

NONDISCLOSURE AGREEMENT

This NONDISCLOSURE AGREEMENT (this “**Agreement**”), dated as of January 10, 2023 is entered into between ExampleCo., a Delaware corporation (the “**Company**”), and John Appleseed, a(n) individual based out of Boston, MA, USA (the “**Recipient**”), with reference to the following facts:

A. In the course of exploring a potential relationship and/or transaction(s) with the Company, and in the course of such relationship and/or as a result of such transaction(s) (if applicable), the Recipient desires to and will receive information from the Company as a necessary or advisable adjunct to such activities (collectively, the “**Activities**”).

B. The Recipient appreciates that the Company has expended money and effort to establish a proprietary position with respect to its assets (including, without limitation, information pertaining thereto), and that the Company considers such assets to be its confidential property.

C. In connection with the Activities, the Company is willing to provide the Recipient with certain information but solely on a confidential basis.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants set forth below, the parties hereby agree as follows:

1. “**Confidential Information**” shall mean, collectively:
 - (a) all technical, financial and business information of any kind whatsoever including, where appropriate and without limitation, all data, compilations, blueprints, plans, audio and/or video recordings and/or devices, information on computer disks, software, tapes, printouts and other printed, typewritten or handwritten documents, specifications, systems, schemas, methods, strategies, business and marketing development plans, customer lists, research plans and/or projections, processes, techniques, designs, sequences, components, programs, technology, ideas, know-how, improvements, inventions (whether or not patentable or copyrightable), information about operations and maintenance, trade secrets, formulae, models, patent disclosures, information regarding the skills and compensation of Company employees, information concerning the actual or anticipated business, research or development of the Company or its actual or potential customers or partners, information that is or has been generated or received in confidence by or for the Company by or from any person, and any other information;
 - (b) any and all tangible and intangible embodiments thereof of any kind whatsoever including, where appropriate and without limitation, all compositions, machinery, apparatus, records, reports, drawings, copyright applications, patent applications, documents and samples, prototypes, models, products and the like; and

- (c) any extensions or derivatives thereof of any kind whatsoever,

in each case disclosed by the Company or the representatives of the Company to the Recipient or its representatives or obtained by the Recipient or its representatives through observation or examination of the foregoing.

2. The Company and its representatives may have disclosed certain Confidential Information to the Recipient and its representatives prior to the date of this Agreement, and the Company and its representatives may continue to disclose Confidential Information to the Recipient and its representatives. Each and every such disclosure, whether past, present or future, is subject to the terms and conditions of this Agreement.

3. The Recipient hereby acknowledges that the Company is the owner or licensee of the Confidential Information. The Recipient shall not use any of the Confidential Information at any time except for purposes of the Activities. The Recipient shall not disclose any of the Confidential Information other than on a need to know basis, as reasonably necessary for purposes of the Activities, to representatives of the Recipient who are bound by written agreements with the Recipient to maintain the Confidential Information in confidence and otherwise abide by the provisions of this Agreement.

4. Confidential Information shall not be reproduced in any form except as required for purposes of the Activities. Any reproduction or derivative work of any Confidential Information shall remain the property of the Company and shall contain any and all confidential or proprietary notices or legends that appear on the original, unless otherwise authorized in writing by the Company.

5. Notwithstanding the foregoing, (i) the Recipient shall have the right to disclose Confidential Information to the extent required by applicable law or regulation (provided that the Recipient shall give the Company prompt written notice and sufficient opportunity to object to such disclosure, or to request confidential treatment of the Confidential Information) and (ii) the Recipient's above nonuse and nondisclosure obligations shall not apply to such Confidential Information as the Recipient can establish by written documentation to:

- (a) have been publicly known prior to disclosure to the Recipient by the Company or its representatives;
- (b) have become publicly known, without fault on the part of the Recipient or its representatives, subsequent to disclosure to the Recipient by the Company or its representatives;
- (c) have been received by the Recipient at any time from a source, other than the Company or its representatives, lawfully having possession of and the right to disclose such Confidential Information; or
- (d) have been otherwise known by the Recipient (based upon written records of the Recipient) prior to disclosure to the Recipient by the Company or its representatives.

6. Upon the request of the Company, the Recipient shall promptly (i) return all tangible items relating to the Confidential Information and all copies and derivatives thereof, including, without limitation, all written material, photographs, models, devices, content, compounds, compositions and the like, and (ii) destroy all intangible items relating to the Confidential Information and all copies and derivatives thereof, including, without limitation, all electronic mail, computer files and the like, and thereafter provide the Company with written confirmation of such destruction. Upon the request of the Company, the Recipient shall identify those persons to whom Confidential Information was disclosed.

7. The Recipient shall not disclose to any third party any terms, conditions or facts relating to this Agreement, the subject matter of this Agreement or the parties' entering into this Agreement without the prior express written consent of the Company.

8. The Recipient shall not export, directly or indirectly, any technical data acquired from the Company pursuant to this Agreement or any product utilizing any such data to any country for which the U.S. government or any agency thereof at the time of export requires an export license or other governmental approval without first obtaining such license or approval.

9. The obligations of the Recipient under this Agreement shall continue for a period of five (5) years from the later of (i) the date of this Agreement and (ii) the date of the last disclosure of Confidential Information from the Company to the Recipient. Notwithstanding the foregoing, the confidentiality obligations of Recipient relating to Company trade secrets shall continue for so long as it remains a trade secret under applicable law.

10. The Recipient may not assign this Agreement, whether by operation of law or otherwise, without the prior express written consent of the Company. Without limiting the foregoing, the Recipient's obligations under this Agreement shall be binding upon any successor to the Recipient or the business of the Recipient (whether by merger, stock purchase, asset purchase or otherwise).

11. This Agreement shall not be construed to grant any license or other rights except as expressly specified herein. The Company makes no warranty whatsoever relating to the Confidential Information and the use to be made thereof by the Recipient, and the Company disclaims all implied warranties.

12. This Agreement represents the entire agreement between the parties regarding the subject matter hereof and shall supersede all previous communications, representations, understandings, acknowledgements and agreements, whether oral or written, by or between the parties with respect to the Confidential Information, whether heretofore or hereafter disclosed to the Recipient.

13. No change, modification, extension, termination or waiver of this Agreement, or any of the provisions herein contained, shall be valid unless made in writing and signed by duly authorized representatives of the parties hereto.

14. The Recipient shall hold harmless and indemnify the Company, as well as the shareholders, officers, directors, employees, agents and representatives of the Company, from

and against any and all claims, judgments, obligations, costs, awards, expenses (including, without limitation, reasonable attorneys' fees and costs) and liabilities of every kind arising from any use made by the Recipient of the Confidential Information.

15. The Recipient shall be responsible for any breach of the provisions of this Agreement by the representatives of the Recipient (including, without limitation, any directors, officers and employees to whom Confidential Information is disclosed pursuant to Section 3).

16. This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to the conflicts of law principles thereof. This Agreement has been negotiated by both parties and shall not be strictly construed against either party.

17. Each party understands and agrees that, because of the unique nature of the Confidential Information, the Company will suffer irreparable harm if the Recipient fails to comply with any of its obligations under this Agreement, and monetary damages will be inadequate to compensate the Company for such breach. Accordingly, the Recipient agrees that the Company shall, in addition to any other remedies available to the Company at law or in equity, be entitled to injunctive relief to enforce the terms of this Agreement without posting a bond or other undertaking.

18. The covenants and agreements set forth in this Agreement are each deemed separate and independent, and if any such covenant or agreement is determined by any court of competent jurisdiction to be invalid or unenforceable for any reason, including, without limitation, by reason of such covenant or agreement extending for too great a period of time or over too great a geographical area, or by reason of its being too extensive in any other respect, such covenant or agreement, to the specific extent that it is unenforceable, shall be deemed automatically deleted from this Agreement and shall be interpreted to extend only over the maximum period of time and geographical area, and to the maximum extent in all other respects, as to which it is valid and enforceable, in order to effectuate the parties' intent to the greatest extent possible. Any such deletion or interpretation shall have no effect on the validity or enforceability of any remaining provision of this Agreement.

19. This Agreement may signed in one or more counterparts. A facsimile or e-mail transmission of a signed version of this Agreement shall be legal and binding on the applicable party.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date first written above.

The Company:

EXAMPLECO, INC.

By: 

Name: Jane Doe

Title: CEO & Co-Founder

Recipient:

JOHN APPLESEED

By: 

Name: John Appleseed

Title: Strategic Advisor