosing Party:**

**KORITE INTERNATIONAL INC.**

Per: \_\_\_\_\_  
Name: Hazel Da Costa  
Title: Controller

**Recipient:**

**[Insert Name]**

Per: \_\_\_\_\_  
Name:  
Title:

**ADD NOTICE INFORMATION:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attention: \_\_\_\_\_  
Tel: \_\_\_\_\_  
Email: \_\_\_\_\_