# MUTUAL NON-DISCLOSURE AGREEMENT

**THIS MUTUAL NON-DISCLOSURE AGREEMENT** (this "Agreement") is entered into between **ADAPTIVE PLANNING, INC.** (the "Company") and **WNA, Inc.** as of October 5, 2009 (the "Effective Date"), to protect the confidentiality of certain confidential information of the Company or WNA, Inc. to be disclosed under this Agreement solely for use in evaluating or pursuing a business relationship with the Company (the "Permitted Use"). The Company and WNA, Inc. may be referred to herein individually as a "Party" and collectively as the "Parties."

**1.** As used herein, the "Confidential Information" of a Party will mean, subject to Section 2, any and all technical and non-technical information disclosed by such Party (the "Disclosing Party") to the other Party (the "Receiving Party"), which may include without limitation: (a) patent and patent applications, (b) trade secrets, and (c) proprietary and confidential information, ideas, samples, media, techniques, sketches, drawings, works of authorship, models, inventions, know-how, processes, apparatuses, equipment, algorithms, software programs, software source documents, data, databases and data collections, designs, diagrams, flow chars, materials, marks (including brand names, product names, logos, and slogans), methods, network configurations and architectures, procedures, protocols, schematics, specifications, subroutines, tools, uniform resource identifiers including uniform resource locators (URLs), user interfaces and formulae related to the current, future, and proposed products and services of each of the Parties, such as information concerning research, experimental work, development, design details and specifications, engineering, financial information, procurement requirements, purchasing, manufacturing, customer lists, investors, employees, business and contractual relationships, business forecasts, sales and merchandising, and marketing plans.

**2.** If the Confidential Information is disclosed orally or visually, it will be identified as such at the time of disclosure.

**3.** Subject to Section 4, the Receiving Party agrees that at all times and notwithstanding any termination or expiration of this Agreement it will hold in strict confidence and not disclose to any third party any Confidential Information of the Disclosing Party, except as approved in writing by the Disclosing Party, and will use the Confidential Information of the Disclosing Party for no purpose other than the Permitted Use. The Receiving Party will limit access to the Confidential Information of the Disclosing Party to only those of the Receiving Party's employees or authorized representatives having a need to know and who have signed confidentiality agreements containing, or are otherwise bound by, confidentiality obligations at least as restrictive as those contained herein.

**4.** The Receiving Party will not have any obligations under this Agreement with respect to a specific portion of the Confidential Information of the Disclosing Party if such Receiving Party can demonstrate with competent evidence that such portion of Confidential Information:

**(a)** was in the public domain at the time it was disclosed to the Receiving Party;

**(b)** entered the public domain subsequent to the time it was disclosed to the Receiving Party, through no fault of the Receiving Party;

**(c)** was in the Receiving Party's possession free of any obligation of confidence at the time it was disclosed to the Receiving Party;

**(d)** was rightfully communicated to the Receiving Party free of any obligation of confidence subsequent to the time it was disclosed to the Receiving Party; or

**(e)** was developed by employees or agents of the Receiving Party independently of and without reference to any information communicated to the Receiving Party by the Disclosing Party.

**5.** Notwithstanding the above, the Receiving Party may disclose certain Confidential Information of the Disclosing Party, without violating the obligations of this Agreement, to the extent such disclosure is required by a valid order of a court or other governmental body having jurisdiction, *provided that* the Receiving Party provides the Disclosing Party with reasonable prior written notice of such disclosure and makes a reasonable effort to obtain, or to assist the Disclosing Party in obtaining, a protective order preventing or limiting the disclosure and/or requiring that the Confidential Information so disclosed be used only for the purposes for which the law or regulation required, or for which the order was issued.

**6.** The Receiving Party will immediately notify the Disclosing Party upon discovery of any loss or unauthorized disclosure of the Confidential Information of the Disclosing Party.

**7.** Upon termination or expiration of this Agreement, or upon written request of either Party, each Party will promptly return to the Disclosing Party or destroy all documents and other tangible materials representing the Disclosing Party's Confidential Information and all copies thereof.

**8.** The Receiving Party recognizes and agrees that nothing contained in this Agreement will be construed as granting any property rights, by license or otherwise, to any Confidential Information of the Disclosing Party, or to any invention or any patent, copyright, trademark, or other intellectual property right that has issued or that may issue, based on such Confidential Information. Neither Receiving Party will make, have made, use or sell for any purpose any product or other item using, incorporating or derived from any Confidential Information of the Disclosing Party.

**9.** The Receiving Party will not reproduce the Confidential Information of the Disclosing Party in any form except as required to accomplish the intent of this Agreement. Any reproduction by a Receiving Party of any Confidential Information of the Disclosing Party will remain the property of the Disclosing Party and will contain any and all confidential or proprietary notices or legends that appear on the original, unless otherwise authorized in writing by the Disclosing Party.

**10.** This Agreement will terminate one year after the Effective Date, or may be terminated by either party at any time upon thirty (30) days written notice to the other party. Each Party's obligations under this Agreement will survive termination of this Agreement and will be binding upon such Party's heirs, successors, and assigns. Each Party's obligations hereunder with respect to all Confidential Information of the other Party will continue in full force and effect and will terminate only pursuant to Section 4.

**11.** This Agreement will be governed by and construed in accordance with the laws of the state of California without reference to conflict of laws principles. Any disputes under this Agreement may be brought in the state courts and the Federal courts located in Santa Clara County, California, and the Parties hereby consent to the personal jurisdiction and exclusive venue of these courts. This Agreement may not be amended except by a writing signed by both Parties.

**12.** Each Party acknowledges that its breach of this Agreement may cause irreparable damage to the other Party and hereby agrees that the other Party will be entitled to seek injunctive relief under this Agreement, as well as such further relief as may be granted by a court of competent jurisdiction.

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

**14.** Neither Party will communicate any information to the other Party in violation of the proprietary rights of any third party.

**15.** Neither Party will assign or transfer any rights or obligations under this Agreement without the prior written consent of the other Party, except that a Party may assign this Agreement without such consent to its successor in interest by way of merger, acquisition or sale of all or substantially all of its assets.

**16.** The Receiving Party will not export, directly or indirectly, any technical data acquired from the Disclosing Party 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.

**17.** All notices or reports permitted or required under this Agreement will be in writing and will be delivered by personal delivery, electronic mail, facsimile transmission or by certified or registered mail, return receipt requested, and will be deemed given upon personal delivery, five (5) days after deposit in the mail, or upon acknowledgment of receipt of electronic transmission. Notices will be sent to the addresses set forth at the end of this Agreement or such other address as either Party may specify in writing.

**18.** Each Party agrees that the software programs of the other Party contain valuable confidential information and each Party agrees that it will not modify, reverse engineer, decompile, create other works from, or disassemble any software programs contained in the Confidential Information of the other Party without the prior written consent of the other Party.

**IN WITNESS WHEREOF**, the Parties have caused this Mutual Non-Disclosure Agreement to be executed as of the Effective Date.

| **Adaptive Planning, Inc.** | **WNA, Inc.** |
|---|---|
| Signature: _____ | Signature: _____ |
| Print Name: _____ | Print Name: _____ |
| Title: _____ | Title: _____ |
| Address: 2041 Landings Drive<br>Building N<br>Mountain View, CA 94043 | Address: _____<br>_____ |