Alpha Test License Agreement

This Alpha Test License Agreement ("Agreement") is entered into and effective as of _____ ("Effective Date") by and between Infinite Solutions and Technology, LLC, a Colorado limited liability company ("Licensor") and

_____ ("Licensee").

1.   SCOPE

1.1   Licensor is developing a proprietary software platform application which, when completed, will enable users to efficiently monitor, track, organize and implement a wide variety of tasks and projects (the "Software"). Licensee has agreed to install and use the Software in real time operational settings, and to provide feedback to Licensor regarding the performance of the Software.

2.   ACKNOWLEDGMENT OF TEST ENVIRONMENT

2.1   Licensee acknowledges that the Software is a preliminary test version that may not function fully or operate in accordance with Licensor's specifications and may not contain all functionality intended to be in the commercial version. Licensee and Licensor acknowledge and agree that the Software is being supplied to Licensee without charge in exchange for Licensee's input, feedback and evaluation as provided in this Agreement.

3.   LICENSE

3.1   <u>Grant of License</u>. Licensor grants Licensee a limited, nonexclusive, nontransferable license to install and use the Software and any related documentation at Licensee's facility for evaluation and testing purposes in an actual working environment, subject to all terms and conditions of this Agreement.

3.2   <u>Term of License</u>. The license granted under this Agreement shall commence on the Effective Date and automatically expire on the earlier of (a) 180 days following the Effective Date, or (b) the date on which either party notifies the other party in writing of its desire to terminate the License, which termination need not be for cause.

3.3   <u>Return of Software</u>. Within five days of termination, Licensee shall, at its expense, remove the Software and any related programs and return all Software and materials to Licensor the Software together with all completed or partially completed copies of any evaluations, performance reports, benchmark tests or other materials or information relating to assessments of the Software. Licensee may, prior to removal and return of such material, remove or obscure any references to Licensee's Confidential Information.

3.4   <u>License Fee.</u>   Licensee is under no fee obligation in order to procure the licensed granted under this agreement, and Licensee's usage of the Software under this Agreement shall not be deemed a commitment to purchase or license the Software at a later date.

4.   LICENSOR'S RESPONSIBILITIES

4.1   Licensor agrees, at its expense; (a) to provide all Software and related documentation, including transportation, installation, removal, and any associated services, reasonably necessary to meet Licensee's requirements for operating the Software and performing this evaluation; (b) to provide technical specifications, training, training materials, on line support and other reasonable assistance during business hours and subject to scheduling and other availability of personnel and resources; and (c) to furnish Licensee with all enhancements and modifications to Software developed during the term.

5. LICENSEE'S RESPONSIBILITIES.

5.1   Licensee agrees, at its expense to: (a) make reasonable efforts to evaluate and assess the performance of the Software under actual working conditions on a real time basis; (b) provide ongoing information and reports concerning the performance of the Software to Licensor, in such format and with such frequency as Licensor may reasonably request; (c) provide prompt, candid and complete information to Licensor with respect to any defects, deficiencies or other criticisms noted with respect to the Software; (d) make Licensee's facilities and resources available to Licensor in order to install and activate the Software, update the Software, provide error correction and other troubleshooting, and assist in maintenance and training with respect to the operation of the Software; (e) provide suitable connections, computer equipment, storage space, heat, lighting, ventilation, and electrical supply required for the installation and use of the Software; (f) carry out any specific tests with respect to the Software as may be reasonably requested by Licensor; and (g) establish back-up, log, batch, review, and other archival procedures and controls appropriate to maintain the integrity and continuity of Licensee's operations and data during operation of the Software.

6. USE AND OWNERSHIP OF EVALUATION INFORMATION.

6.1   Ownership of Licensee's Information. Licensee agrees that Licensor is the owner of the Software and the owner of all information obtained, prepared or furnished by Licensee relating to the performance, errors, corrections, defects, criticisms and other evaluation and use of the Software. All of such information shall be considered Confidential Information as provided herein and Licensee will not provide or furnish such information to any third party, whether verbally or in writing, for any purpose except as specifically authorized by Licensor.

6.2   Use of Licensee's Information. Licensor shall be permitted to use all test information furnished by Licensee under this Agreement for any and all purposes. Licensor shall have the right to disclose the fact that Licensee and Licensor are engaged in an Alpha Test of Licensor's software.

7. OWNERSHIP AND USE OF THE SOFTWARE.

7.1   Licensee agrees that Licensor owns all rights, title and interest, including but not limited to copyright, patent, trade secret and all other intellectual property rights, in the Software and any changes, modifications or corrections to the Software, including unauthorized changes or modifications as well as changes suggested by Licensee. Licensee agrees that, except as otherwise provided in this Agreement, Licensee and its employees shall not, directly or indirectly, (a) sell, lease, assign or otherwise transfer, (b) duplicate, reproduce or copy, (c) disclose, divulge or otherwise make available to any third party, (d) attempt, or assist a third party attempting, to decompile, disassemble or reverse engineer the Software, or otherwise attempt to determine the logic structure, architecture or other internal system design for the Software.

8. CONFIDENTIALITY

8.1   Confidential Information defined. As used herein, "Confidential Information" shall mean any technical or business information furnished, in whatever form or medium, disclosed or made accessible by one party to the other (including, but not limited to, product/service specifications, prototypes, computer programs, models, drawings, marketing plans, financial data, personnel statistics), which is marked as confidential or proprietary; or for information which is orally disclosed, the disclosing party clearly indicates to the receiving party at the time of disclosure the confidential or proprietary nature of the information and confirms the confidential or proprietary nature in writing within thirty days after the disclosure, or any other information which is received or obtained under conditions such that the receiving party reasonably should understand that such information is considered confidential by the disclosing party.

8.2   Restrictions on Use of Confidential Information. Each party agrees to hold Confidential

Information of the other party in strictest confidence and shall use same solely for the purposes of this Agreement unless otherwise authorized in writing by the disclosing party. The receiving party shall not copy such Confidential Information without express written permission, or disclose such Confidential Information to anyone (including consultants and subcontractors) except employees of the receiving party to whom disclosure is necessary for the purposes set forth in this Agreement. The receiving party shall appropriately notify each such employee that the disclosure is made in confidence and must be kept in confidence in accordance with this Agreement. The obligations set forth herein shall be satisfied by each party through the exercise of at least the same degree of care used to restrict disclosure and use of its own information of like importance.

8.3   Storage of Copies.   All copies of such Confidential Information fixed or stored in written, graphic, electronic, optical, magnetic or other tangible form shall be returned to the disclosing party upon expiration, termination or cancellation of this Agreement or upon the disclosing party's request, unless otherwise agreed.

8.4   Exception. The obligations imposed in this Section 8 shall not apply to any information that: (a) is already in the possession of or is independently developed by the receiving party without violation of any obligation of nondisclosure; (b) is or becomes publicly available without violation of any obligation of nondisclosure; (c) is obtained by the receiving party from a third person without violation of any obligation of nondisclosure; or (d) is disclosed without restriction by the disclosing party.

8.5   Continuing Requirement.   The requirements set forth herein shall continue to be enforceable following termination for so long as the information does not come within the scope of Section 8.4

8.6   Injunctive Relief. The parties agree that any breach of this Article 8 would cause the other party severe, irreparable and incalculable injury, not compensable through monetary damages, and that in the even of any existing or threatened breach, the nonbreaching party shall be entitled, in addition to any other remedies, to injunctive or other equitable relief without the necessity of posting an undertaking, which requirement is hereby expressly waived.

9.   WARRANTY, INDEMNIFICATION AND LIABILITY

9.1   Licensor's Warranty and Disclaimers.   Licensor warrants and represents that it owns or has acquired the necessary rights to grant the license to Licensee set forth herein. Except as just stated, Licensee acknowledges that the Software is not a fully tested product offering, and has not been completed according to Licensor's normal development procedures or offered to the general public. Licensee's use of the software is at Licensee's sole risk and Licensee acknowledges that the software and associated documentation may contain defects, fail to comply with applicable specifications, any may produce unintended or erroneous results either alone or when operated in combination with other products or programs. Licensee accepts the software "as is" without any warranty whatsoever.

9.2   Indemnification.   Licensor shall indemnify, hold harmless and defend, Licensee, its officers, directors, affiliates, agents and employees from any and all claims, demands, litigation, expenses and liabilities (including costs and reasonable attorneys' fees) ("Liabilities") arising from or incident to any claims that the Software infringes any trade secrets, trademark, copyright or patent rights of any third party. This shall not apply to the extent that any such claim is the result of Licensee's misuse of the Software, combination of the Software with components or software not furnished by Licensor, use of a superceded version of the Software, or unauthorized modification of the Software. Licensee agrees to cooperate with the defense of any such claims, at Licensor's expense. Licensor may, at its sole option, and in additional to any other rights, respond to such claims by modifying the Software so as to remove the infringing component, procuring from the claimant the right to continue to use the Software under this Agreement, or terminating this Agreement.

9.3 LIMITATION OF DAMAGES. OTHER THAN AS SET FORTH ABOVE IN THIS ARTICLE 9, NEITHER PARTY IS LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL, INCIDENTAL OR SPECIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, COMMERCIAL LOSS, LOST PROFITS, LOSS OF VALUE, DAMAGES OR OTHER DAMAGES HOWEVER CAUSED AND REGARDLESS OF LEGAL THEORY OR FORESEEABILITY, WHICH DIRECTLY OR INDIRECTLY ARISES UNDER THIS AGREEMENT OR A BREACH OF THIS AGREEMENT. LICENSEE SHALL BE RESPONSIBLE FOR ANY USE OF THE SOFTWARE IN LICENSEE'S OPERATIONS AND FOR VERIFYING ANY OUTPUT RESULTING FROM USE OF THE SOFTWARE. LICENSEE ACCEPTS ALL RISK OF LOSS OCCASIONED BY SOFTWARE DEFECTS, LOSS OF DATA OR FAILURE OF THE SOFTWARE TO OPERATE PROPERLY OR IN ACCORDANCE WITH SPECIFICATIONS.

10. GENERAL PROVISIONS

10.1 Independent Contractor: Each party hereunder is acting as an independent contractor and not as an agent, employee, representative or affiliate of the other. Neither party shall have authority to act for the other's behalf, to bind or incur any debts or liabilities in the name of or on behalf of other, or to control or answer for the acts of the employees of the other. Each party shall be responsible for, and shall indemnify, defend and hold the other harmless from, claims arising from the acts of its own employees, independent contractors, agents and representatives. Each party is responsible for all matters relating to payment of its employees, independent contractors, agents and representatives including compliance with worker's compensation, unemployment, disability insurance, social security withholding, and all other federal, state and local laws, rules and regulations.

10.2 Entire Agreement: This agreement contains the entire agreement between the parties hereto with respect to the matters covered herein and supercedes all prior or contemporaneous agreements, understandings and representations, both oral and written.

11.3 Severability: If any provision of this Agreement is held invalid or unenforceable, such determination will not effect the remaining portions of this Agreement, and the parties agree that the affected provisions shall be amended to the extent necessary to render it enforceable so as to carry out the intent of this Agreement.

11.4 Force Majeure: Neither party shall be liable for failure to perform solely caused by unforeseeable circumstances beyond their control.

11.5 Assignment and Delegation: No rights or interests in this Agreement shall be assigned by Licensee without written permission of Licensor, and any attempted assignment in violation of this Section shall be void.

11.6 Notices: Any notices required or permitted under this Agreement shall be directed to the addresses appearing below, and shall be deemed received and effective: (a) when delivered, if delivered in person or by confirmed receipt of an email or faxed transmission: (b one (1) day after mailing, if sent by overnight courier; and (c) two (2) days after mailing, if sent by first class mail postage prepaid. A facsimile or photocopy of this Agreement and any notices associated herewith shall be treated as "original" documents admissible into evidence unless a document's authenticity is genuinely placed in question. The parties consent to the use of electronic means for all communications regarding the enforcement or performance of this Agreement.

11.7 Waivers: The failure of either party to exercise any right shall not be construed to be a waiver unless agreed upon in writing. A waiver in any one instance shall not constitute an amendment to this Agreement or indicate any continued waiver of such right(s) on any other occasion.

11.8 Modifications or Amendments: No modifications or amendments shall be made to this Agreement unless in writing and signed by the Parties.

11.9   <u>Governing Law, Jurisdiction, Venue and Attorney's Fees</u>. This Agreement shall be construed under the laws of the state of Colorado. The parties agree that this Agreement is executed and partially performed in the city of Denver, Colorado, and that venue for any legal action to enforce or interpret this Agreement shall be exclusively vested in the state and Federal courts having jurisdiction over Denver, Colorado, and the parties submit to the exercise of *in personam* jurisdiction over them in connection with such actions. If any legal action is required to enforce or interpret this Agreement, the prevailing party in such action shall be entitled to recover, in addition to any other remedies, all attorney's fees and costs incurred in connection with such action.

11.10   <u>Authority; Counterparts.</u> Each party signing this Agreement warrants that such party has the full and necessary authority and capacity to bind the party represented by such party's signature to each and every obligation set forth in this Agreement. This Agreement may be signed in counterparts, each of which shall constitute an original and all of which shall be considered the same document.

Licensor _____

Title:_____

Address for purposes of notice:

_____

_____

_____

Licensee _____

Title:_____

Address for purposes of notice:

_____

_____

_____