

CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement (hereafter "Agreement") is made between the University of Hawai'i (hereafter "University") and _____(hereafter "Company").

Whereas, Company has been retained to perform services for the University pursuant to 2005 contract with University of Hawai'i – Manoa College of Education to provide student assessment and electronic portfolio services for the University of Hawai'i], (hereafter the "Contract");

Whereas, in the course of performing services under this Contract, Company may have access to confidential information such as personal identifying information, including but not limited to, students' addresses, social security numbers and dates of birth; and proprietary information such as UH ID numbers, (hereafter collectively referred to as "Confidential Information").

NOW THEREFORE, Company and the University agree as follows:

1. Confidential Information disclosed by or on behalf of the University to the Company shall be used by the Company solely for the purpose of fulfilling the obligations of the Contract.
2. All Confidential Information disclosed hereunder shall be held in the strictest confidence by the Company. Only the employees and agents of the Company who are under obligations of confidentiality no less restrictive than those set forth herein shall have access to the Confidential Information, and then only for the purpose set forth above.
3. Company agrees not to make any copies in whole or in part of Confidential Information, which is not available on the open market or from other sources, for any purposes other than the purposes of fulfilling the obligations of the Contract. Company will, upon request by the University, return all tangible and intangible (such as data) materials furnished hereunder, including copies thereof.
4. This Agreement shall apply to all Confidential Information except to the extent that:
 - A. Disclosure of Confidential Information is necessary pursuant to the terms of the Contract;
 - B. Information is known by Company prior to the effective date of the Contract as established by written records kept in the normal course of business;

- C. Information that is known or becomes known to the public through no fault of the Company;
 - D. Information disclosed by a third party that to the Company's knowledge has no obligation of confidentiality to the University or its constituents.
5. In the event that Confidential Information is required to be disclosed as required by law or regulation the Contractor shall notify the University to allow the University to assert whatever exclusions or exemptions may be available to it.
 6. The University shall retain all proprietary rights in and to Confidential Information disclosed hereunder. Neither this Agreement nor the disclosure of Confidential Information shall be construed to grant any party an implied or express license, or any right to obtain any implied or express license, to any Confidential Information of the University.
 7. This Agreement shall be construed and governed by the laws of the State of Hawai`i. Any action at law or equity to enforce or interpret the provisions of this contract shall be brought in a state court of competent jurisdiction in Honolulu, Hawai`i.
 8. The Company agrees that any breach of this Agreement will cause the University substantial and irreparable damages and, therefore, in the event of any such breach, in addition to other remedies which may be available, the University shall have the right to seek specific performance and other injunctive and equitable relief.
 9. This Agreement may not be changed or modified or released, discharged or abandoned, or otherwise terminated in whole or in part, except in a written instrument, executed by the University.

Date: _____

By: _____

Title: _____