

## CONFIDENTIALITY AGREEMENT

This CONFIDENTIALITY AGREEMENT (this “Agreement”) is dated as of \_\_\_\_\_, 2020 and is entered into by and between Terracore AgentCo LLC, a Delaware limited liability company (the “Disclosing Party”) and \_\_\_\_\_ (“Recipient”). Recipient and Disclosing Party are sometimes collectively referred to herein as the “Parties” and individually as a “Party.”

WHEREAS, Recipient has requested certain information in order to enable Recipient to evaluate the possibility of acquiring (i) all right, title and interest in and to all of the equity interests in Terracore Operating Company LLC, a Delaware limited liability company (the “Company”), owned by Terracore Intermediate Holdings LLC, a Delaware limited liability company (“Parent”), which interest is purported to constitute one hundred percent (100%) of the total outstanding membership interests in Borrower (said membership interests are hereinafter referred to as the “Terracore Operating Membership Interests”) and (ii) all of Parent’s right, title and interest in that certain Global Intercompany Note, dated June 28, 2019 (“Note”), by and between Parent and Borrower (the “Note” and, collectively with the Terracore Operating Membership Interests, the “Collateral”), on an as-is, where-is, with all faults basis, with no express or implied warranties, representations, statements or conditions of any kind made by Disclosing Party or any other person acting for or on behalf of Disclosing Party, and without any recourse whatsoever to Disclosing Party or any other person acting for or on behalf of Disclosing Party, pursuant to a public sale auction accordance with Section 9-610 of the Uniform Commercial Code as enacted in the State of New York (such auction, the “Auction”, and such potential acquisition, a “Transaction”); and

WHEREAS, Recipient acknowledges and agrees that any Evaluation Material (as defined below) that may be provided by or on behalf of the Disclosing Party or the Company to the Recipient is proprietary and highly confidential and that the unrestricted disclosure of such Evaluation Material would result in substantial and irreparable harm to the Disclosing Party and the Company, which harm would be extremely difficult to quantify.

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereto expressly agree as follows:

1. **Evaluation Material**. The term “Evaluation Material” means any and all information, in any form or medium, whether in oral, written, photographic or graphic form, electronically stored (including all information posted in any electronic data site) or otherwise, concerning or relating to the Company, its business or affairs, the Disclosing Party or their respective affiliates (whether prepared by the Disclosing Party, the Company, their respective Representatives or otherwise, and irrespective of the form or means of communication and whether it is labeled or otherwise identified as confidential), that is furnished to Recipient or its Representatives by or on behalf of the Disclosing Party and/or the Company whether before, on or after the date hereof, including all information relating to financial statements and tax filings, projections, processes, procedures, evaluations, plans, programs, customers, independent contractors, suppliers, costs, facilities, equipment and other assets, services, development plans,

business development, processes, marketing, pricing and sales information, research and development, trade secrets, know-how, patent applications that have not been published, technology and other confidential information and intellectual property of the Disclosing Party and the Company and all information obtained by Recipient or its Representatives in the course of any meetings, management presentations, examinations or discussions, in each case, in connection with a Transaction. In addition, “Evaluation Material” shall include all notes, analyses, studies, interpretations, memoranda and other documents, material or reports (in any form or medium) prepared by or for the Recipient or any of its Representatives that contain, reflect, or are based upon, in whole or part, the Evaluation Material furnished to Recipient or its Representatives as contemplated hereby. Notwithstanding anything to the contrary set forth in this Agreement, the term “Evaluation Material” shall not include information that Recipient can reasonably demonstrate: (a) is or becomes available to the public generally, other than as a result of disclosure by Recipient or any of its Representatives in violation of the terms of this Agreement; (b) is or becomes available to Recipient or any of its Representatives from a source other than the Disclosing Party or any of its Representatives; provided, that such source is not known by Recipient or any of its Representatives to have a contractual, legal, or fiduciary obligation of confidentiality to the Disclosing Party and/or the Company with respect to such information; or (c) was or is independently developed by the Recipient or any of its Representatives without violating its obligations hereunder and without use of, reliance on, or reference to any Evaluation Material.

The term “Representatives” of a person means such person’s Affiliates and such person’s and such person’s Affiliates’ respective directors, officers, employees, accountants, attorneys, consultants, non-exclusive, bona fide debt financing sources and financial advisors; provided, however, that if Recipient is a financial sponsor or private equity firm, the term Affiliates as used in this paragraph shall, without the express prior written consent of Disclosing Party, not include such Recipient's limited partners or portfolio companies.

## **2. Use of Evaluation Material and Confidentiality.**

(a) Recipient agrees that it and its Representatives shall not use the Evaluation Material for any reason or purpose other than solely to evaluate, negotiate and consummate a Transaction. Further, Recipient agrees that it and its Representatives shall keep the Evaluation Material confidential and that neither Recipient nor any of its Representatives shall disclose any Evaluation Material in any manner whatsoever; provided, however, that Recipient may disclose Evaluation Material: (i) to such of its Representatives who (A) need to know such information for the purpose of evaluating, negotiating and consummating a Transaction, (B) are informed in advance by Recipient of the confidential nature of such information and are bound under a similar obligation of confidentiality to Recipient to keep the Evaluation Material confidential, and (C) agree in writing to be bound by the terms of this Agreement as if they were the Recipient hereunder; and (ii) to the extent expressly permitted by this Agreement.

(b) As a condition to the furnishing of Evaluation Material to the Representatives of Recipient, Recipient shall direct its Representatives to treat such information in accordance with the provisions of this Agreement and to perform or to comply with the obligations of Recipient’s Representatives with respect to the Evaluation Material as contemplated hereby. Recipient agrees that it shall be fully responsible for any breach or

threatened breach of any of such provisions of this Agreement by its Representatives and any other person to whom Recipient (or its Representatives) provides any Evaluation Material (including, for the avoidance of doubt, any provisions of this Agreement that Recipient is required to direct its Representatives to comply with as if such Representatives were required to comply with such direction), and, at Recipient's sole expense, Recipient agrees to take all reasonable measures to restrain its Representatives from unauthorized disclosure or unauthorized use of the Evaluation Material. Recipient agrees to promptly notify the Disclosing Party in writing (email being sufficient) of any (i) breach or threatened breach of the terms of this Agreement, (ii) misuse or misappropriation of Evaluation Material by Recipient or its Representatives or (iii) unauthorized disclosure or release of Evaluation Material by Recipient or its Representatives, and to use its commercially reasonable efforts to retrieve the same.

(c) If Recipient or any of its Representatives is required to disclose any Evaluation Material by law, rule (including those of any applicable stock exchange) or regulation (including by way of interrogatories, requests for information or other documents in legal proceedings, subpoena, civil investigative demand or any other similar process to which Recipient or any of its Representatives is subject), Recipient shall provide the Disclosing Party (if not legally prohibited) with prompt written notice of the existence, terms and circumstances surrounding any such requirement so that the Disclosing Party has an opportunity to seek a protective order, or to seek another appropriate remedy at its expense or waive compliance with the provisions of this Agreement. Recipient and its Representatives shall reasonably cooperate with, and shall not oppose, any effort by the Disclosing Party to resist or narrow such requirement or to seek a protective order or other remedy. If the Disclosing Party expressly waives in writing compliance with the provisions of this Agreement with respect to a specific requirement, Recipient and its Representatives shall disclose only that portion of the Evaluation Material that is covered by such waiver and which is necessary in the opinion of counsel to disclose in order to comply with such requirement. If, in the absence of a waiver by the Disclosing Party, the Disclosing Party has not secured a protective order or other appropriate remedy, and Recipient or one of its Representatives is nonetheless then legally compelled to disclose any Evaluation Material, Recipient or such Representative may, without liability hereunder, disclose only that portion of the Evaluation Material that is based on the opinion of counsel necessary to be disclosed; provided, that prior to such disclosure, Recipient or such Representative shall have provided the Disclosing Party with the text of such disclosure as far in advance thereof as is practicable and shall have considered in good faith any suggestions from the Disclosing Party concerning the scope and nature of the information to be disclosed. In the event that disclosure is made in accordance with this Section 2(c), Recipient shall exercise and cause its Representatives to exercise commercially reasonable efforts to preserve the confidentiality of the Evaluation Material, including using reasonable best efforts to obtain reasonable assurances that confidential treatment shall be accorded any Evaluation Material so furnished. Notwithstanding the foregoing, Evaluation Material may be disclosed, and no notice as referenced above is required to be provided, pursuant to requests for information in connection with routine supervisory examinations by regulatory authorities with the jurisdiction over Recipient or its Representatives and not directed at the Disclosing Party, the Company, the Evaluation Material or a Transaction; provided, that Recipient or its applicable Representative inform any such authority of the confidential nature of the information disclosed to them and to keep such information confidential in accordance with such authority's policies and procedures.

(d) If Recipient decides that it does not desire to proceed with a Transaction, then it shall promptly notify the Disclosing Party in writing thereof. In that event, or at any other time upon the request of the Disclosing Party, Recipient shall promptly (and in any event within five (5) business days following such event or request) deliver or cause to be delivered to the Disclosing Party or destroyed (at Recipient's election) all Evaluation Material furnished to it or to any of its Representatives, together with all copies (including electronic copies), extracts or other reproductions in whole or in part of such Evaluation Material, and an officer of Recipient shall certify promptly in writing to the Disclosing Party that all such Evaluation Material has been returned or destroyed; provided, that Recipient and its Representatives may maintain Evaluation Material to the extent required by applicable law or bona fide and established internal document retention policies. Notwithstanding the return, destruction, or preservation of the Evaluation Material as contemplated by this Section 2(d), Recipient and its Representatives shall continue to be bound by the confidentiality and use obligations set forth in this Agreement with respect to information retained for five (5) years following expiration of this Agreement.

(e) Recipient recognizes and agrees that nothing contained in this Agreement, nor any disclosure of Evaluation Material, shall be construed as granting to it or its Representatives any express or implied rights, by license or otherwise, to any Evaluation Material or any patents, copyrights, trademarks, trade secrets or other intellectual property protecting or relating to the Evaluation Material. The information covered by this Agreement is and shall always remain the exclusive property of the Disclosing Party and/or the Company (as applicable), and Recipient and its Representatives acknowledge the right, title and interest of the Disclosing Party and/or the Company (as applicable) in and to its information.

3. **No Liability, Reliance or Obligation.** Recipient acknowledges and agrees that the Disclosing Party is free to conduct any process for a Transaction as it shall determine solely in its discretion. In addition, Recipient understands and acknowledges that neither the Disclosing Party nor any of its Representatives makes or is making, and Recipient and its Representatives are not relying on, any representation or warranty, express or implied, as to the accuracy, timeliness or completeness of any Evaluation Material, and that neither the Disclosing Party nor any of its Representatives shall have any liability whatsoever to Recipient or to any of its Representatives relating to or resulting from the Evaluation Material or any errors therein or omissions therefrom, and neither Recipient nor its Representatives shall make or facilitate in the making of any claims whatsoever against such persons, with respect to, or arising out of, the Evaluation Material or any errors therein or omissions therefrom. Recipient further acknowledges that the information provided in the data site that will be made available to Recipient is limited to information to which Disclosing Party has been provided access and may not, and does not purport to, include all material information about the Collateral, Company, its assets, its liabilities, operations, performance or prospects. The Disclosing Party and its Representatives expressly disclaim any duty (express or implied) to update, supplement, or correct any Evaluation Material disclosed under this Agreement regardless of the circumstances.

4. **Diligence Process.** Recipient shall not, and shall cause its Representatives not to, initiate or maintain direct or indirect contact with the Disclosing Party, the Company or any of their respective Representatives, members, partners, customers, suppliers, distributors, advisors, lenders, or any other person with whom the Company has a business relationship, with respect to or relating in any way to a Transaction, the Evaluation Material, or the business,

operations, prospects or finances of the Company, or in which a Transaction is discussed or referred to directly or indirectly, except by or with the prior written consent of the Disclosing Party and as provided in this Section 4; provided, that such contact that is in the ordinary course of business and does not relate in any way to a Transaction shall not be prohibited. Recipient hereby agrees to submit or direct all (a) communications regarding a Transaction, (b) requests for additional information, (c) requests for facility tours or management or employee meetings or conversations and (d) discussions or questions regarding procedures to the designee or designees of the Disclosing Party, which shall initially be Braunco, Inc. (“Auctioneer”).

5. **Non-Solicitation and Non-Hire of Employees.** Recipient acknowledges that the employees of the Company are a key component to the success of the Company and that the preservation of the employee base of the Company is critical to, among other things, the prospects of the Company. Consequently, Recipient agrees that, for a period of one (1) year from the date hereof, neither it nor its Representatives (and any person acting on behalf of or in concert with it or its Representatives) shall, directly or indirectly, solicit for employment (including any discussion of any possible terms of employment following a Transaction), interfere with the relationship of the Company with, or hire, as an employee, independent contractor, or otherwise, any director, officer or employee of the Company, unless such person (a) has been terminated by the Company for a period of at least six (6) months prior to commencement of employment discussions between Recipient or its Representatives and such person (and only if the non-solicitation provisions contained in this Section 5 were not breached by Recipient or its Representatives at or any time prior to the cessation of employment with respect to such person) or (b) responds to any generalized advertisement or solicitation of employment opportunities not targeted or directed at the employees of the Company.

6. **Remedies.** It is understood and agreed that money damages would not be a sufficient remedy for any breach or threatened breach of this Agreement by Recipient or any of its Representatives and that the Company and the Disclosing Party shall be entitled to equitable relief, including an injunction or injunctions to prevent breaches or threatened breaches of this Agreement and to compel specific performance of this Agreement, without the need for proof of actual damages. Recipient agrees to, and shall cause its Representatives to agree to, waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedies shall not be deemed to be the exclusive remedies for a breach of this Agreement, but shall be in addition to all other remedies available at law or equity to the Company and the Disclosing Party. Recipient agrees not to, and shall cause its Representatives to agree not to, oppose the granting of specific performance and other equitable relief on the basis that the Disclosing Party has an adequate remedy at law or that an award of specific performance is not an appropriate remedy for any reason at law or equity. In the event any Party initiates litigation against the other arising from this Agreement, the prevailing Party, as determined by a court of competent jurisdiction, shall be entitled to reasonable and documented, out-of-pocket attorneys’ fees and costs in connection with such litigation.

7. **Attorney-Client Privilege.** To the extent that any Evaluation Material includes materials subject to the attorney-client privilege, work product doctrine or any other applicable privilege concerning pending or threatened legal proceedings or government investigations, Recipient understands and agrees that the Parties have a commonality of legal interest with respect to such matters and it is their mutual desire, intention and understanding that

the sharing of such material is not intended to, and shall not, waive or diminish in any way the confidentiality of such material or its continued protection under the attorney-client privilege, attorney work product doctrine or other applicable privilege. All Evaluation Material furnished by the Disclosing Party or its Representatives that is entitled to protection under the attorney-client privilege, attorney work product doctrine or other applicable privilege shall remain entitled to such protection under these privileges, this Agreement, and under the common legal interest and joint defense doctrine, and Recipient agrees to take all commercially reasonable measures necessary to preserve, to the fullest extent possible, the applicability of all such privileges and doctrines. Nothing in this Agreement obligates Recipient or the Disclosing Party to reveal material subject to the attorney-client privilege, attorney work product doctrine or any other applicable privilege.

8. **Private Placement; Qualified Institutional Buyer**. Recipient acknowledges that (a) the offering and sale of the Collateral have not been and will not be registered under the U.S. Securities Act of 1933, as amended (the “Securities Act”) or the securities laws of any other jurisdiction and the sale is being made in reliance upon federal and state exemptions for transactions not involving a public offering, (b) the offering and sale of the Collateral is being made only to investors reasonably believed to be “qualified institutional buyers” in reliance on Rule 144A under the Securities Act (“Rule 144A”) and (c) it is hereby notified that the Disclosing Party may be relying on the exemption from the registration requirements of the Securities Act provided by Rule 144A. Recipient represents and warrants that it is acting on its own behalf and not as an agent or broker for another party. Recipient shall not, directly or indirectly through its Representatives or Affiliates, without the prior written consent of the Disclosing Party, act as a broker for, or representative of, or as a joint bidder, co-bidder, joint venture partner or consortium member with, or financing source to, any other person with respect to a Transaction, including any right to participate in any way in a Transaction. Recipient hereby acknowledges that it is aware, and that it will advise such of its Representatives who are informed as to the matters that are the subject of this Agreement, that under various circumstances the United States securities laws prohibit any person who has received from an issuer material non-public information from purchasing or selling securities of such issuer or from communicating such information to any other person under circumstances in which it is reasonably foreseeable that such person is likely to purchase or sell such securities.

9. **Waivers and Amendments**. No failure or delay by either Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other exercise thereof or the exercise of any other right, power or privilege hereunder. No alteration, amendment, change or supplement hereto shall be binding or effective unless the same is set forth in writing signed by a duly authorized representative of each Party. No provision hereof or right hereunder may be waived except by a separate written letter executed by an authorized officer of the waiving Party, which writing expressly waives an identified portion of this Agreement.

10. **Notices**. All notices, demands or other communications to be given or delivered under or by reason of the provisions of this Agreement shall be in writing and shall be deemed to have been given (a) when delivered personally to the recipient, (b) when received by the recipient electronically, (c) one (1) business day after being sent to the recipient by reputable overnight courier service (charges prepaid) or (d) five (5) business days after being mailed to the

recipient by certified or registered mail, return receipt requested and postage prepaid. Such notices, demands and other communications shall be sent to each Party at the address indicated on the signature page to this Agreement or to such other address or to the attention of such other person as the recipient Party has specified by prior written notice to the sending Party.

11. **Choice of Law; Consent to Jurisdiction; Waiver of Trial by Jury.** The validity, interpretation, performance and enforcement of this Agreement shall be governed by the laws of the State of New York without regard to the conflicts of laws principles thereof that would result in the application of the laws of any other jurisdiction. EACH PARTY HEREBY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS SITTING IN THE CITY OF NEW YORK, BOROUGH OF MANHATTAN FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION HERewith OR UNDER THE TERMS OF SALE OR IN CONNECTION WITH ANY TRANSACTION CONTEMPLATED HEREBY OR THEREBY, AND HEREBY IRREVOCABLY WAIVES, AND AGREES NOT TO ASSERT IN ANY SUIT, ACTION OR PROCEEDING, ANY CLAIM, OBLIGATION OR DEFENSE THAT IT IS NOT PERSONALLY SUBJECT TO THE JURISDICTION OF ANY SUCH COURT, THAT SUCH SUIT, ACTION OR PROCEEDING IS BROUGHT IN AN INCONVENIENT FORUM OR THAT THE VENUE OF SUCH SUIT, ACTION OR PROCEEDING IS IMPROPER. EACH PARTY HEREBY IRREVOCABLY WAIVES PERSONAL SERVICE OF PROCESS AND CONSENTS TO PROCESS BEING SERVED IN ANY SUCH SUIT, ACTION OR PROCEEDING BY MAILING A COPY THEREOF TO SUCH PARTY AT THE ADDRESS SET FORTH BELOW SUCH PARTY'S SIGNATURE TO THIS AGREEMENT AND AGREES THAT SUCH SERVICE SHALL CONSTITUTE GOOD AND SUFFICIENT SERVICE OF PROCESS AND NOTICE THEREOF. NOTHING CONTAINED HEREIN SHALL BE DEEMED TO LIMIT IN ANY WAY ANY RIGHT TO SERVE PROCESS IN ANY MANNER PERMITTED BY LAW. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW ANY AND ALL RIGHT SUCH PARTY MAY NOW OR HEREAFTER HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY ACTION, SUIT OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT.

12. **Term.** This Agreement and the Parties' obligations hereunder shall terminate and be of no further force or effect on the date that is two (2) years from the date hereof, except as otherwise specifically provided herein.

13. **Severability.** If any provision or portion of this Agreement should be determined by any court or agency of competent jurisdiction to be invalid, illegal or unreasonable, in whole or in part in any jurisdiction, and such determination should become final, such provision or portion shall be deemed to be severed in such jurisdiction, but only to the extent required to render the remaining provisions and portions of this Agreement enforceable, and this Agreement as thus amended shall be enforced in such jurisdiction to give effect to the intention of the Parties insofar as that is possible, and further, this Agreement shall continue without amendment in full force and effect in all other jurisdictions.

14. **Counterparts.** For the convenience of the Parties, any number of counterparts of this Agreement may be executed by the Parties hereto. Each such counterpart

shall be, and shall be deemed to be, an original instrument, but all such counterparts taken together shall constitute one and the same Agreement. A facsimile or “.pdf” copy of this Agreement or any signatures hereon shall be considered as originals for all purposes.

15. **Successors and Assigns.** The benefits of this Agreement shall inure to the respective successors and assigns of the Parties hereto, and the obligations and liabilities assumed in this Agreement by the Parties hereto shall be binding upon their respective successors and assigns; provided, that Recipient may not assign this Agreement or any of its rights and obligations hereunder without the prior written consent of the Disclosing Party. Any attempted assignment by Recipient without the Disclosing Party’s prior written consent will be of no force and effect. The Disclosing Party reserves the right to assign this Agreement and all of its rights and obligations hereunder, including the right to enforce all of its terms, without Recipient’s prior consent.

16. **Headings; Construction.** The headings to the Sections and subsections contained herein are for identification purposes only and are not to be construed as part of this Agreement. As used in this Agreement, (a) the term “person” shall be interpreted broadly to include any corporation, limited liability company, partnership group, individual or other entity, (b) the word “including” (and all variations) shall mean including without limitation and (c) the term “Affiliate” when used with respect to a person, shall have the meaning given to it in Rule 12b-2 under the U.S. Securities Exchange Act of 1934, as amended. The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement. Any reference to any federal, state, local or foreign statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the Parties hereto have executed or caused this Confidentiality Agreement to be executed by their duly authorized officers as of the day and year first written above.

\_\_\_\_\_

By: \_\_\_\_\_  
Name:  
Title:

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

Attention: \_\_\_\_\_

E-mail: \_\_\_\_\_

**TERRACORE AGENTCO LLC**

By: \_\_\_\_\_  
Name:  
Title:

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

Attention: \_\_\_\_\_

E-mail: \_\_\_\_\_