VITE LLC

[INSERT ADDRESS]

[Add date]

BY EMAIL: [Add email address]

[Add recipient’s address]

[                                      ]

[                                      ]

[                                      ]

Re: Non-Disclosure, Non-Circumvent and Confidentiality Agreement

Dear [Add recipient name]:

VITE LLC], a New York limited liability company (the “Company”), is willing to explore a possible relationship with [Prospective Counterparty] (together with its affiliates, “[Prospective Counterparty]”), concerning [describe the project with enough specificity so that a judge may understand what it is you are seeking to protect, without disclosing the secret sauce] (the “Project”). In connection with the Parties’ evaluation of a possible relationship, each Party has agreed to supply and disclose directly and indirectly to the other Party, certain confidential information, marked or otherwise identified in writing as proprietary or confidential at the time of disclosure, or which by its very nature such Party understands or reasonably should understand is confidential (the “Evaluation Materials”). This letter shall serve to confirm our mutual agreement (the “Agreement”) concerning the delivery, use and disclosure of the Evaluation Materials. The Company and [Prospective Counterparty] are hereinafter referred to individually as a “Party” and, collectively, as the “Parties.” The Party furnishing Evaluation Material is referred to herein as the “Disclosing Party” and the Party receiving the Evaluation Material is referred to herein as the “Receiving Party.”

1. The Receiving Party acknowledges that any and all disclosure of Evaluation Materials, whether disclosed orally, in writing, in digital form or in any other form or format, or by inspection, shall be held by the Receiving Party and its Representatives (as defined below) on a **strictly confidential basis**. Subject to Section 4, all Evaluation Materials shall be considered confidential and proprietary. The Receiving Party also understands that the Disclosing Party would not have disclosed the Evaluation Materials and/or the Project absent the Receiving Party’s and its Representatives’ agreement not to use or disclose the Evaluation Materials in any manner whatsoever, including, but not limited to, any materials or items that are derivative of the Evaluation Materials.
2. The Receiving Party and its Representatives may use the Evaluation Materials only as reasonably necessary to carry out the purpose of this Agreement, and may not use or disclose the Evaluation Materials for any other purpose. The Receiving Party and its Representatives shall not reconstruct or re-compile any Evaluation Materials, or use any similar means to recreate its composition, structure or trade secrets. The Receiving Party and its Representatives shall keep any copies of the Evaluation Materials in a secure location and shall take all steps necessary to prevent the unauthorized disclosure, copying, or use of the Evaluation Materials. Disclosure of the Evaluation Materials to the Receiving Party or its Representatives shall not create any obligation on the Parties to enter into any business or other relationship with each other. Neither Party makes any claims about the accuracy, completeness, or up-to-date character of any Evaluation Materials.
3. In the event that the Receiving Party desires to disclose the Evaluation Materials to any professional advisers, representatives, directors, officers, employees or agents, it may do so only if it first receives the Disclosing Party’s prior written approval of any such persons in each instance, and only if such persons agree prior thereto to abide by the terms of this Agreement. In any event, the Receiving Party shall be responsible for any breach of this Agreement by any of its Representatives.
4. Notwithstanding the foregoing, the Receiving Party's obligation of confidentiality to the Evaluation Materials shall not include information which:
5. at the time of disclosure to the Receiving Party, can be shown by creditable written supporting documentation, was generally known to the public;
6. after such disclosure, becomes generally available to the public other than through any act or omission by the Receiving Party or its Representatives;
7. was lawfully in the possession of the Receiving Party prior to such disclosure, as evidenced by the written records of the Receiving Party, except to the extent unlawfully appropriated;
8. can be demonstrated with credible written documentation was independently developed by the Receiving Party or its Representatives without reference to or use of the Evaluation Materials; or
9. after consultation with counsel, the Receiving Party reasonably believes is required to be disclosed in order to comply with applicable law, regulation (including, without limitation, any rule, regulation or policy statement of any self-regulatory organization of which it is a member) or legal or judicial process, provided that prior written notice of such disclosure is furnished to the Disclosing Party in a timely manner in order to afford the Disclosing Party an opportunity to seek a protective order against such disclosure. The Receiving Party agrees to reasonably cooperate, to the extent requested by the Disclosing Party and at the Disclosing Party’s sole cost and expense, with the Disclosing Party’s efforts to obtain a protective order or to otherwise protect the Evaluation Material from disclosure. In the event such protective order or other remedy is not obtained and disclosure of Evaluation Material is required, or the Disclosing Party grants a waiver hereunder, the Receiving Party or such Representative of the Receiving Party, as the case may be, (i) may, without liability hereunder, furnish that portion (and only that portion) of the Evaluation Material which, in the written opinion of counsel to the Receiving Party or such Representative, as the case may be, the Receiving Party or such Representative is required to disclose by such law, regulation or rule and (ii) shall use reasonable best efforts to have any Evaluation Material disclosed be accorded confidential treatment. In addition, either Party may disclose Evaluation Material to any regulatory authority in response to or pursuant to any audit, examination or request of general supervisory oversight so long as such Party does not have reason to believe that such audit, examination or request is directed specifically at the Evaluation Material.
10. Neither Party nor its Representatives, without the prior written consent of the other Party, shall make any statement or disclosure whatsoever to any third party, including without limitation, an announcement or press release, that relates to any of the specific matters described between the Parties or might imply or reveal, either directly or indirectly, that the matters are or have been under discussion between the Parties.
11. The Receiving Party agrees to indemnify and hold harmless the Disclosing Party from and against any third party actions, claims, or proceedings and any costs, expenses, or other liabilities arising therefrom (including, without limitation, reasonable attorney’s fees and expenses), as and when incurred, as a result of the unauthorized disclosure by the Receiving Party, or any of its advisers, representatives, employees, agents, affiliates, subsidiaries, successors and/or assigns, of any of the Evaluation Materials disclosed to it by the Disclosing Party.
12. If the Disclosing Party has reasonable grounds to believe that the Receiving Party or its Representatives has used the Evaluation Materials for unauthorized purposes or has disclosed such information to unauthorized persons, the Disclosing Party has the right to demand the immediate return of all Evaluation Materials, including all copies thereof, and require their return within three days of such demand.
13. Upon demand by the Disclosing Party, all Evaluation Material, including copies, written notes, photographs, and memoranda, produced or taken by the Receiving Party or any of its Representatives in connection with its investigation of the Disclosing Party, shall be destroyed, provided, however, that the foregoing destruction of information is subject to the Receiving Party’s (and its Representatives’) obligations under applicable laws, rules and regulations (including without limitation, the Securities Exchange Act of 1934, as amended), and its (and their) bona fide internal document retention and business continuity policies and procedures. Upon written request by the Disclosing Party, destruction by the Receiving Party and its Representatives of materials containing Evaluation Material in accordance with the terms of this Agreement shall be certified by an officer of the Receiving Party. Any and all duties and obligations existing under this Agreement shall remain in full force and effect, notwithstanding the destruction of Evaluation Material required by this Paragraph 8, including, without limitation, a Receiving Party’s confidentiality obligations in respect of any Evaluation Material retained in accordance with the terms of this Paragraph 8.
14. The Receiving Party acknowledges and agrees that in the event of its breach of this Agreement, the Disclosing Party will suffer irreparable injuries that cannot be compensated by money damages and therefore the Disclosing Party shall not have an adequate remedy at law. Accordingly, the Disclosing Party may be entitled to a temporary restraining order, or a preliminary and final injunction without the necessity of posting any bond or undertaking in connection therewith to prevent any further breach of this Agreement or further unauthorized use of the Evaluation Materials. This remedy is separate and apart from any other remedy the Disclosing Party may have.
15. The obligations set forth in this Agreement shall be continuing and shall survive the termination of any discussions between the Parties for a period of two (2) years from the date of termination, except with regard to trade secrets of the Parties, which must be held in confidence for as long as such information remains a trade secret under applicable law. The term “trade secrets,” as used in this Agreement, will be given its broadest possible interpretation under the law of the State of New York and will include, without limitation, anything tangible or intangible or electronically kept or stored.
16. Apart from the limited rights described in this Agreement, each Party acknowledges that neither it nor its Representatives shall be entitled to any right or license in respect of the Evaluation Materials of the other Party.
17. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provisions contained herein, and this Agreement shall be construed as if such invalid or unenforceable provision were omitted.
18. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York, without giving effect to the rules governing conflicts of law, and the courts located in New York County, New York shall have exclusive jurisdiction over any and all claims arising hereunder or relating hereto.

[*The remainder of this page intentionally left blank*  
*the following page is a signature page.*]

If the foregoing is acceptable to you, please sign this Agreement where indicated below, and kindly return to me for countersignature.

VITE LLC

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: Cole Pergament

Title: Manager

**AGREED AND ACCEPTED:**

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

[ ], individually, and on behalf of  
[ ]

Date: \_\_\_/\_\_\_/\_\_\_