

Confidentiality Agreement

THIS AGREEMENT is entered into and is effective as of _____, 2017 (the "**Effective Date**") between Hawai'i Tourism Authority (the "**HTA**") and _____ ("**Contractor**").

The parties acknowledge that the HTA and Contractor are in discussions about a potential business relationship between them (the "**Business Relationship**") in connection with which certain Confidential Information (as defined below) of HTA and Contractor may be disclosed to the other party. In consideration of the mutual covenants set forth below, HTA and Company each agree as follows:

Confidential Information. As used in this Agreement, the term "Confidential Information" means all information, whether or not reduced to writing, related to the potential business relationship or to the business of either party or its affiliates that (a) is disclosed by one party or its Representatives (as defined below) (the "Disclosing Party") to the other party (the "Recipient") or observed by the Recipient on the Disclosing Party's premises, and (b) is identified as confidential or other similar designation by the Disclosing Party, or would otherwise reasonably be understood to be confidential under the circumstances. Confidential Information includes but is not limited to data (technical and non-technical), formulas, patterns, compilations (including data base or compilations of visitor or customer information or surveys), intellectual property developed on behalf of the HTA, programs (including models), devices, methods (including design methods), techniques, drawings (including equipment drawings), processes, financial information (including visitor data and sales forecasts), pricing, lists of actual or potential customers or suppliers (including identifying information about those customers), operational information, planning or strategy information (including marketing programs, activities, or initiatives), research and development information (including visitor statistics and market intelligence), information about existing and future services and products, and information about personnel matters of the Disclosing Party or its affiliates. Confidential Information also includes information disclosed by a third party that otherwise meets the foregoing definition, and the fact that negotiations are taking place hereunder.

Exclusions. For purposes of this Agreement, the term "Confidential Information" does not include any data or information which: (a) the Recipient can establish was already known by the Recipient at the time of disclosure hereunder by the Disclosing Party; (b) is or becomes generally known to the public other than as a result of a disclosure by the Recipient; (c) is received by the Recipient from a third party, without restriction on disclosure, and without breaching any obligation of confidentiality about which the Recipient knew or should have known; or (d) is independently developed by the Recipient without use, directly or indirectly, of Confidential Information received from Disclosing Party, as demonstrated from the written records of the Recipient.

Permitted Disclosures. Disclosures of the Confidential Information of the Disclosing Party may be made only to affiliates, employees, agents, advisors or independent contractors of the Recipient who are directly involved in performing or evaluating the Business Relationship, and who have a specific need to know such information, and who are obligated to hold the information in confidence and otherwise to comply with the terms of this Agreement (collectively, "Representatives"). The Recipient agrees to instruct each of its Representatives to maintain the confidentiality of all of the Confidential Information, and will be liable for any unauthorized disclosures of Confidential Information by the Recipient's Representatives. Neither party will directly or indirectly contact, or discuss the Business Relationship contemplated under this Agreement, with any person who is not a designated Representative of the other party.

Confidentiality and Non-Use of Confidential Information. Each of the parties hereto and its Representatives (a) must use the same care and discretion as it employs with its own confidential and proprietary information (but in no event less than reasonable care and discretion) to maintain in confidence, and prevent disclosures of, the Confidential Information of the other party, and (b) must not

use the Confidential Information of the other party except to further the Business Relationship or as otherwise specifically authorized in writing by the Disclosing Party. Under no circumstances, except as expressly set forth below, will the Recipient reproduce, distribute or otherwise provide, directly or indirectly, any Confidential Information of the other party to any person or entity without the consent of the Disclosing Party. Each party understands that in addition to its obligations to the other party under this Agreement, it may not use any Confidential Information of the other party in violation of any federal or state securities laws governing insider trading. Each party understands and will inform its Representatives that such laws prohibit any person, directly or indirectly, from buying or selling securities of any company while in possession of material non-public information regarding that company.

Mandatory Disclosure. If Confidential Information is required to be produced by law, court order or governmental authority, the Recipient must promptly notify the Disclosing Party of that obligation. The Recipient must not produce or disclose any such Confidential Information until the Disclosing Party has (a) requested protection from the court or other legal or governmental authority issuing the process (with the reasonable assistance of the Recipient at the Disclosing Party's expense) and the request has been denied, (b) consented in writing to the production or disclosure of such Confidential Information, or (c) taken no action to protect its interest in the Confidential Information within ten (10) business days (or such shorter period required by order of a court or other legal or governmental authority) after receipt of notice from the Recipient of the obligation to produce or disclose. Notwithstanding the foregoing, the Recipient will only disclose such portion of the Disclosing Party's Confidential Information which the Recipient is advised by counsel is required for the Recipient to comply with law.

Return of Materials. Within ten (10) days following the Recipient's receipt of a written request from the Disclosing Party, the Recipient must (a) deliver to the Disclosing Party all tangible materials containing or embodying the Confidential Information; and (b) purge all electronic materials containing or embodying the Confidential Information, and certify the same to the Disclosing Party in writing. Notwithstanding the foregoing delivery requirement, the Recipient may destroy any notes, analyses or reports generated by the Recipient to the extent such notes, analyses or reports contain Confidential Information, and the Recipient will certify such destruction within such ten (10) day period.

Rights and Ownership. Recipient acknowledges and agrees that any Confidential Information is the sole and exclusive property of the Disclosing Party (or a third party providing such information to the Disclosing Party). Except as expressly herein provided, this Agreement will not be construed as granting or conferring to either party, either expressly or impliedly, any rights, licenses or interests in or with respect to any Confidential Information of the other party, including any intellectual property rights. This Agreement will also not create any exclusive business relationship or other rights or obligations between the parties, nor require the parties to enter into any other definitive business agreement.

Competitive Information. Each of the parties acknowledges and understands that the other party may now market or have under development products or services which are competitive with products or services now offered or which may be offered by the other party, and, except as expressly set forth in this Agreement and the External Destination Marketing Management Services Agreement entered into between the parties (if any), the parties' communications hereunder will not serve to impair the right of either party to develop, make, use, procure or market products or services now or in the future which may be competitive with those offered by the other party, nor require either party to disclose any planning or other information to the other party.

Duration. This Agreement and the obligations of confidentiality set forth herein will commence on the date first above written and will continue (a) with respect to Confidential Information which qualifies as a trade secret under applicable law, at all such times thereafter as it so qualifies, and (b) with respect to all other Confidential Information, for a period of two (2) years after the date of disclosure of such information.

Warranties. The Disclosing Party represents that if the Confidential Information disclosed hereunder contains any confidential or proprietary information of any third party, such third party has authorized the disclosure of such information. No other warranties of any kind are made with respect to any information disclosed under this Agreement.

Notices. All notices under this Agreement will be in writing and will be deemed properly delivered when (a) delivered personally, (b) sent by facsimile to the fax number of the other party set forth below, with receipt confirmed, or (c) mailed by certified mail, postage prepaid to the address of the other party set forth below. Notices will be effective upon receipt.

Miscellaneous. The rights and obligations of the parties will inure to the benefit of, will be binding upon, and will be enforceable by the parties and their lawful successors. No modifications of this Agreement or waiver of any of its terms will be effective unless set forth in writing signed by both parties.

This Agreement will be governed by and construed in accordance with the laws of the State of Hawai'i. If either party employs attorneys to enforce any rights arising out of or relating to this Agreement, the prevailing party will be entitled to recover actual, reasonable attorneys' fees. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof. Should any provision of this Agreement be held invalid, illegal or unenforceable for any reason, such provision will be deemed restricted in application to the extent required to render it valid, and the remainder of this Agreement will in no way be affected and will remain valid and enforceable for all purposes.

IN WITNESS WHEREOF, this Confidentiality Agreement has been executed and delivered as of the date first above written.

THE HAWAII TOURISM AUTHORITY	CONTRACTOR:
Signed:	Signed:
Name:	Name:
Title:	Title:
Address: Hawai'i Convention Center, First Level 1801 Kalākaua Avenue Honolulu, Hawai'i 96815	Address:
Fax: 808-973-2253	Fax: