

# NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT

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This Non-Disclosure and Confidentiality Agreement (this "Agreement") is entered into as of \_\_\_\_\_ (the "Effective Date") by and between ISABEL TECHNOLOGIES, INC., a Delaware corporation ("First Party") and \_\_\_\_\_, as an Individual ("Second Party"). First Party and Second Party may each be referred to in this Agreement individually as a "Party" and collectively as the "Parties."

The Parties are evaluating or pursuing a business relationship with the Company (the "Transaction"). In connection with the Transaction, each Party, their respective affiliates and their respective directors, officers, employees, agents or advisors (collectively, "Representatives") may provide or gain access to certain confidential and proprietary information. A Party disclosing its Confidential Information to the other Party is hereafter referred to as a "Disclosing Party." A Party receiving the Confidential Information of a Disclosing Party is hereafter referred to as a "Receiving Party." In consideration of the mutual promises and covenants set forth in this Agreement, the Parties hereby mutually agree as follows:

**1. Confidential Information.** The term "Confidential Information" as used in this Agreement shall mean any data or information that is competitively sensitive material and not generally known to the public, including, but not limited to, information relating to any of the following: product development and plans; marketing strategies; design; improvements; business plans; present or future business activities; finance; operations; systems; processes; procedures; supplier lists; supplier relationships; supplier profiles; proprietary concepts; computer software; source code; object code; inventions; know-how; trade secrets; technical information; customer list; customer relationships; customer profiles; pricing; sales estimates; performance results; and any other information the Disclosing Party considers confidential.

**2. Exclusions from Confidential Information.** The obligation of confidentiality with respect to Confidential Information will not apply to any information:

- a. If the information is or becomes publicly known and available other than as a result of prior unauthorized disclosure by Receiving Party or any of its Representatives;
- b. If the information is or was received by Receiving Party from a third party source which, to the best knowledge of Receiving Party or its Representatives, is or was not under a confidentiality obligation to Disclosing Party with regard to such information;
- c. If the information is disclosed by Receiving Party with the Disclosing Party's prior written permission and approval;
- d. If the information is independently developed by Receiving Party prior to disclosure by Disclosing Party and without the use and benefit of any of the Disclosing Party's Confidential Information; or
- e. If Receiving Party or any of its Representatives is legally compelled by applicable law, by any court, governmental agency or regulatory authority or by subpoena or discovery request in pending litigation but only if, to the extent lawful, Receiving Party or its Representatives give prompt written notice of that fact to Disclosing Party prior to disclosure so that Disclosing Party may request a protective order or other remedy to prevent or limit such disclosure and in the absence of such protective order or other remedy, Receiving Party or its Representatives may disclose only such portion of the Confidential Information which it is legally obligated to disclose.

**3. Obligation to Maintain Confidentiality.** With respect to Confidential Information:

- a. Receiving Party and its Representatives agree to retain the Confidential Information of the Disclosing Party in strict confidence, to protect the security, integrity and confidentiality of such information and to not permit unauthorized access to or unauthorized use, disclosure, publication or dissemination of Confidential Information except in conformity with this Agreement;
- b. Receiving Party and its Representatives shall adopt and/or maintain security processes and procedures to safeguard the confidentiality of all Confidential Information received by Disclosing Party using a reasonable degree of care, but not less than that degree of care used in safeguarding its own similar information or material;
- c. Upon the termination of this Agreement, Receiving Party will ensure that all documents, memoranda, notes and other writings or electronic records prepared by it that include or reflect any Confidential Information are returned or destroyed as directed by Disclosing Party;
- d. If there is an unauthorized disclosure or loss of any of the Confidential Information by Receiving Party or any of its Representatives, Receiving Party will promptly, at its own expense, notify Disclosing Party in writing and take all actions as may be necessary or reasonably requested by Disclosing Party to minimize any damage to the Disclosing Party or a third party as a result of the disclosure or loss; and
- e. The obligation not to disclose Confidential Information shall survive the termination of this Agreement, and at no time will Receiving Party or any of its Representatives be permitted to disclose Confidential Information, except to the extent that such Confidential Information is excluded from the obligations of confidentiality under this Agreement pursuant to Paragraph 2 above.

**4. Non-Disclosure of Transaction.** Without Disclosing Party's prior written consent, neither Receiving Party nor its Representatives shall disclose to any other person, except to the extent, the provisions of Paragraph 2 apply: (a) the fact that Confidential Information has been made available to it or that it has inspected any portion of the Confidential Information; (b) the fact that Disclosing Party and Receiving Party are having discussions or negotiation concerning the Transaction; or (c) any of the terms, conditions or other facts with respect to the Transaction.

**5. Representatives.** Receiving Party will take reasonable steps to ensure that its Representatives adhere to the terms of this Agreement. Receiving Party will be responsible for any breach of this Agreement by any of its Representatives.

**6. Disclaimer.** There is no representation or warranty, express or implied, made by Disclosing Party as to the accuracy or completeness of any of its Confidential Information. Except for the matters set forth in this Agreement, neither Party will be under any obligation with regard to the Transaction. Either Party may, in its sole discretion: (a) reject any proposals made by the other Party or its Representatives with respect to the Transaction; (b) terminate discussions and negotiations with the other Party or its Representatives at any time and for any reason or for no reason; and (c) change the procedures relating to the consideration of the Transaction at any time without prior notice to the other Party.

**7. Remedies.** Each Party agrees that use or disclosure of any Confidential Information in a manner inconsistent with this Agreement will give rise to irreparable injury for which: (a) money damages may not be a sufficient remedy for any breach of this Agreement by such Party; (b) the other Party may be entitled to specific performance and injunction and other equitable relief with respect to any such breach; (c) such remedies will not be the exclusive remedies for any such breach, but will be in addition to all other remedies available at law or in equity; and (d) in the event of litigation relating to this Agreement, if a court

of competent jurisdiction determines in a final non-appealable order that Receiving Party, or any of its Representatives, has breached this Agreement, Receiving Party will be liable for reasonable legal fees and expenses incurred by Disclosing Party in connection with such litigation, including, but not limited to, any appeals.

**8. Notices.** All notices given under this Agreement must be in writing. A notice is effective upon receipt and shall be sent via one of the following methods: delivery in person, overnight courier service, certified or registered mail, postage prepaid, return receipt requested, addressed to the Party to be notified at the below address or by facsimile at the below facsimile number or in the case of either Party, to such other Party, address or facsimile number as such Party may designate upon reasonable notice to the other Party.

**9. Termination.** This Agreement will terminate on the earlier of: (a) the written agreement of the Parties to terminate this Agreement; (b) the consummation of the Transaction; or (c) 2 years from the date hereof.

**10. Amendment.** This Agreement may be amended or modified only by a written agreement signed by both of the Parties.

**11. Jurisdiction.** This Agreement will be governed by and construed in accordance with the laws of the State of California, without regard to the principles of conflict of laws. Each Party consents to the exclusive jurisdiction of the courts located in the State of California for any legal action, suit or proceeding arising out of or in connection with this Agreement. Each Party further waives any objection to the laying of venue for any such suit, action or proceeding in such courts.

**12. Miscellaneous.** This Agreement will inure to the benefit of and be binding on the respective successors and permitted assigns of the Parties. Neither Party may assign its rights or delegate its duties under this Agreement without the other Party's prior written consent. In the event that any provision of this Agreement is held to be invalid, illegal or unenforceable in whole or in part, the remaining provisions shall not be affected and shall continue to be valid, legal and enforceable as though the invalid, illegal or unenforceable parts had not been included in this Agreement. Neither Party will be charged with any waiver of any provision of this Agreement, unless such waiver is evidenced by a writing signed by the Party and any such waiver will be limited to the terms of such writing.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first written above.

ISABEL TECHNOLOGIES, INC.		ERIC HAGER CEO
_____ <b>First Party</b> Full Name	_____ <b>First Party Representative</b> Signature	_____ <b>First Party Representative</b> Name and Title
_____ <b>Second Party</b> Signature	_____ <b>Second Party Representative</b> Signature	_____ <b>Second Party</b> Full Name

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## GENERAL INSTRUCTIONS

Confidentiality Agreements or NDA (Non-Disclosure Agreements) are commonly used when one or both parties have valuable information. In order to turn that great idea into cash flow, both parties want to explore a possible collaboration or business relationship.

### WHAT IS A NON DISCLOSURE AGREEMENT?

A Confidentiality Agreement or NDA is a written document that officially recognizes a legally binding relationship between two parties — a Disclosing Party and a Receiving Party. Both parties understand the information is sensitive, technical, or nonpublic and is valuable for commercial or other purposes.

Further, the two parties promise that they will not use or disclose the protected information with anyone else as they discuss and explore the possibility of entering into a business relationship with each other.

A simple Confidentiality Agreement or NDA will identify the following basic elements: The “Effective Date”, The “Transaction”, The “Confidential Information”, The “Disclosing Party”, The “Receiving Party”, The “Representatives”.

### WHAT SHOULD BE INCLUDED?

A simple NDA should generally have at least the following:

#### 1. Who is on the hook? (the “Parties”)

The Disclosing Party, either a person or a company, usually has valuable information that they want to share with the Receiving Party in order to explore a potentially fruitful business relationship (i.e. the “Transaction”).

Both parties should sign and date the Confidentiality Agreement or NDA for it to become a legally binding document.

#### 2. What is Protected? (the “Confidential Information”)

Any data or information that is private, secret, sensitive, or valuable will be protected. Confidential information can include: proprietary information, trade secrets, unpublished patent applications, financial information, marketing materials, tangible and intangible information, written and verbal representations and communications, etc.

#### 3. For how long is everyone on the hook? (the “Effective Date” and “Disclosure Period”)

The Confidentiality Agreement or NDA should also spell out when the promises to protect information begin (the “Effective Date”) and for how long the protected information must not be shared with others (the “Disclosure Period”).

Usually the parties agree to when the Confidentiality Agreement or NDA will end (the “Termination” provision). For example, the Agreement could terminate whenever the Agreement expires, the Transaction is completed; or a specific amount of time has passed.

#### 4. Where the Agreement applies? (the “Jurisdiction”)

If a problem grows into a lawsuit, the parties should agree that the laws of one state apply. In other words, both parties consent to appear in a specific state.

It is important to know that some states like California encourage employees to be entrepreneurial so the laws there disfavor non-compete clauses (also known as a “covenant not to compete” or CNC) and employer NDAs that restrict an employee’s mobility after leaving one company.

#### 5. What other details should be included in a Confidentiality Agreement or NDA?

A Confidentiality Agreement or NDA may also cover useful details such as : Disclaimer, No License, Non-Disclosure, Obligations, No Obligation, Remedies, Notice.