



NON-DISCLOSURE AGREEMENT

This Agreement (hereinafter “Agreement”) is entered into as of _____ (hereinafter “Effective Date”), between the University of Hawai’i, on behalf of its **Telecommunications and Social Informatics Research Program/Pacific Health Informatics and Data Center**, and Principal Investigator, Dr. Norman H. Okamura, having an office at 2424 Maile Way, Saunders Hall 713, Honolulu HI 96822 (hereinafter “UH”), and (**COMPANY NAME**), having an office at _____, (hereinafter “Receiving Party”). (Parties may also be referred to herein individually as “Party” or collectively as the “Parties”)

WHEREAS, UH wishes to disclose certain of its proprietary information relating to the All-Payer Claims Database technical infrastructure and systems documentation, to Receiving Party, for the purpose of providing proposals for RFP # APCD-Security-Services-2017-03 (“Purpose”);

NOW, THEREFORE, in consideration of the promises recited herein, UH agrees to disclose, and Receiving Party agrees to receive, UH confidential subject matter (as defined below) in a manner consistent with the following provisions:

1. "Confidential Subject Matter" shall mean any and all UH information, know-how and data, technical or non-technical, disclosed or provided by UH to the Receiving Party, whether disclosed or provided in oral, written, graphic, photographic, electronic or any other form, except for subject matter and information:
 - a. that is or becomes generally known or available to the public without breach of this Agreement;
 - b. that is known to the Receiving Party at the time of disclosure, as evidenced by written records of the Receiving Party;
 - c. that is known or independently developed by the Receiving Party and can be proven as such through written records of the Receiving Party;
 - d. that is disclosed to the Receiving Party in good faith by a third-party who has an independent right to such subject matter and information; and/or
 - e. that is required to be disclosed by law.
2. Any information disclosed in oral or other intangible form under this Agreement shall be identified as “Confidential Subject Matter” at the time of disclosure and shall be confirmed in written summary form marked “Confidential Subject Matter.” Receiving Party retains the right to refuse receipt of written material which it does not consider to be essential to the completion of the Purpose, or which it believes to be improperly designated as Confidential Subject Matter, or for any other reason.
3. The Receiving Party agrees to hold in confidence and withhold from third-parties any and all Confidential Subject Matter disclosed by UH to the Receiving Party, on or after the Effective Date of this Agreement, and to use Confidential Subject Matter only for the Purpose set forth in this Agreement. The Receiving Party may not disclose, transfer or provide any Confidential Subject Matter to any third-party without the prior written consent of UH.
4. The Receiving Party agrees to take reasonable and appropriate measures to safeguard any Confidential Subject Matter it receives, from unauthorized use, publication or disclosure to others, and to limit access to Confidential Subject Matter to those employees within the Receiving Party’s

organization who reasonably require such access in order to accomplish the Purpose. The above obligations relating to use and disclosure shall be satisfied by the Receiving Party affording the Confidential Subject Matter the degree of care normally used by the Receiving Party in the protection of its own Confidential Subject Matter of like quality, but in any event, no less than reasonable care.

5. Unless otherwise specified in writing, all Confidential Subject Matter remains UH's property. Immediately upon request of UH, or within thirty (30) days from the date of termination or expiration of this Agreement, the Receiving Party agrees to cease using the Confidential Subject Matter and to return or destroy all Confidential Subject Matter received from UH. Receiving Party shall be permitted to retain one copy of UH's written Confidential Subject Matter, which the Receiving Party may keep solely to monitor its obligation under this Agreement.
6. The term of this Agreement shall be for one (1) year from the Effective Date. The Receiving Party shall hold all Confidential Subject Matter confidential for three (3) years from the Effective Date.
7. Nothing contained in this Agreement shall be construed as an obligation to enter into any further agreement concerning the Confidential Subject Matter. No license, right or options under any patent, copyright, trademark, mask works, or equivalent rights are granted by this Agreement.
8. This Agreement is not intended to constitute, create, give effect to or otherwise recognize a joint venture, partnership or formal business entity of any kind and the rights and obligations of the Parties shall be limited to those expressly set forth herein. Nothing herein shall be construed as providing for the sharing of profits or losses arising out of the efforts of either or both Parties. Each Party shall act as an independent contractor and not as an agent of the other for any purpose whatsoever and neither Party shall have any authority to bind the other except as specifically set forth herein. Neither Party has an obligation to supply Confidential Subject Matter to the other, nor negotiate or enter into any agreement or relationship with the other.
9. Receiving Party agrees not to file any patent applications claiming any information, developments, discoveries, technologies, inventions and the like arising from the use of Confidential Subject Matter received from UH or that could not have been made, developed or discovered but for access to Confidential Subject Matter received from UH.
10. Neither Party shall make use of this Agreement, or use the other's name or that of any member of the other's staff for publicity or advertising purposes without prior written approval of the other Party.
11. Should any court of competent jurisdiction later consider any provisions of this Agreement to be invalid, illegal, or unenforceable, such provisions shall be considered severed from this Agreement. All other provisions, rights, and obligations shall continue without regard to the severed provision, provided that the remaining provisions of this Agreement are in accordance with the intentions of the Parties.
12. The Parties agree that any Confidential Subject Matter or other Technical Data that is subject to control under the Commerce Control List of the Export Administration Regulations or the US Munitions List of the International Traffic in Arms Regulations that is disclosed to the Receiving Party will be marked as "Export Controlled – United States ("U.S.") Persons Only." Receiving Party agrees that it will not export, directly or indirectly, any technical data acquired from UH pursuant to 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 government approval without first obtaining such license or approval. The Parties further agree to abide by UH Export Control Program Guidelines which are available at: <http://www.hawaii.edu/offices/export/guidelines.pdf>

13. The validity, interpretation and performance of this Agreement and any dispute connected herewith shall be governed and construed in accordance with the laws of the State of Hawai'i.
14. Each Party shall be responsible for damages or injury caused by its own officers, employees, and agents in the course of their employment under this Agreement to the extent that the Party's liability for such damage or injury has been determined by a court or otherwise agreed to by the Party, and the Party shall pay for such damages and injury to the extent permitted by law.
15. This Agreement contains the entire understanding between the Parties with respect to the Confidential Subject Matter described herein and supersedes all prior understandings whether written or oral. Any modification, amendment or waiver of the terms of this Agreement shall require the written approval of authorized representatives of each Party.
16. Both Parties certify and represent that they have the right to enter into this Agreement.
17. Paragraphs 9, 10, 12, 14, and that portion of paragraph 6 hereof dealing with the duration of the obligation of confidentiality, shall survive the termination or expiration of this Agreement.

The foregoing has been agreed to and accepted by authorized representatives of each Party whose signatures appear below.

AGREED:

UNIVERSITY of HAWAII

[COMPANY NAME]

 Name: Leonard R. Gouveia Jr.
 Title: Director, Office of Export Controls
 Date:

 Name:
 Title:
 Date:

Read, Understood and Agreed

 Name:
 Title:
 Date: