



## NON-DISCLOSURE AGREEMENT

<b>Effective Date:</b>	_____
<b>Company:</b>	_____
<b>Company Principal Address:</b>	_____
<b>Hercules:</b>	Hercules Capital, Inc., a Maryland corporation
<b>Hercules Principal Address:</b>	400 Hamilton Avenue, Suite 310, Palo Alto, CA 94301

This Agreement is made as of the Effective Date by and between Hercules and Company.

Hercules is a specialty finance company primarily focused on providing debt and equity growth capital to technology-related companies, including cleantech, life science and select lower middle market companies. Hercules wishes to engage in discussions with Company, and Company wishes to provide certain information to Hercules, for the purposes of exploring a potential business relationship between Hercules and Company.

**Nothing in this Agreement, or in the course of dealings between Hercules and Company, creates or implies any commitment by Hercules to consider, evaluate or enter into a business relationship or consummate any transaction with Company.**

In consideration of the foregoing, Hercules and Company hereby agree as follows:

### 1. Definition of Information.

- a) As used herein, "Information" means information relating to Company's business, technology, know-how, inventions (whether patented or not), trade secrets, business and product plans, business relationships, forecasts, financial results or requirements and product development plans that is provided by Company to Hercules and that is:
  - i) reduced to writing and marked as "Confidential"; or
  - ii) presented by Company to Hercules in a manner such that a reasonable person would deem the information confidential.
- b) For the avoidance of doubt, "Information" does not include information that:
  - i) is in the public domain at the time it is disclosed to Hercules or that enters the public domain through no improper action or inaction by Hercules;
  - ii) was in the possession of or known to Hercules prior to Company providing such information to Hercules or that subsequently becomes known to Hercules from a third party;
  - iii) is rightfully disclosed to Hercules or any third party not in violation of the rights or obligations of Hercules or another person or entity, or
  - iv) is required by law, regulation or its auditors to be disclosed by Hercules.

### 2. Agreements. Hercules agrees:

- a) to maintain Information in confidence and to take all reasonable precautions to protect Information in a manner similar to the precautions Hercules takes with respect to its own confidential and proprietary information;
- b) to use Information solely for the purpose of evaluating whether to enter into a business relationship with Company;
- c) not to disclose Information to any third party except:

- i) as authorized in writing by Company;
- ii) to Hercules' agents and employees for the purposes of assisting Hercules; or
- iii) to Hercules' lenders/trustees as required under any financing arrangements among Hercules, its affiliates and such lenders/trustees; *provided that* such lender/trustee is bound by confidentiality provisions that contain use and nondisclosure restrictions at least as protective as those in this Agreement;
- d) upon Company's request, to return or destroy all documents and other tangible media containing Information and any copies of the same; *provided that* Hercules may retain copies of such documents and other tangible media for audit and regulatory purposes; and
- e) that Information (if any) will be disclosed solely in Company's discretion and nothing in this Agreement requires Company to disclose any information to Hercules.

3. **Term.** This Agreement will remain in full force and effect until the earlier of

- a) two (2) years from the Effective Date; and
- b) the entry into definitive transaction documents between Hercules and Company that provide for the treatment of Information.

4. **Non-Disclosure.** Except to the extent required by law, neither Hercules nor Company will disclose the existence or subject matter of this Agreement, including any potential business relationship or transaction.

5. **Entire Agreement; Amendment.** This Agreement supersedes all prior discussions and writings and constitutes the entire agreement between the parties with respect to the protection, use and disclosure of Information. No waiver or modification of this Agreement will be binding on either party unless made in writing and signed by duly authorized representatives of both parties.

6. **Governing Law; Arbitration; Damages.** This Agreement will be governed and construed in accordance with the laws of the State of California, without regard to conflicts of law provisions thereof. All disputes under this Agreement will be resolved by binding arbitration conducted under the rules, and by a three-person panel, of the American Arbitration Association of San Francisco. Hercules will not be liable under any circumstances for any special, consequential or punitive damages.

**AGREED TO AND ACCEPTED:**

**HERCULES CAPITAL, INC.**

**Company:** \_\_\_\_\_

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

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_