



Professional Services Terms and Conditions

The following documents the terms and conditions for the delivery of WolfePak Services including training, implementation services, conversion services and custom software development (the “Agreement”).

1. **SERVICES TO BE PROVIDED BY WOLFEPAK**

1.1. **Services.** WolfePak agrees to perform services for Customer as documented in one or more Statements of Work and incorporated herein by reference (“Services”).

1.2. **Contract Coordinators and Project Managers.**

(a) **Contract Coordinators.** In each Statement of Work, Customer shall identify a Contract Coordinator who shall be responsible for coordination with WolfePak and who shall have authority to execute amendments to a Statement of Work, initiate Requests for Changes, and execute Change Orders, as defined in Section 1.3 below, and shall assure timely completion by Customer of its responsibilities related to the Statement of Work. WolfePak shall also identify a Contract Coordinator with the same requirements/responsibilities.

(b) **Project Manager.** In each Statement of Work, Customer shall identify a Project Manager who shall be responsible for coordination of the Services under the Statement of Work with respect to all day-to-day dealings relating to such Projects (defined in Section 1.4 below). WolfePak shall also identify a Project Manager with the same requirements/responsibilities. The Project Managers shall meet regularly to review the status of the Project. Such regular meetings may be in person, via tele- or video-conference, or other agreed upon methods.

1.3. **Cooperation.**

(a) Customer agrees to provide WolfePak with such information, materials, and technology owned or controlled by Customer, as WolfePak reasonably requires in order to perform the Services for Customer. Customer further agrees to obtain for WolfePak the right to use, for the purpose of performing the Services for Customer, such third-party information, materials, and technology as WolfePak reasonably requires in order to perform the Services for Customer.

(b) As between Customer and WolfePak, all such materials provided or made available to WolfePak shall be the property of Customer and shall be considered Customer Confidential Information as defined below.

(c) Customer also understands that WolfePak’s provision of the Services may depend upon the completion of certain tasks by Customer or the adherence by

Customer to one or more schedules in completing its tasks as to be set forth in one more Statements of Work. Consequently, the schedule for completion of the Services by WolfePak may require adjustments or changes in the event such Customer tasks or schedules change, are modified, or are not completed as anticipated. All such changes shall be governed by the change control process described in Section 1.4 below.

(d) WolfePak shall have no liability or otherwise be responsible for delays in the provision of the Services caused by: (i) Customer's personnel or contractors not completing tasks assigned to them timely or accurately; or (ii) events outside the control of WolfePak, as such failures are reported in accordance with Subsection (e) below, provided that WolfePak took all commercially reasonable steps to mitigate the delays caused by such failures.

(e) If WolfePak determines that: (i) Customer's personnel or contractors are not completing tasks assigned to them timely or accurately; or (ii) events outside the control of WolfePak could or will cause delays or increased costs in completing a Project, then WolfePak shall notify Customer's Contract Coordinator in writing of such circumstances in (i) or (ii) promptly. WolfePak shall have no liability or otherwise be responsible for delays in the provision of the Services caused by Customer's such circumstances, provided that Customer's Contract Coordinator was notified in writing of such events on a timely basis as described above.

1.4. Project Management Processes

(a) Provision of Development Services. WolfePak shall perform the Services to the extent agreed upon by the parties for a particular Customer project set forth in a Statement of Work (the "Project"). With respect to each Project, the parties shall agree in writing upon supplemental terms and conditions applicable to the performance of the Project including, for example and without limitation, (i) a price and milestone payment schedule, (ii) a Project performance schedule, including the appropriate work steps and phases, (iii) applicable specifications, (iv) functional and detailed design specifications, and (v) a schedule of those items or tasks to be performed by WolfePak which must be approved by Customer or performed to the satisfaction of Customer ("Deliverables"). For and with each Deliverable, WolfePak shall include sufficient and accurate documentation to allow a user who is reasonably skilled to make effective use of the Deliverable. The terms and conditions established for a Project shall be incorporated in the applicable Statement of Work.

(b) Approval of Deliverables. The supplemental Project terms and conditions shall establish time frames for the acceptance process of Deliverables; any reference to dates or time periods in this Section shall mean the dates mutually agreed upon by the parties in, or determined in accordance with, such terms and conditions. On or before the specified delivery date for such Deliverable, the WolfePak Contract Coordinator shall submit to the Customer Contract Coordinator each Deliverable. Within the established time frame, the Customer Contract Coordinator shall approve or disapprove the Deliverable by providing written notice to the WolfePak Contract Coordinator, using "Deliverable Review and Sign-Off" form adopted for each Project.

Customer shall describe in any disapproval the ways in which the Deliverable fails to conform to the established requirements and/or the applicable specifications for the Project or portion thereof; Customer may also suggest corrections or improvements which may cause the Deliverable to meet such standard. WolfePak shall resubmit the Deliverable to Customer for approval as provided in this Section, within the cure period stated in the Statement of Work, if any. Customer may extend the period of time for resubmission of the Deliverable if WolfePak submits to the Customer Contract Coordinator a written request outlining the specific reasons why WolfePak cannot comply with the requirements, together with WolfePak's proposed alternative schedule for resubmission of the Deliverable. WolfePak may submit draft versions of a Deliverable prior to the required date for the informal comment of the Customer Project Manager. Approval of a Deliverable by the Customer Project Manager or Contract Coordinator indicates only that Customer has reviewed the Deliverable and detected no errors or omissions sufficient enough to warrant the withholding or denial of payment, if any, for such Deliverable. Customer's approval of a Deliverable does not discharge WolfePak's obligation with respect to any subsequent Deliverable intended to operate in conjunction with a previously delivered or accepted Deliverable. Without limiting the foregoing, for Deliverables that are intended to operate in conjunction with Deliverables to be provided by WolfePak at a later time, Customer shall have the right to complete regression testing upon receipt of each subsequently delivered Deliverable to confirm that the previously accepted Deliverables are operating properly in conjunction with subsequently delivered Deliverables.

(c) Change Orders.

(1) If either party determines that a material change to a Project (which shall include, without limitation, any change that would delay the scheduled completion date for such Project) is necessary, desirable, or required, then that party's Contract Coordinator shall promptly inform the other party's Contract Coordinator, in writing, of the facts and circumstances leading to such determination ("Request for Change"). If pursuant to a Request for Change that is initiated by WolfePak, WolfePak shall include in such Request for Change an estimate of the additional time and cost, if any, as well as impact to the scheduled completion dates, which would result from such change. Such Request for Change shall not relieve WolfePak from any obligation set forth herein, or the Statement of Work, without the written consent of Customer's Contract Coordinator. Upon mutual agreement by the parties that a Request for Change should be implemented, the Contract Coordinator for each party shall execute a mutually agreed upon change order which describes the relevant changes to the Project and, if applicable, any changes to the scheduled completion dates, additional responsibilities of Customer, and any change to the cost estimate (a "Change Order").

(2) WolfePak shall not be obligated to perform any change described in a Request for Change, and there shall be no change to a Project (including the cost estimate and scheduled completion dates) unless a Change Order as

contemplated by this Section shall have been executed by each party's Contract Coordinator.

(3) For changes to a Project caused by: (i) Customer's personnel or contractors not completing tasks assigned to them timely or accurately; or (ii) events outside the control of WolfePak, as such failures are reported in accordance with Section 1.3(e) above, WolfePak shall initiate a Request for Change and the parties shall negotiate in good faith the appropriate Change Order.

(d) Additional Work. By Customer Contract Coordinator providing written notice to the WolfePak Contract Coordinator, Customer may request WolfePak to perform additional Services outside the general scope of a Project. At its option, WolfePak may submit, at no charge to Customer, a written proposal for such Services, including a price/cost proposal, expenses related to travel, lodging and meals, a delivery schedule, and any other information reasonably related to such request. Within a reasonable time period requested by WolfePak, Customer shall accept or reject such proposal.

2. FEES TO BE PAID BY CUSTOMER

2.1. Fees for Services.

(a) During the term of this Agreement, WolfePak will provide the Services to Customer at the rate to be established in each Statement of Work.

(b) Each Statement of Work shall be subject to the Customer's approval prior to the Services thereunder beginning.

(c) Customer will pay reasonable travel and living expenses incurred by WolfePak in connection with any and all of the Services.

2.2. Estimates.

WolfePak will provide to Customer estimates of the amount of Services required for WolfePak to complete the tasks assigned to WolfePak under a Statements of Work. WolfePak will use all commercially reasonable efforts to: (i) make WolfePak's estimates as accurate and reliable as WolfePak can, using all tools and experience available to WolfePak; and (ii) manage carefully WolfePak's utilization of WolfePak's resources to do everything commercially reasonable to complete the Services at or below the estimates WolfePak has provided.

2.3. Invoices.

Unless otherwise set forth in a particular Statement of Work, WolfePak will invoice Customer monthly for the Services performed and travel and living expenses incurred pursuant to the Statement of Work.

2.4. **Late Charges.**

Payment shall be due upon receipt of invoice. If payment of the undisputed amount is not received within 30 days from the date of the invoice, interest at the rate of 1.5% percent month (or the highest legally permissible rate if lower) will be due and payable from the date of the invoice until payment is received. Customer shall be responsible for paying all sales and use taxes associated with a Statement of Work and all taxes arising out of the purchase, lease or use of any communications line or equipment approved in advance by Customer.

3. **MISCELLANEOUS TERMS**

3.1. **Non-Solicitation.** During the term of this Agreement and for a period of one year thereafter, neither party will directly or indirectly, without prior written consent of the other, (a) induce any employee of the other to terminate his or her employment, (b) offer employment or independent contractor engagement to any employee of the other or (c) offer any former employee of the other employment for a period of six months immediately following such employee's termination. To compensate a party whose employee has been solicited, hired, or induced to terminate his or her employment by the other party, and not in the way of liquidated damages but to compensate the non-breaching party for the costs of hiring and training a replacement employee, the breaching party shall pay to the non-breaching party an amount equal to twelve months of the gross salary of the employee who was solicited, hired, or induced to terminate.

3.2. **Limited Warranty.**

(a) WolfePak warrants that all services provided hereunder will be performed in a professional and workmanlike quality in compliance with generally accepted industry standards.

(b) WolfePak represents that it is the owner of and has title to or has the right to use the materials used in performing the Services, except for those materials provide by Customer as set forth above.

(c) WolfePak warrants that it shall not include in any of the materials provided as part of the Services and that it shall not install or knowingly permit to be installed into such materials provided hereunder or into Customer's operating environment any virus, time bomb, back door or other disabling or harmful device and WolfePak covenants that it shall use all commercially reasonable efforts to prevent any such device from being incorporated into Customer's operating environment.

(d) WolfePak warrants that, for a period of 90 days following acceptance of Services or the Acceptance Date of a Deliverable, as applicable, as described in Section 1.5: (i) the Services will conform in all material respects with the specifications for such Services; and (ii) the Deliverable will conform in all material respects with the specifications therefor. Customer shall notify WolfePak in writing within 90 days after completion of the Services in question when any of the Services fail to conform to the description set forth in the applicable Statement of Work or

within 90 days after the Acceptance Date if a Deliverable fails to perform in accordance with its specifications. Such notification shall include the detailed information necessary for WolfePak to verify such nonconformity. Upon actual receipt of such notification and verification of the nonconformity, WolfePak shall correct the nonconformity at no additional charge to Customer so that the Services or Deliverable substantially conforms with the agreed description in the applicable Statement of Work. WolfePak shall initiate a response in accordance with the severity of the problem being experienced by Customer, as set forth in the table below.

Severity Level	Result of Material Defect	Minimum Time to Initiate Response
Urgent	A live system is down, or producing incorrect results, and the user has no work around for the problem	WolfePak will initiate a response within two hours of notification from Customer. WolfePak will devote sufficient resources without material interruptions to correct the problem or implement a suitable work around until the severity level is reduced. If it is determined that the problem being experienced by Customer is not the result of a Material Defect, Customer shall reimburse WolfePak for its work based on the “Time-and-Materials” pricing set forth in <u>the Statement of Work</u> .
High	A live system is either down or producing incorrect results, but the user has a work around for the problem, or Customer commitments may be missed due to the problem	WolfePak will initiate a response within one business day of notification from Customer. WolfePak will devote sufficient resources without material interruptions to correct the problem or implement a suitable work around until the severity level is reduced. If it is determined that the problem being experienced by Customer is not the result of a Material Defect, Customer shall reimburse WolfePak for its work based on the “Time-and-Materials” pricing set forth in <u>the Statement of Work</u> .
Medium	A software problem is causing inconvenience, but the user has a work around for the problem	WolfePak will initiate a response within five business days of notification from Customer. WolfePak will provide a plan reasonably acceptable to Customer to resolve the problem on a timely basis. If it is determined that the problem being experienced by Customer is not the result of a Material Defect, Customer shall reimburse WolfePak for its work based on the “Time-and-Materials” pricing set forth in <u>the Statement of Work</u> .
Low	Cosmetic problem or an error not causing inconvenience	WolfePak will initiate a response within 10 business days of notification from Customer.

		<p>WolfePak will provide a plan reasonably acceptable to Customer to resolve the problem on a timely basis. If it is determined that the problem being experienced by Customer is not the result of a Material Defect, Customer shall reimburse WolfePak for its work based on the "Time-and-Materials" pricing set forth in the <u>Statement of Work</u>.</p>
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3.3. DISCLAIMER OF ALL OTHER WARRANTIES AND LIMITATION OF LIABILITY. EXCEPT AS EXPRESSLY SET FORTH IN "LIMITED WARRANTY" ABOVE, WOLFEPAK PROVIDES THE SERVICES AND/OR THIRD-PARTY SOFTWARE (TO THE EXTENT SUPPLIED OR ARRANGED BY WOLFEPAK) "AS IS" AND "WITH ALL FAULTS" AND DISCLAIMS, TO THE MAXIMUM EXTENT PERMITTED BY LAW, ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED. IN NO EVENT SHALL WOLFEPAK BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA, OR OTHER INTANGIBLE LOSSES, EVEN IF CUSTOMER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR WHETHER OR NOT SUCH DAMAGES ARE FORESEEABLE. EXCEPT FOR A PARTY'S INDEMNIFICATION OBLIGATIONS HEREUNDER, IN NO EVENT SHALL THE LIABILITY OF EITHER PARTY FOR ANY BREACH OF THIS AGREEMENT EXCEED AN AMOUNT EQUAL TO THE AGGREGATE FEES PAID BY CUSTOMER TO WOLFEPAK IN THE PRECEDING 12 MONTHS.

3.4. Force Majeure. WolfePak shall not be liable for any delay or failure to perform resulting directly or indirectly from acts of God, the elements, acts of civil or military authority or the public enemy, wars, riots, civil disturbances, sabotage, explosions, strikes or labor disputes, inability, after reasonable efforts, to secure suitable parts, materials, labor, or transportation, fuel or energy shortages, government priorities, restrictions, regulations or orders of any government, agency or subdivision thereof, electrical power surges or outages, telecommunication failures, acts or omissions of communications carriers, computer errors or malfunctions or system nonconformity, fires, snow, ice, water, floods, hurricanes, tornadoes, lightning, earthquakes, pest damage, epidemics or other causes beyond WolfePak's control whether or not similar to the foregoing; provided, however, WolfePak (i) gives the Customer written notice of such cause promptly; (ii) uses commercially reasonable efforts to correct such failure or reduce the delay in its performance; and (iii) followed commercially prudent standards for mitigating the risk associated with such event, in light of the severity of damages such event could cause the Customer, including, without limitation, maintaining adequate inventories of replacement parts and equipment and materials, and maintaining adequate human resource procedures to reduce reliance on certain employees or contractors.

3.5. **Amendments.** This Agreement may be amended only by written agreement of the parties, signed by an authorized officer of each of the parties.

3.6. **Notices.** All notices required or permitted under this Agreement, shall be deemed given when sent by overnight delivery service or certified mail (return receipt requested) addressed to the recipient set forth in the preamble above, attention such party's Contract Coordinator. Each party to this Agreement may change the address or authorized recipient relating to it by written notice to the other party. For purposes of providing notices required or permitted by this Agreement, waiving any right under this Agreement, or amending any term of this Agreement and notwithstanding any law recognizing electronic signatures or records, "a writing signed," "in writing" and words of similar meaning, shall mean only a writing in a tangible form bearing an actual "wet" signature in ink manually applied by the person authorized by the respective party, unless both parties agree otherwise by making a specific reference to this section.

3.7. **No Third Party Beneficiaries.** The parties intend that there shall be no third party beneficiaries of this Agreement unless expressly designated otherwise in a Statement of Work.

3.8. **Agreement to Arbitrate.** Any dispute, other than one for which the remedy is specific performance or a temporary or permanent injunction (an "Arbitrable Dispute"), now or hereafter arising between the parties, including but not limited to any concerning, arising out of or related to the formation, validity, interpretation, effect, or alleged violations of this Agreement, the arbitrability of any dispute, any federal, state or local statutory claim (including discrimination or retaliation and wage and hour statutes), contract claims, tort claims, and claims of any other sort, will and must be submitted to and resolved only through final and binding arbitration in Dallas, Texas, administered by the National Arbitration Forum (www.adrforum.com) in accordance with its *Code of Procedure* then in effect. The parties will not be permitted to bring or participate in any claims brought as any type of purported class action, representative action, collective action, consolidated action, coordinated action, aggregated action, or similar action or proceeding. The parties must only bring claims against each other in their individual capacity, and they each fully reserve and do not waive their right to the appointment of an arbitrator to hear and decide only their respective individual claims. The arbitrator will have no authority or jurisdiction to modify or change this Agreement in any way. This arbitration agreement and any proceedings related thereto will be governed exclusively by the Federal Arbitration Act, 9 U.S.C. § 1 et seq. WolfePak and Customer each hereby acknowledge and agree that they are waiving their right to have any claims covered by this arbitration agreement decided by a judge or jury trial. In either an arbitration proceeding or an injunction proceeding, the non-prevailing party shall pay all costs of the arbitrators or court, as the case may be, and all of the prevailing party's reasonable attorneys fees and expenses and reasonable fees of expert witnesses.

3.9. **Choice of Law; Venue.** This Agreement shall be governed by and construed under the substantive laws of the State of Texas, without regard to its conflicts of laws provisions. Venue for any action brought hereunder shall be proper only in the federal and state courts having jurisdiction in Dallas County, Texas.

3.10. **Independent Contractor.** WolfePak's relationship to Customer is that of an independent contractor, and nothing herein shall be construed to render either WolfePak or its employees as employees of Customer.

3.11. **Waiver.** Any waiver of any one provision of this Agreement shall not be a waiver of any other provision, and no waiver shall be effective unless expressly made or confirmed in writing by a person with binding authority for the party making the waiver.

3.12. **Severability.** If any provision of this Agreement or the application hereof to any party or circumstances shall, to any extent, now or hereafter, be or become invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and every other provision of this Agreement shall be valid and enforceable, to the fullest extent permitted by law.

3.13. **Transferees, Successors, and Assigns.** All terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties to this Agreement and their respective permitted transferees, successors, and assigns. None of the rights or obligations hereunder may be assigned or transferred in whole or in part by either party without the prior written consent of the other. A merger or consolidation of a party, a sale of all or substantially all of a party's assets, or a change of control of a party shall not be deemed an assignment of this Agreement.

3.14. **Term.** The initial term of this Agreement shall be three years commencing on the Effective Date of initial Statement of Work. Thereafter, the term of this Agreement shall automatically renew for successive one-year periods unless one party provides a written termination notice to the other party at least 60 days in advance of the end of the then existing term.

3.15. **Indemnification.** Customer agrees to indemnify and hold harmless, or at its election and own expense defend, WolfePak, its parent and subsidiaries, and its and their respective employees, officers, directors, stockholders, agents, licensors, and their respective successors and assigns (collectively, the "*WolfePak Indemnitees*") from and against any and all claims, suits, liabilities, judgments, and expenses (including, but not limited to, the payment of reasonable attorneys' fees, costs of investigation, and costs of suit incurred in connection with such defense), in law or in equity, any claim, demand, action, or other proceeding brought against a WolfePak Indemnitee arising out of or based upon any claim: (i) that results from Customer's breach of this Agreement; (ii) that results from Customer's or any of its employees' or agents' negligence or willful misconduct; or (iii) that relates to Customer's misuse or disclosure of WolfePak's Confidential Information. Any obligation of Customer to provide defense or indemnification hereunder is contingent upon WolfePak: (a) giving Customer prompt written notice of any such claim, in no event less than 10 days prior to the due date for any response; (b) providing Customer with reasonable assistance in defending or settling same; and (c) agreeing that Customer shall solely control the defense and/or settlement thereof.

WolfePak agrees to indemnify and hold harmless, or at its election and own expense defend, Customer, its parent and subsidiaries, and its and their respective employees, officers,

directors, stockholders, agents, licensors, and their respective successors and assigns (collectively, the “*Customer Indemnitees*”) from and against any and all claims, suits, liabilities, judgments, and expenses (including, but not limited to, the payment of reasonable attorneys’ fees, costs of investigation, and costs of suit incurred in connection with such defense), in law or in equity, any claim, demand, action, or other proceeding brought against a Customer Indemnitee arising out of or based upon any claim: (i) that results from WolfePak’s breach of this Agreement; (ii) that results from WolfePak or any of its employees’ or agents’ negligence or willful misconduct; or (iii) that relates to WolfePak’s misuse or disclosure of Customer’s Confidential Information. Any obligation of Customer to provide defense or indemnification hereunder is contingent upon Customer: (a) giving WolfePak prompt written notice of any such claim, in no event less than 10 days prior to the due date for any response; (b) providing WolfePak with reasonable assistance in defending or settling same; and (c) agreeing that WolfePak shall solely control the defense and/or settlement thereof.

3.16. Intellectual Property Rights.

(a) As used herein, the term “*IP Rights*” shall mean protectable intellectual property, such as patents and applications, trademarks, trade secrets, know-how, methodologies, and any and all other legal rights protecting intangible proprietary information. In providing the Services, WolfePak will exercise and utilize certain of its IP Rights and may exercise and utilize certain IP Rights of Customer solely related to the Services provided herein.

(b) Except as expressly set forth herein, neither this Agreement nor the provision of Services by WolfePak shall give either party any ownership interest in or rights to the IP Rights of the other party.

(c) Subject to (d) below, all Work Product, as defined below, and all related intellectual property rights shall belong to WolfePak, and if by operation of law any of the Work Product, including all related IP Rights, is not owned by WolfePak automatically upon creation thereof, then Customer agrees to assign, and hereby assigns, to WolfePak the ownership of such Work Product, including all related IP Rights. WolfePak hereby grants to Customer a perpetual, non-transferable royalty-free license to use the Work Product for the express purposes for which it was created. WolfePak may obtain and hold in its own name copyrights, registrations and other protection that may be available to Customer resulting from such Work Product. Customer agrees to provide any reasonable assistance, at WolfePak’s sole cost and expense, required to perfect such protection and to take such further actions and execute and deliver such further agreements and other instruments as WolfePak may reasonably request to give effect to this Section.

(d) The term “*Work Product*” shall mean all ideas, discoveries, methodologies, concepts, artwork, materials, and systems, whether patentable or copyrightable, conceived or made by WolfePak during its engagement with Customer, including any ideas suggested by Customer in connection therewith, and any programming, documentation, data compilations, reports and any other media, materials or other

objects produced as a result of WolfePak's performance of the Services or delivered by WolfePak in the course of performing that work.

(e) Nothing in this Section shall be deemed to prohibit WolfePak from developing work product for other customers of WolfePak that is substantially identical to Work Product, provided that WolfePak does not use or include in such work product Customer IP Rights or Customer Confidential Information. Customer shall have no rights, royalties, or licenses in or to any such work product, regardless of the similarity thereof to Work Product.

3.17. **Confidentiality.** Except in furtherance of their duties and responsibilities under this Agreement, the parties will hold in strictest confidence and will not use, reproduce, distribute, transmit, or disclose, directly or indirectly, the Confidential Information of the other party. A party may disclose the other party's Confidential Information only to its employees and third-party vendors with a need to know, or as expressly permitted or directed in writing by the other party. The parties' obligations hereunder shall survive the termination or expiration of this Agreement for as long as information continues to constitute Confidential Information as defined herein. "*Confidential Information*" means any and all current and future information, in whatever form, comprising trade secrets (as determined by applicable law) or non-public product information, technical or financial information, forecasts, customer names, hiring and employment practices, proprietary business methods, processes, or methodologies, and other non-public business information that may be disclosed between the parties, whether or not designated as "confidential" or "proprietary" if it would be reasonably understood under the circumstances of its disclosure to be confidential or proprietary. Confidential Information shall not include information if and only to the extent that the recipient establishes that the information: (i) is or becomes a part of the public domain through no act or omission of the recipient; (ii) was in the recipient's lawful possession prior to the disclosure and had not been obtained by the recipient either directly or indirectly from the disclosing party; (iii) is disclosed with the prior approval of the discloser; (iv) is independently developed by the recipient without reference to or recollection of the Confidential Information of the discloser; (v) becomes known to the recipient from a source other than the discloser without breach of this Agreement by the recipient and in a manner which is otherwise not in violation of the discloser's rights; or (vi) is disclosed by the recipient pursuant to a requirement of a governmental agency, court order, or by operation of law, provided that the recipient shall disclose only that part of the Confidential Information which it is required to disclose, shall notify the owner prior to such disclosure, and shall disclose such information only if governed by an appropriate protective order or contractual agreement to maintain the confidentiality of the information.

3.18. **Section Headings.** Section headings contained in this Agreement are for reference purposes only and are not part of this Agreement.

3.19. **Entire Agreement.** This Agreement, the License Agreement, and the Statements of Work, and supplemental Project documents which may be incorporated by reference into a Statement of Work, constitute the entire agreement and understandings between the parties with respect to the subject matter hereof, and supersedes and merges any and all prior written or oral communications between them related hereto. To the extent any of the terms and

conditions in the Agreement conflict with any of the terms and conditions in a Statement of Work (including supplemental Project documents which may be incorporated therein by reference), the provisions of this Agreement shall govern, unless the Statement of Work (or a supplemental Project document which may be incorporated therein by reference) specifically refers to a Section of this Agreement to be amended or superceded.

3.20. **Insurance.** WolfePak agrees to carry until final acceptance of the work the following insurances with companies acceptable to the Customer:

(a) Workers' compensation and employer's liability insurance in accordance with the applicable laws of the States in which WolfePak is obligated to pay compensation to employees engaged in the performance of the work. The policy is limited for employer's liability insurance shall not be less than \$500,000 for any one occurrence.

(b) Comprehensive general liability insurance applicable to the performance of the work and everything incidental thereto, with a combined single limit of bodily injury and/or property damage liability of not less than \$1,000,000 per each occurrence.

3.21. **Survival.** The provisions of Section 2.4 and Sections 3.1 through 3.20 of this Agreement survive termination of this Agreement.