



Non-Disclosure Agreement

THIS AGREEMENT made this _____ day of _____, 20____ by and between Hercules Capital, Inc. ("Hercules") with a principal office at 400 Hamilton Avenue, Suite 310, Palo Alto, CA 94301, and
(the "Company") with a principal office at _____

Whereas, Hercules wishes to engage in discussions with Company for the purposes of exploring a potential business relationship involving Company and Hercules; and

Whereas, 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; and

Whereas, Company wishes to provide certain information to Hercules for the purposes of exploring a potential business relationship between Company and Hercules;

NOW, THEREFORE, in consideration of the foregoing and the agreements entered into herein, Hercules and Company hereby agree as follows:

1. Company may disclose and may in the future disclose certain information relating to its 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 to Hercules (collectively, "Information").
2. Hercules agrees (a) to maintain the Information in confidence and to take all reasonable precautions to protect such Information in similar manner to the precautions Hercules takes with respect to its own confidential and proprietary information; (b) to use such Information solely for the purpose of evaluating whether to enter into a business relationship with Company; and (c) not to provide copies of materials provided to Hercules by Company to any third party except (i) as may be authorized in writing by Company, (ii) to such agents and employees, of Hercules who require access to such Information for the purposes of assisting Hercules or (iii) to any of Hercules' lenders or trustees as required under any financing arrangements among Hercules, its affiliates and such lenders or trustees provided that such lender or trustee executes a written agreement (or is bound by confidentiality provisions) that contain use and nondisclosure restrictions at least as protective as set forth in this Agreement.
3. Hercules shall have no obligation whatsoever hereunder or otherwise with regard to any Information which (a) is in the public domain at the time disclosure to Hercules or which thereafter enters the public domain through no improper action or inaction by Hercules, (b) Information which was in the possession of or known to Hercules prior to its receipt thereof or which subsequently becomes known to Hercules from third parties, (c) is rightfully disclosed to Hercules or any third party by any person not in violation of the rights or obligations of Hercules or another person or entity, and (d) is required by law or regulation or its auditors to be disclosed by Hercules, e.g., court order.
4. Upon the request of Company at any time, Hercules will return or destroy all documents and other tangible media containing any of Company's Information and any copies of the same; provided however, Hercules may retain a copy for audit and regulatory purposes.
5. Hercules understands and agrees that (a) nothing herein requires the disclosure of any confidential information of Company which will be disclosed, if at all, solely at the discretion of Company or (b) requires Hercules to proceed with any proposed transaction or relationship in connection with which Information may be disclosed. Nothing contained herein or in the course of dealings between the parties shall create or imply any commitment on the part of Hercules to consider, evaluate or enter into a business relationship with Company. The parties hereby agree that only that Information which (i) is reduced to writing and which is marked as "Confidential" or (ii) a reasonable person would deem confidential, shall be considered Information protected by this Agreement.
6. This Agreement shall remain in full force and effect until the earlier of (a) two (2) years from the date of this Agreement or (b) the date of the execution and delivery of any transaction or finance documents among the parties hereto which relates to the treatment of the Information referred to above.

7. Except to the extent required by law, neither party hereto shall disclose the existence or subject matter of the relationship contemplated hereunder or the possibility of entering into a business relationship in Company.
8. 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 such party.
9. This Agreement shall be governed and construed in accordance with the internal laws of the State of California, without regard to conflicts of law provisions thereof. All disputes under this Agreement shall be resolved by binding arbitration conducted under the rules, and by a three-person panel, of the American Arbitration Association of San Francisco. In the event of a breach of any provision of this Agreement, Hercules will not be liable for any special (other than out-of-pocket), consequential or punitive damages.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

Hercules Capital, Inc.

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____