

NON-DISCLOSURE AGREEMENT

This Non-Disclosure Agreement is made and entered into this ___th day of _____ 2019 in MAKATI CITY by and between:

AKAMAI HOLDINGS INC., a corporation duly organized and existing under the laws of the Philippines, with principal office at **Unit 301, W. Young Building, Felipe Rd. Brgy. Poblacion Bel-Air Makati City, Metro Manila, Philippines** herein represented by its CHAIRMAN, **MR. ANTONIO V. ECHAVEZ**;

-and-

_____ with office
address _____, represented by its
PRESIDENT; _____

WITNESSETH: THAT;

WHEREAS, the Parties agree to enter into discussions concerning any Potential Transaction and anticipate that in the course of such discussions certain Confidential Information, as hereinafter defined, may be disclosed;

WHEREAS, the Parties desire to prevent the unauthorized use and disclosure of any Confidential Information;

- **AKAMAI RESORTS PROJECT (AKAMAI Holdings, Inc.)**

NOW, THEREFORE, in consideration of the premises and covenants contained herein, the Parties undertake and agree as follows:

1. **Definitions.** As used herein:

- 1.1 The phrase "Confidential Information" shall mean any and all technical and non-technical information, in whatever form or media, obtained orally, in writing, visually, by observation or by other means, including but not limited to:
 - (a) designs, sources and contacts,
 - (b) patent and patent applications,
 - (c) trade secrets,
 - (d) information obtained by the Disclosing Party from its customers or business partners under terms of confidence consistent with those applicable to this Agreement and disclosed under the terms of this Agreement to the Receiving Party;
 - (e) financial records;
 - (f) proprietary information (including but not limited to sales or service proposals, ideas, techniques, sketches, drawings, works of authorship, models, inventions, know-how, processes, apparatuses, equipment, algorithms, architecture and formulae related to the current, future, and proposed products and services of a Party, and including, without limitation, information concerning research, experimental work, development, design details and specifications, engineering, financial information, procurement requirements, purchasing, manufacturing customer lists, investors, employees, consultants, business and contractual relationships, business forecasts, sales and merchandising, marketing plans and information that one Party provides to the other regarding third parties, business or finances of the Parties and its Affiliates, or other confidential and/or proprietary information of, or licensed to, the Parties or their clients/customers); and
 - (g) other information deemed proprietary or confidential by the Disclosing Party.
- 1.2 The phrase "Receiving Party" shall mean the recipient of Confidential Information, which shall include its directors, officers, stockholders, employees, contractors, counsel, advisors, authorized representatives, and/or assigns.
- 1.3 The phrase "Disclosing Party" shall mean the party responsible for the disclosure of the Confidential Information, which shall include its directors, officers, stockholders, employees, contractors, counsel, advisors, authorized representatives, and/or assigns;
- 1.4 The phrase "Third Party" shall mean parties other than the Receiving Party or Disclosing Party.
- 1.5 The parties to this Agreement are herein referred to individually as "Party" and collectively as "Parties".

1.6 The phrase "Potential Transaction" shall mean any business relationship, service agreement or other arrangement that may be entered into between the Parties.

2. **Scope.**

2.1. This Agreement covers all Confidential Information received or obtained by the Receiving Party both prior to and subsequent to the date of the execution of this Agreement.

2.2. If the Parties agree to enter into or continue any Potential Transaction and do not enter into a new confidentiality agreement, the terms and conditions set forth herein shall also apply to any information and/or materials related to, or activities undertaken in connection with, carrying out such Potential Transaction, unless otherwise agreed to by the Parties in writing.

3. **Term.** This Agreement shall remain in effect for a period of three (3) years from the date of its execution.

4. **Obligations of the Parties.** The Receiving Party agrees, with respect to any Confidential Information received from the Disclosing Party:

4.1. to hold such Confidential Information in confidence and use it only for the purpose of evaluating any Potential Transaction;

4.2. to use the same methods and degree of care that it uses in similar situation to prevent the disclosure of Confidential Information, provided that such measures are consistent with at least a reasonable degree of care;

4.3. not to disclose any Confidential Information to any Third Party without the prior written consent of the Disclosing Party;

4.4. to inform its directors, officers, stockholders, employees, contractors, counsel, advisors, authorized representatives, and/or assigns, as the case may be, of the nature of the Confidential Information;

4.5. to require its directors, officers, stockholders, employees, contractors, counsel, advisors, authorized representatives, and/or assigns to strictly observe this Agreement;

or disclosure of Confidential Information, or any other breach of this Agreement by the Receiving Party, and will cooperate with the Disclosing Party in every reasonable way to help the latter regain possession of the Confidential Information and prevent further unauthorized use or disclosure; and

4.7. to return or destroy the Confidential Information received from the Disclosing Party within fourteen (14) days from the date of the Disclosing Party's written request for the return or destruction of such Confidential Information and to retain no reproductions, copies, extracts or summaries of any Confidential Information.

5. **Limitations.** The Receiving Party shall not be obligated to treat any information as Confidential Information if such information:

5.1. was rightfully in the Receiving Party's possession or was rightfully known to the Receiving Party prior to receipt from the Disclosing Party;

5.2. was independently known to the Receiving Party, provided, that the Receiving Party shall bear the burden of proving that it had independent knowledge of such information;

5.3. was already available to the public at the time of disclosure;

5.4. becomes available to the public other than by reason of a breach of the terms of this Agreement by the Receiving Party;

4.6. to notify the Disclosing Party immediately upon discovery of any unauthorized use

5.5. was or becomes rightfully known to the Receiving Party from a source not bound by a confidential obligation with the Disclosing Party;

5.6. is required to be disclosed pursuant to a court or government action provided, however, that the Receiving Party shall immediately notify the Disclosing Party of the order to give the latter an opportunity to exercise its remedies under law;

5.7. is disclosed pursuant to an express written statement by the Disclosing Party that such information is not confidential.

6. **Non-Solicitation.** During the term of this Agreement, either Party shall not, directly or indirectly:

- 6.1. solicit, induce, persuade, employ parties or assist in the solicitation, inducement, persuasion or employment of, any person employed by the other Party to leave the employ of or terminate such person's relationship with the other Party, in order to engage in or be employed in any business that competes or intends to compete, directly or indirectly, with the other Party's business; or
- 6.2. solicit, induce, persuade, or assist in the solicitation, inducement, persuasion of, any customer or client of the other Party to cease doing business in whole or in part with the other Party with respect to the other Party's business or otherwise divert business from the other Party in any manner.
- 6.3. solicit, induce, persuade, assist and or engage any customer or client during both parties MOA agreement.

7. **No Other Obligation.**

- 7.1. The Parties agree that this Agreement does not require or compel any party to disclose any Confidential Information, or obligate any party to enter into a business or contractual relationship.
- 7.2. Further, it is understood that no patent, copyright, license, title or interest is hereby granted by either party to the other by reason of this Agreement.

8. **Representations and Warranties.**

- 8.1. Disclosing Party makes no representation or warranty as to the accuracy or completeness of the Confidential Information and Receiving Party agrees that Disclosing Party shall have no liability to the Receiving Party resulting from any use of the Confidential Information.
- 8.2. Each Party represents and warrants that its relationship with the other Party will not cause or require it to breach any obligation, agreement, or confidence related to confidential, trade secret and proprietary information with any other person, company or entity.

9. **Indemnification Clause.**

Each Party agrees to indemnify the other party and hold the latter, and/or the latter's directors, officers, employees, personnel, consultants and agents, free and harmless from and against any and all liabilities, claims, demands, actions, suits, losses, damages, costs and expenses payable to third persons or the government by reason of:

- (a) its acts or omissions in violation of existing laws, rules and regulations;
- (b) its acts or omissions resulting to a liability or loss sustained by the other Party in the performance of any part of its obligations/s as specified herein;
- (c) its breach of the provisions of this Agreement; and
- (d) a representation made by it which results in the imposition of liabilities, claims, demands, actions, suits, losses, damages, costs and expenses to the other Party.

10. **Remedies.**

The Receiving Party acknowledges that monetary damages may not be a sufficient remedy for damages resulting from the unauthorized disclosure of Confidential Information and that the Disclosing Party shall be entitled, without waiving any other rights or remedies, to seek such injunctive or equitable relief as may be deemed proper by a court of competent jurisdiction

11. **Counterparts.**

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

12. Separability Clause.

If any one or more of the provisions of this Contract are declared invalid, illegal or unenforceable in any respect under any applicable law, the validity, legality or enforceability of the remaining provisions contained herein shall not in any way be affected or impaired.

13. Governing Law and Dispute Resolution.

This Agreement shall be governed by the laws of the Republic of the Philippines. In case of any dispute arising from or in connection with this Agreement, the Parties agree to resolve the same through good faith negotiations.

14. Jurisdiction.

If resort to court proceedings cannot be avoided, the Parties agree that the sole and exclusive venue of any such proceedings shall be in the proper courts of Makati City.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date and place first above-written.

**AH3 CONSTRUCTION
CORPORATION.**

**Company
General Contractor**

By:

By:

**ENGR. AARON T. FERNANDEZ
President – CEO**

AKAMAI Holdings, Inc.

**MR. ANTONIO V. ECHAVEZ
CHAIRMAN**

Signed in the presence of:

A C K N O W L E D G E M E N T

