

MUTUAL PROPRIETARY NON-DISCLOSURE AGREEMENT

This agreement is made and entered into effective as of _____, 2011, between **Procerus Technologies LC**, a Utah LLC ("**Procerus**") having offices at 500 South Geneva Rd., Vineyard, UT 84058, and _____, a _____ company ("**Promisor**") with offices at _____, agree to the following terms and conditions for the protection, use and disclosure of Proprietary Information.

1. **Purpose.** Procerus is the exclusive license holder and developer of Kestrel™ Autopilot, Virtual Cockpit™, and OnPoint™ Technologies and other products it may develop from time to time. Procerus and Promisor wish to pursue business possibilities of mutual interest. In connection with this, each party may disclose to the other party technical and business information which the disclosing party considers to be proprietary and confidential. In order to facilitate an open exchange of information, the parties desire to provide a means for determining which information is Confidential and Proprietary and entitled to protection against unauthorized use or disclosure, and to define the respective rights and duties of the parties with respect to such Confidential and Proprietary information. This disclosure is not an offer for sale. This agreement in no way obligates either party to disclose any information to the other, and such disclosures shall be at the sole discretion of the disclosing party. Nothing herein shall obligate either party to proceed with any transaction between them, and each party reserves the right, in its sole discretion, to terminate the discussions contemplated by this agreement concerning the business opportunity.

2. **Definition of Confidential and Proprietary Information.** "Confidential and Proprietary Information" means any and all information, materials, technical data, or know-how, related to business, its plans or strategies, potential business and methods of operation, of Procerus or Promisor and their products, services, discoveries, inventions, ideas, trade secrets, techniques, know-how, products and technologies whether or not patentable, designs, drawings, specifications, techniques, formulations, standards, equipment, or finances of the disclosing party, its business and assets which is disclosed to, or learned or acquired by, the receiving party during the term of this Agreement and/or in the course of the business relationship, discussions and negotiations contemplated hereby. Confidential and Proprietary Information given in written form shall be designated in writing to be Confidential and/or proprietary, and Confidential and Proprietary Information given orally or by inspection of products or samples, or otherwise, shall be identified as confidential at the time of disclosure and confirmed in writing within fifteen (15) days after such disclosure as being Confidential and/or proprietary. Such written documentation shall identify the Confidential and Proprietary Information and shall reference the place and date of such oral disclosure or inspection, and the names of the employees or officers of the party to which such disclosure was made. Notwithstanding the foregoing, Confidential and Proprietary Information shall not include information, materials, data or know-how which (i) is in the possession of the receiving party at the time of disclosure as shown by the receiving party's files and records immediately prior to the time of disclosure; (ii) prior or after the time of disclosure becomes public knowledge or part of public literature, not as a result of any inaction or action of the receiving party; (iii) is disclosed to the receiving party by another third party having the right to disclose such information without any violation of any rights or obligations to, the disclosing party; or (iv) is approved for release by written authorization of the disclosing party; or (v) is independently developed by the receiving party.

3. **Disclosure/Receipt Responsibility.** Each Party agrees to designate in writing a specific individual as the point of contact for disclosing and/or receiving written Confidential and Proprietary Information transmitted between the Parties. The point of contact for each Party is as follows:

From Procerus Technologies LLC: Todd Titensor, (801) 224-5713

For [company]:

4. **Non-Disclosure of Confidential and Proprietary Information.** Each of Procerus and Promisor agrees not to use the Confidential and Proprietary Information of the other party for its own use, the use of others, or for any purpose except to carry out the business relationship, discussions and negotiations referenced above. Neither party will disclose the Confidential and Proprietary Information of the other to any third parties or to its employees, associates or affiliates, except those employees who have a ‘need to know’ the Confidential and Proprietary Information to pursue the business relationship between the parties and related discussions and negotiations. Each party shall require all persons to whom Confidential and Proprietary Information of the other party is disclosed to sign a non-disclosure agreement in content substantially similar to this Agreement. Each party agrees that it will take all reasonable steps to protect the confidentiality of, and to avoid unauthorized disclosure or use of the Confidential and Proprietary Information of the other to prevent it from falling into the public domain or the possession of unauthorized persons. Without limiting the generality of the foregoing, each party agrees to take the same steps and use the same methods to prevent the unauthorized use or disclosure of the Confidential and Proprietary Information received from the other party as it takes to protect its own Confidential and Proprietary Information. Each party agrees to notify the other in writing of any misappropriation or misuse by any person of such Confidential and Proprietary Information of the other which may come to its attention. The fact that this Agreement has been entered by and among the undersigned, the nature, purpose, and details of this Agreement or any of the negotiations entered into pursuant to this Agreement disclosed by the undersigned, shall also constitute Confidential and Proprietary Information. Neither party shall include references to the other party or their disclosures in advertisements, press releases, or other disclosures without express written consent of the other party. The Kestrel programmable autopilot is Protected by U.S. Patent 7,302,316.

5. **Exceptions to Liability for Disclosure.** A Receiving Party shall not be liable to a Disclosing Party claiming a proprietary interest for disclosure of Confidential and Proprietary Information if the same is disclosed as required by judicial or governmental requirement or order or is otherwise required by law, provided the Party claiming the proprietary interest (i) promptly notifies the other Party of such requirement or action, (ii) takes reasonable steps as requested by the other Party, at the other disclosing party’s expense, to contest such requirement or order or otherwise protect the other Party’s rights prior to the disclosure of the Confidential and Proprietary Information, and (iii) limits the scope of the disclosure of Confidential and Proprietary Information to the greatest extent permitted.

6. **Return of Material.** Any materials or documents which are furnished by one party to the other will promptly be returned, accompanied by all copies and reproductions, regardless of storage or print media, of such documentation, at the earlier of the disclosing party’s request for return of the materials or the termination of the relationship between the parties.

7. **License, Patent or Copyright Infringement.** Neither the execution of this Agreement nor the furnishing of any information hereunder shall be construed as granting, either expressly or by implication, or otherwise, any license under any invention or patent or other intellectual property now or hereafter owned by or controlled by the disclosing Party. None of the information which may be submitted or exchanged by the Parties shall constitute any representation, warranty, assurance, guarantee, or inducement by a Party to the other Party or Parties with respect to the infringement of patents, copyrights, trademarks, trade secrets, or any other rights of third persons.

8. **Relationship of Parties.** Nothing in this Agreement shall grant to a Party the right to make commitments of any kind for, or on behalf of, another Party. This Agreement is not intended to be, nor shall it be construed as, a joint venture, teaming relationship, partnership, or other formal business arrangement, and no Party shall have the right or obligation to share any of the profits or bear any of the losses of another Party under any contract or subcontract performed in conjunction herewith. This Agreement shall not be construed in any manner to be an obligation to enter into a subcontract or contract or to result in any claim whatsoever by one Party against another for reimbursement of cost for any effort expended.

9. **Term.** Except as provided below, the foregoing commitments in this Agreement shall terminate five (5) years following the date of this Agreement. Procerus and Promisor further agree that the obligations of non-disclosure of Confidential and Proprietary Information shall survive termination of this Agreement and shall continue until the Confidential, Trade Secrete, and Proprietary Information is no longer Confidential and Proprietary.

10. **Export.** Technical data disclosed hereunder may be subject to U.S. Dept. of State ITAR laws and regulations. Accordingly, the receiving party shall not transfer technical data received under this Agreement to any foreign person, country, foreign subsidiary or parent corporation, without specific written authorization from the disclosing party and pursuant to an appropriate U.S. Government agency license. Further, the receiving party does assure the disclosing party it will not disclose technical data received hereunder to any employee, consultant or subcontractor employee not holding United States citizenship or granted admission or permanent residence in the United States under the Immigration and Nationality Act, as amended (8 USC 1101 et seq.). At time of disclosure, parties will make clear, prior to disclosure, any technical data that falls under ITAR regulations.

11. **Non-Solicitation.** The receiving party acknowledges that the disclosing party's employees, agents, representatives, independent contractors, or other representatives have been entrusted with considerable information that may be utilized to the detriment of the disclosing party. The receiving party, therefore, agrees that it shall not approach or solicit, either directly or indirectly, nor otherwise attempt to entice any of the disclosing party's employees, agents, representatives, independent contractors, or other representatives to leave the employment or service of disclosing party.

12. **Injunction.** Each party acknowledges and agrees that, due to the unique nature of the other party's Confidential and Proprietary Information, remedies at law may be inadequate to protect the disclosing party against an actual or threatened breach of this Agreement by the receiving party and that any such breach may result in irreparable harm to the disclosing party, and that, therefore, upon any such breach or any threat thereof, the disclosing party shall be entitled to seek appropriate equitable relief, including injunctive relief and specific performance, in addition to any other rights and remedies the disclosing party might have at law. The receiving party shall notify the disclosing party in writing immediately upon the occurrence of any unauthorized release of Confidential and Proprietary Information, whether inadvertent or otherwise, and shall use reasonable efforts to prevent or limit any further dissemination of such Confidential and Proprietary Information.

13. **Entire Agreement; Amendment.** This Agreement, which shall be interpreted and enforced in accordance with the laws of the State of Utah, constitutes the entire Agreement between the parties with respect to the subject matter hereof, and it is expressly agreed that any and all prior understandings or agreements between the parties relating to the subject matter of this Agreement, whether oral or written, are automatically canceled by the execution of this Agreement. The terms and conditions set forth herein may only be modified in a subsequent writing signed by the parties. If any portion of this Agreement is held to be invalid, such decision shall not affect the validity of the remaining portions.

14. **Limitation of Liability.** Any and all costs or expense incurred by a Party arising from its performance of this Agreement shall be borne by the Party which incurred same, and no Party shall be liable or obligated to another Party for said cost or expense. No claims arising under or relating to this Agreement, including, but not limited to, the performance of work, shall be made by any Party against another Party, except for claims relating to the violation of obligations under this Agreement. In the event any proceeding or lawsuit is brought by a Party against another Party for violation of obligations under this Agreement, the prevailing Party shall be entitled to recover its costs and reasonable attorneys' fees from the other Party.

15. **Miscellaneous.** This Agreement is binding upon and for the benefit of the undersigned parties, their successors and assigns, provided that access to Confidential and Proprietary Information may not be assigned without the prior written consent of the disclosing party. Failure to enforce any provisions of this Agreement shall not constitute a waiver of any term hereof.

IN RECOGNITION OF THE ABOVE, the Parties have caused this Agreement to be executed on the dates set forth below.

Procerus Technologies LLC
500 South Geneva Rd
Vineyard, UT 84058
801-224-5713 (main)
801-437-0182 (fax)

Company or individual name
Address
City _____, State _____, Zip _____
Phone
Fax

Signed: _____

Signed: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____