

NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT

This NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT (this "Agreement") dated effective as of _____, 2020, is made and entered into by and between

Dr. James E. Hetrick, (the "Disclosing Party") a professor employed at the University of the Pacific with campuses in Stockton, San Francisco, and Sacramento, California, and

_____ (the "Receiving Party"). The Disclosing Party and the Receiving Party may sometimes herein be referred to collectively as the "Parties" or individually as a "Party."

WITNESSETH:

WHEREAS, the Disclosing Party and the Receiving Party have held preliminary discussions and intend to hold further discussions in which certain proprietary Confidential Information, as defined hereinafter, of the Disclosing Party will be shared with and disclosed to the Receiving Party, and each of the Parties wishes to protect such Confidential Information which shall be disclosed between the Parties against unauthorized use and disclosure;

WHEREAS, the Receiving Party agrees to protect the confidentiality of all Confidential Information disclosed to it by the Disclosing Party against unauthorized use and disclosure; and

WHEREAS, as a pre-condition to the disclosure of the confidential and/or proprietary information, the Parties agree that any and all Confidential Information (defined below) disclosed to the Receiving Party shall remain strictly confidential and shall not be used or in any way exploited by the Receiving Party, except in accordance with the terms of this Agreement;

NOW, THEREFORE, the Parties hereby covenant and agree as follows:

Definition of Confidential Information. The term "Confidential Information" shall mean confidential and/or proprietary information disclosed to the Receiving Party by the Disclosing Party or its affiliates, including, without limitation, financial, marketing, operating, performance, cost, business, intellectual property, inventions, recipes, menu items, project specific design and related data, project specific cost and revenue projections, processes, procedures, source code and other information of the Disclosing Party or any other Person (as defined below). The term "Confidential Information" does not include information that (a) is now, or hereafter becomes, through no act or failure to act on the part of the Receiving Party, generally known or available; (b) is known by the Receiving Party at the time of receiving such information as evidenced by its records; or (c) is hereafter furnished to the Receiving Party by a third party, as a matter of right and without restriction on disclosure.

Restricted Use of Confidential Information; Covenant Not to Disclose. Subject to the restrictions contained in this Agreement, Confidential Information of the Disclosing Party may be used by the Receiving Party solely for the purpose of investigating possible business arrangements between the Receiving Party and Disclosing Party and/or one or more of Disclosing Party's affiliates (the "Purpose"). Confidential Information will be held by the Receiving Party in the strictest confidence at all times and will not be used by the Receiving Party for any purpose other than the Purpose. The disclosure of the Confidential Information to the Receiving Party shall not grant any right to assign, license, sublease, or

otherwise transfer the Confidential Information to the Receiving Party. Confidential Information will not be disclosed or divulged by the Receiving Party to any Person, except as may be required by law, rule or regulation, or by the order or demand of a court or government agency or authority; provided, that the Receiving Party provides the Disclosing Party with prompt notice of such requirement prior to compliance so that the Disclosing Party may seek an appropriate protective order or waive the restriction on disclosure. If, in the absence of a protective order, other legal remedy or the receipt of prior written consent by the Disclosing Party, the Receiving Party is nonetheless, in the opinion of the Receiving Party's legal counsel, legally compelled to disclose Confidential Information to any tribunal or else stand liable for contempt or suffer other censure or penalty, the Receiving Party may, without liability hereunder, disclose to such tribunal only that portion of the Confidential Information which such legal counsel advises is legally required to be disclosed; provided, that the Receiving Party exercises its best efforts to preserve the confidentiality of the Confidential Information including, without limitation, by cooperating with the Disclosing Party to obtain an appropriate protective order or other reliable assurance that confidential treatment will be accorded the Confidential Information by such tribunal. The Receiving Party shall not put Confidential Information to any personal use, including, without limitation, for the benefit of any other Person. The term "Person" as used in this Agreement shall be broadly interpreted to include, without limitation, the media, any corporation, group, partnership, individual, joint venture, trust, estate, or unincorporated organization.

Return of Confidential Information. Upon the request of the Disclosing Party, the Receiving Party shall promptly deliver to the Disclosing Party all Confidential Information, including any copies, compilations, and extracts thereof, in the Receiving Party's, without retaining any copies thereof (including on hard disk, flash drive or any other electronic, magnetic or digital medium), or shall certify the destruction thereof, unless prohibited by professional standards applicable to its profession; provided, however, that the Receiving Party need not destroy Confidential Information captured and retained in the Receiving Party's routine computer backup process, provided that no specific effort is made to retrieve such archived Confidential Information for any purpose which could violate the confidentiality obligations in this Agreement. Notwithstanding the return of the Confidential Information, the Parties will continue to be bound by the terms and conditions of this Agreement.

No Agency Relationship. This Agreement does not create any agency or partnership relationship between the Parties of any kind.

Term. This Agreement and all obligations hereunder shall be effective for three years from the date that the Disclosing Party last discloses any Confidential Information to the Receiving Party. Notwithstanding such termination, the obligations of the Receiving Party to protect the confidentiality of the Confidential Information shall survive in perpetuity.

Effect of Discussions. Neither Party will be under any obligation whatsoever with respect to a transaction by virtue of this Agreement or any other written or oral expression with respect to such a transaction by any of the Parties' agents or representatives.

No Publicity. Without first obtaining the written consent of the other Party, the Receiving Party shall not issue or release any articles, advertising, publicity or other matter relating to any Confidential Information of the other Party (including the fact that a meeting or discussion has taken place between the Parties) or mention or imply the name of the other Party, except as may be required by law (and then only after providing the other Party with an opportunity to review and comment thereon) without the Disclosing Party's prior written consent.

Remedies for Breach. The Receiving Party acknowledges and agrees that disclosure of any Confidential Information will result in irreparable harm to the Disclosing Party. Accordingly, in the event of a breach or threatened breach of the provisions of this Agreement by the Receiving Party, in addition to any other remedy that the Disclosing Party may have at law, the Disclosing Party shall be entitled to seek injunctive or similar relief to specifically enforce such provisions.

Governing Law. This Agreement shall be governed by the laws of the State of California, without giving effect to the choice of laws or conflict of laws of any State. It is agreed that in the event of any litigation arising hereunder, the Parties hereto shall submit to the jurisdiction of any court of competent jurisdiction within Sacramento County, California, and will comply with all requirements necessary to give such Court jurisdiction, and that all matters arising hereunder shall be determined in accordance with the law and practice of such court. It is further agreed that service of process in any such litigation may be made in the manner provided for in Section 415.4 of the California Code of Civil Procedure, or in any other manner provided for in said Code for service upon a person outside the State of California.

Waivers. No waiver of any provision or condition of this Agreement shall be valid unless executed in writing and signed by the Party to be bound thereby, and then only to the extent specified in such waiver. No waiver of any provision or condition of this Agreement shall be construed as a waiver of any other provision or condition of this Agreement, and no present waiver of any provision or condition of this Agreement shall be construed as a future waiver of such provision or condition.

Entire Agreement. This Agreement contains the entire understanding between the Parties concerning the subject matter contained herein. There are no representations, agreements, arrangements, or understandings, oral or written, between or among the Parties relating to the subject matter of this Agreement that are not fully expressed herein. No prior or contemporaneous oral or written language may be introduced to contradict, amend, or enlarge any provision of this Agreement. Each Party fully understands the consequences of this provision and has had an opportunity to consult with legal counsel.

Severability. In the event that any of the provisions, or portions thereof, of this Agreement are held to be illegal, unenforceable or invalid by any court of competent jurisdiction, the legality, enforceability, and validity of the remaining provisions, or portions thereof, shall not be affected thereby, and, in lieu of the illegal, unenforceable or invalid provision, or portion thereof, there shall be added a new legal, enforceable and valid provision as similar in scope and effect as is necessary to effectuate the results intended by the deleted provision or portion.

Counterparts. This Agreement may be executed simultaneously in two or more counterparts, including by facsimile signature, either of which need not contain the signatures of more than one party, but which taken together shall constitute one and the same Agreement.

Assignment; Binding Effect. Neither Party may assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other Party. Subject to the foregoing restriction, this Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors, heirs, and permitted assigns.

IN WITNESS WHEREOF, the duly authorized officers or representatives of the Parties have set their respective hands hereto as of the date first written above.

DISCLOSING PARTY:

Dr. James E. Hetrick

By: _____

Printed: _____ James Hetrick _____

Title: _Professor and Fletcher Jones Endowed Professor of Data Science

Date: ___20 Apr 2020_____

Address: ___Physics Dept., 3601 Pacific Ave., Stockton, CA 95211

RECEIVING PARTY:

By:

Printed: _____

Title: _____

Date: _____

Address: _____
