

MUTUAL NONDISCLOSURE AGREEMENT

This **MUTUAL NONDISCLOSURE AGREEMENT** is dated as of the date of last signature below (“Effective Date”) by and between _____ (“Spinneraker”) and _____ (“Company”) and governs the disclosure and use of information by the parties (including Affiliates).

For the purpose as stated in Section 3 below, Spinneraker and Company have established terms governing the use and protection of Information (as defined in Section 2 below) that one party (“Discloser”) may disclose to the other party (“Recipient”). The parties agree as follows:

1. Affiliates. This agreement is intended to cover the contracting parties, and their affiliates. For purposes of this agreement, “Affiliate” means, any person or entity that is directly or indirectly controlled by, under common control with, or that controls a party to this Agreement. For purposes of this definition, “controls,” “control” and “controlling” mean the direct or indirect ownership or control (whether through contract or otherwise) of shares entitled to more than fifty percent (50%) of the vote for the election of directors in the case of corporate entities and in the case of non-corporate entities, more than fifty percent (50%) of the equity interest with the power to direct management policies, or the direct or indirect power to direct or cause the direction of the management or policies of the party. In the event any party’s Affiliate discloses any Information hereunder, all references to “Discloser” in this agreement shall include that Affiliate, and in the event any Affiliate receives any Information hereunder, all references to “Recipient” in this agreement shall include that Affiliate.

2. Information Defined. “Information” means all information disclosed by the Discloser to the Recipient, whether in written or other tangible, visual or oral form, in connection with the parties’ discussions related to the Purpose stated in Section 3 below. Information includes, without limitation, all information disclosed by the Discloser (a) that should reasonably have been understood by Recipient to be proprietary and confidential to Discloser or to a third party, because of legends or other markings, the circumstances of disclosure or the nature of the information itself and (b) information of or relating to Discloser’s products, source code, object code, drawings, know-how, formulas, designs, processes, products, ideas, inventions and other technical, business and financial plans, processing information, pricing information, specifications, research and development information, customer lists, the identity of any customers or suppliers, forecasts and any other information relating to any work in process, future development, forecasts, manufacturing plans, marketing plans, strategies, financial matters, personnel matters, present or future products, investors or business operations of Discloser, as well as the terms of this agreement.

3. Purpose. Recipient may use the Information only for the purpose of entering into certain discussions evaluating whether to enter into a business arrangement with Discloser (“Purpose”).

4. Obligations. Recipient will, at all times and notwithstanding any termination or expiration of this agreement, hold in strict confidence and not disclose to any third party the Information of Discloser. Recipient will use such Information for no purpose other than the Purpose. Notwithstanding the above, Recipient shall not be in violation of this Section 4 with regard to a disclosure that was in response to a valid order by a court or other governmental body, provided that Recipient provides Discloser with prior written notice of such disclosure in order to permit Discloser to seek confidential treatment of such information. Recipient shall only permit access to Information of Discloser to those Recipient employees or authorized representatives having a need to know and who have signed confidentiality agreements or are otherwise bound by confidentiality obligations at least as restrictive as those contained herein. Recipient shall immediately notify Discloser upon discovery of any loss or unauthorized disclosure of the Information of Discloser.

5. **Exceptions.** Recipient's obligations under this agreement with respect to any portion of Discloser's Information shall terminate if and when Recipient can prove by clear and convincing evidence that such information: (a) was publicly available at the time it was communicated to Recipient by Discloser; (b) becomes publicly available after it was communicated to Recipient by Discloser through no fault of Recipient; (c) was in Recipient's possession free of any obligation of confidence at the time it was communicated to Recipient by Discloser; (d) was rightfully communicated to Recipient free of any obligation of confidence subsequent to the time it was communicated to Recipient by Discloser; or (e) was developed by employees or agents of Recipient independently of and without reference to any Information of Discloser.

6. **No Licenses.** Recipient understands and agrees that nothing contained in this agreement shall be construed as granting any property rights, by license or otherwise, to any Information of Discloser, or to any invention or any patent, copyright, trademark, or other intellectual property right that has issued or that may issue, based on such Information.

7. **Restrictions.** Information shall not be reproduced in any form except as required to further the Purpose. Any reproduction of any Information of Discloser by Recipient shall remain the property of Discloser and shall contain any and all patent, copyright, trademark, and other proprietary rights notices and confidentiality legends which appear on the original, unless otherwise authorized in writing by Discloser. Recipient will not modify, reverse engineer, decompile, create other works from, or disassemble any such products without the prior written consent of Discloser.

8. **Term and Termination.** This agreement shall commence on the Effective Date and shall continue until terminated. This agreement may be terminated by either party at any time upon ten (10) days written notice to the other party. Recipient's obligations with respect to use and disclosure of Information under this agreement shall survive termination of the agreement and continue in full force and effect until and unless the applicable Information falls within an exception set forth in Section 5. Upon termination or expiration of the agreement, or upon written request of Discloser, Recipient shall promptly return to Discloser all documents and other tangible materials representing Discloser's Information and all copies thereof.

9. **Irreparable Harm; Injunctive Relief.** Recipient acknowledges that any actual or threatened material breach of this agreement by Recipient will constitute immediate, irreparable harm to Discloser for which monetary damages would be an inadequate remedy, and entitle Discloser to obtain immediate injunctive relief, as well as such further relief as may be granted by a court of competent jurisdiction, without the requirement of posting bond. If any legal action is brought to enforce this agreement, the prevailing party will be entitled to receive its attorneys' fees, court costs, and other collection expenses, in addition to any other relief it may receive.

10. **Severability.** If any provision of this agreement is found by a proper authority to be unenforceable or invalid such unenforceability or invalidity shall not render this agreement unenforceable or invalid as a whole and in such event, such provision shall be changed to the minimum extent necessary and interpreted so as to best accomplish the objectives of such provision within the limits of applicable law or applicable court decisions.

11. **No Export.** Recipient shall not export, directly or indirectly, any technical data acquired from Discloser under 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.

12. **Notices.** All notices or reports permitted or required under this agreement shall be in writing and shall be delivered by personal delivery, electronic mail, facsimile transmission or by certified or registered

mail, return receipt requested, and shall be deemed given upon personal delivery, five (5) days after deposit in the mail, or upon acknowledgment of receipt of facsimile transmission. Notices shall be sent to the addresses set forth at the end of this agreement or such other address as either party may specify in writing.

12.1 General. This agreement shall be governed by and construed in accordance with the laws of the _____ without reference to conflict of laws principles. This agreement may not be amended except by a writing signed by both parties hereto. Neither party will assign or transfer any rights or obligations under this agreement without the prior written consent of the other party. Any assignment in violation of this provision will be void. This agreement will be binding upon Recipient's valid heirs, successors and assigns. This agreement sets forth the entire understanding and agreement of the parties with respect to the subject matter hereof and supersedes all other oral or written representations and understandings.