

This Confidentiality Agreement ("Agreement") is made and effective the \_\_\_\_\_ by and between Wandara Consulting ("Consultant") and \_\_\_\_\_ ("Company").

## **1. Confidential Information.**

Consultant proposes to disclose certain of its confidential and proprietary information (the "Confidential Information") to Company. Confidential Information shall include all data, materials, products, technology, computer programs, specifications, manuals, business plans, software, marketing plans, business plans, financial information, sales and customer information and lists, and other information disclosed or submitted, orally, in writing, or by any other media, to Company by Consultant (See section A below). Confidential Information disclosed orally shall be identified as such within five (5) days of disclosure. Nothing herein shall require Consultant to disclose any of its information.

### **A. Confidential Information and Materials**

a) "Confidential Information" shall mean any nonpublic information that the Consultant specifically marks and designates, either orally or in writing, as confidential or which, under the circumstances surrounding the disclosure, ought to be treated as confidential or which the Consultant creates or produces in the course of performing services for the Company. "Confidential Information" includes, but is not limited to, product schematics or drawings, descriptive material, specifications, software (source code or object code), sales and customer information, the Company's business policies or practices, information received from others that the Company is obligated to treat as confidential, and other materials and information of a confidential nature.

(b) "Confidential Information" shall not include any materials or information which the Company shows: (i) is at the time of disclosure generally known by or available to the public or became so known or available thereafter through no fault of the Consultant; or (ii) is legally known to the Consultant at the time of disclosure by the Company; or (iii) is furnished by the Company to third parties without restriction; or (iv) is furnished to the Consultant by a third party who legally obtained said information and the right to disclose it.

(c) "Confidential Materials" shall mean all tangible materials containing Confidential Information, including without limitation drawings, schematics, written or printed documents, computer disks, tapes, and compact disks (CD), whether machine or user readable.

## **2. Company's Obligations.**

A. Company agrees that the Confidential Information is to be considered confidential and proprietary to Consultant and Company shall hold the same in confidence, shall not use the Confidential Information other than for the purposes of its business with Consultant, and shall disclose it only to its officers, directors, or employees with a specific need to know. Company will not disclose, publish or otherwise reveal any of the Confidential Information received from Consultant to any other party whatsoever except with the specific prior written authorization of Consultant.

B. Confidential Information furnished in tangible form shall not be duplicated by Company except for purposes of this Agreement. Upon the request of Consultant, Company shall return all Confidential Information received in written or tangible form, including copies, or reproductions or other media containing such Confidential Information, within ten (10) days of such request. At Company's option, any documents or other media developed by the Company containing Confidential Information may be destroyed by Company. Company shall provide a written certificate to Consultant regarding destruction within ten (10) days thereafter.

## **3. Term.**

The obligations of Company herein shall be effective **1 (one) year** from the date Consultant last discloses any Confidential Information to Company pursuant to this Agreement. Further, the obligation not to disclose shall not be affected by bankruptcy, receivership, assignment, attachment or seizure procedures, whether initiated by or against Company, nor by the rejection of any agreement between Consultant and Company, by a trustee of Company in bankruptcy, or by the Company as a debtor-in-possession or the equivalent of any of the foregoing under local law.



**12. No Implied Waiver.**

Either party's failure to insist in any one or more instances upon strict performance by the other party of any of the terms of this Agreement shall not be construed as a waiver of any continuing or subsequent failure to perform or delay in performance of any term hereof.

**13. Attorneys' Fees.**

In the event of a breach by any party with respect to the subject matter of this Agreement, the prevailing party shall be entitled to all of its costs and expenses, including reasonable attorneys' fees and costs incurred in resolving or settling the dispute. These costs and expenses shall be in addition to any other damages to which the prevailing party may be entitled.

**14. Headings.**

Headings used in this Agreement are provided for convenience only and shall not be used to construe meaning or intent.

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

**COMPANY:**

\_\_\_\_\_  
Name Address

By:

\_\_\_\_\_  
Signature Name Title Date

**CONSULTANT:**

Wandara Consulting 4830 Teton Pl, Colorado Springs, Co. 80918  
Name Address

By:

\_\_\_\_\_  
Signature Name Title Date