



**MUTUAL NON-DISCLOSURE
AGREEMENT**

Document No.
PF-01M

Rev.
1

Date
05/13/24

Owner: Chief Financial Officer

MUTUAL NON-DISCLOSURE AGREEMENT

This Mutual Non-Disclosure Agreement (“**Agreement**”) is entered into as of the [] day of [], 20[] (“**Effective Date**”) between [Prototek operating entity name], a [state] [entity type], having its principal place of business at [address] (“**Prototek**”), and [company/person’s name], [a [state] [entity type],] having [its/his/her] principal place of business at [address] (“**[Party B]**”). Prototek and [Party B] are sometimes referred to in this Agreement individually as a “**Party**” and sometimes collectively as the “**Parties**.”

Background. Each Party possesses Confidential Information (as defined below), and the Parties desire to exchange their respective Confidential Information for an Authorized Purpose (as defined below) upon the terms and conditions of this Agreement. Neither Party would be willing to provide Confidential Information to the other Party without the execution and delivery of this Agreement by the other Party.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

Definitions.

“**Affiliate**” of any particular Person means any other Person controlling, controlled by, or under common control with such particular Person, where “control” means the possession, directly or indirectly, of the power to direct the management and policies of a Person whether through the ownership of voting securities, contract or otherwise.

“**Authorized Purpose**” means the purpose of (i) [[evaluating a potential commercial agreement, arrangement or other transaction among the Parties] / [SPECIFIC PROJECT DESCRIPTION]] [Note to User: Insert a specific project description if the project is particularly sensitive and the use of the information should be limited.]; and (ii) performing under any such potential agreement, arrangement or other transaction.

“**Disclosing Party**” means (i) Prototek when Prototek is the Party disclosing its Confidential Information to [Party B], and (ii) [Party B] when [Party B] is the Party disclosing its Confidential Information to Prototek.

“**Confidential Information**” means all information, documents and records concerning the business and affairs of a Disclosing Party or its Affiliates, including without limitation, financial statements, projections, budgets and other financial information; information describing or relating to business, operational, marketing and financial plans, strategies, relationships and performance; trade secrets; unpatented inventions, know-how, ideas, methods, and discoveries; software code, source code and object code; designs, specifications and components; schematics; customer lists; supplier lists; market studies; business plans; product samples; and any other confidential or proprietary information. All of the foregoing shall be Confidential Information whether or not marked as “confidential” or “proprietary,” whether or not provided or existing in oral, written, electronic or other form (including, without limitation, through a physical tour of the Disclosing Party’s facilities), and regardless of the source of disclosure to the Receiving Party. Confidential Information shall also include all notes, databases, summaries, analyses, documents, models, prototypes, electronic media storage devices and other records containing or embodying any, based on, or derived from Confidential Information, regardless of who prepared them. Notwithstanding the foregoing, Confidential Information will not include (i) information that is or becomes available to the general public through no wrongful act of, or breach of this Agreement by, the Receiving Party; (ii) information that the Receiving Party receives from a third party (A) without restriction as to use or disclosure and (B) without the breach or violation of any agreement; contractual, legal or fiduciary duty; or applicable law, court order or regulation; or (iii) information that the Receiving Party can demonstrate

was independently developed by employees of the Receiving Party having no access to, and without the benefit of or reference to, the Confidential Information.

“Person” means an individual, partnership, corporation, association, limited liability company, joint stock company, trust, joint venture, unincorporated organization, governmental entity (or any department, agency or political subdivision thereof) and any other entity.

“Receiving Party” means (i) Prototek when [Party B] is the Disclosing Party, and (ii) [Party B] when Prototek is the Disclosing Party.

“Representatives” of any particular Person means such Person’s Affiliates, directors, managers, members, officers, employees and legal counsel.

Restrictions. A Receiving Party shall not, directly or indirectly, use any of the Confidential Information except for an Authorized Purpose. Except as provided in Section 3, a Receiving Party (a) shall keep confidential all Confidential Information, and (b) shall not, directly or indirectly, disclose, reveal or allow to be revealed to any Person any Confidential Information. The Receiving Party shall employ at least the same security measures to Confidential Information that it would apply to its own Confidential Information (but in no event less than a reasonable degree of care). A Receiving Party shall not, directly or indirectly, (i) reverse engineer, disassemble, decompile or otherwise determine the components or make up of, any Confidential Information of a Disclosing Party, or (ii) facilitate or enable the misappropriation of any intellectual property or trade secret of a Disclosing Party. A Receiving Party may only disclose Confidential Information to its Representatives who have a need to know in connection with an Authorized Purpose and who know of the existence and terms of this Agreement and are bound by obligations of confidentiality no less protective of the Confidential Information than the terms contained herein. A Receiving Party shall be liable for any unauthorized use or disclosure of Confidential Information by its Representatives. The provisions of this Agreement shall apply whether Confidential Information was disclosed to a Receiving Party prior to or after the Effective Date. Upon the request by a Disclosing Party, the Receiving Party shall (x) immediately cease use of the Confidential Information of the Disclosing Party, (y) promptly destroy or return to the Disclosing Party the Confidential Information and all notes, databases, summaries, analyses, documents, models, prototypes and other records containing or embodying any, based upon, or derived from, Confidential Information whether they were originally provided to the Receiving Party by the Disclosing Party or whether they were produced by the Receiving Party after receiving Confidential Information and (z) within seven (7) days of such request, deliver a certificate to the Disclosing Party that is signed by the Receiving Party after certifying that all such Confidential Information in the Receiving Party’s possession has been either delivered to the Disclosing Party or permanently destroyed. Notwithstanding anything in this Agreement to the contrary, this Agreement shall not, and is not intended in any way to, prohibit a Party from using or disclosing its own Confidential Information.

Legally Compelled Disclosure. If a Receiving Party is required by law, including without limitation any subpoena or court order issued by a court of competent jurisdiction, to disclose any of the Confidential Information, the Receiving Party will (to the extent it may legally do so) give prompt and prior written notice of the required disclosure to the Disclosing Party so that the Disclosing Party may seek a protective order or other appropriate remedy, and the Receiving Party will cooperate with the Disclosing Party with respect to the Disclosing Party’s efforts (at the expense of the Disclosing Party) to block, resist or narrow the scope of such required disclosure. If, in the absence of a protective order or other remedy or the receipt of a waiver by the Disclosing Party, the Receiving Party is nonetheless legally compelled to disclose Confidential Information, the Receiving Party may disclose only that portion of the Confidential Information which the Receiving Party is legally required to be disclosed.

Term. All Confidential Information shall be safeguarded as required by this Agreement as of the Effective Date and for a period of five (5) years from the Effective Date (the “**Term**”); provided, however, that any Confidential Information that is a trade secret under applicable law shall be



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safeguarded as required by this Agreement in perpetuity or until such information ceases to be a trade secret under applicable law (other than through an act or omission of Receiving Party), whichever occurs first.

Equitable Remedies. Each Receiving Party acknowledges that the Confidential Information is unique and valuable to the Disclosing Party and that monetary damages would not be an adequate remedy for the breach of this Agreement by the Receiving Party. The Disclosing Party shall be entitled to a temporary restraining order, preliminary and permanent injunctions, and other injunctive and equitable relief to enforce this Agreement and to prevent a breach or threatened breach of this Agreement. The Disclosing Party shall not be required to post any bond or other security, and the Receiving Party waives any right to require the posting of a bond or other security. Such remedies shall not be deemed to be the exclusive remedies for a breach of this Agreement and shall be in addition to all other remedies available at law or in equity. In the event of a dispute or litigation relating to this Agreement, the prevailing Party shall be entitled to receive from the other Party the reasonable attorneys' fees, costs and expenses incurred by or on behalf of the prevailing Party in connection with such dispute or litigation, including any appeal therefrom.

No Warranties. ANY CONFIDENTIAL INFORMATION IS PROVIDED "AS IS" AND WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND, INCLUDING ANY EXPRESS OR IMPLIED WARRANTY AS TO THE COMPLETENESS OR ACCURACY OF THE CONFIDENTIAL INFORMATION. This Agreement is designed to facilitate the Parties' discussions related to the Authorized Purposes; provided, that no Party shall be obligated under this Agreement to enter into any transaction, agreement or other business relationship of any kind. A Disclosing Party is not obligated to disclose any Confidential Information pursuant to this Agreement and may cease providing or disclosing Confidential Information at any time and for any reason. The Disclosing Party retains its entire right, title and interest in and to all Confidential Information, and the Receiving Party shall not obtain a license of or any other rights in any of the Confidential Information (or any intellectual property, technology, trademarks, trade names, patents or other property or rights of the Disclosing Party or its Affiliates) by virtue of this Agreement or the disclosure of Confidential Information.

Intellectual Property. All intellectual property and moral rights of the Disclosing Party in and to its Confidential Information as well as any documents prepared by the Receiving Party according to instructions or for the benefit of the Disclosing Party (collectively, "Disclosing Party IP"), shall be and remain the Disclosing Party's and its Affiliates' exclusive property and shall not be used, reproduced, or made available to third parties by the Receiving Party except as provided in this Agreement. The Receiving Party shall, if so requested, surrender any Disclosing Party IP, and all copies and duplicates thereof, to the Disclosing Party without delay. The Disclosing Party reserves all intellectual property and moral rights of all Disclosing Party IP provided to the Receiving Party. The Receiving Party agrees that the Disclosing Party's (or its Affiliates') disclosure of any Disclosing Party IP does not grant to the Receiving Party any license or intellectual property or similar right applicable to or in any Disclosing Party IP, and the Receiving Party hereby waives any and all such rights. The Receiving Party will not name or designate any Disclosing Party IP in any patent application. If the Receiving Party acquires any intellectual property or similar rights in or relating to any Disclosing Party IP (including any rights in any trademarks, trade secrets, derivative works or patent improvements relating thereto), by operation of law, or otherwise, such rights are deemed and are hereby irrevocably assigned to the Disclosing Party or its licensors, as the case may be, without further action by either party hereto

Cooperation upon Breach. In addition to all other remedies the Disclosing Party has for any breach or threatened breach by the Receiving Party of this Agreement, the Receiving Party shall notify the Disclosing Party immediately upon discovery of any unauthorized disclosure or use of Confidential Information; and cooperate, without charge, with reasonable efforts by the Disclosing Party to regain



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possession of the Confidential Information, prevent further breaches of this Agreement and prevent further unauthorized uses or disclosures of the Confidential Information.

Non-Solicitation of Employees. Each Party agrees that during the Term, without obtaining the prior written consent of the other Party, neither Prototek, on one hand, nor [Party B], on the other hand, shall, directly or indirectly, solicit for employment or otherwise induce, influence, or encourage to terminate employment with the other Party any employee of such other Party, except pursuant to a general solicitation through the media or by a search firm, in either case, not directed specifically to any employees of the other Party.

No Assignment. No Party shall assign or delegate this Agreement or any right or obligation under this Agreement without the prior written consent of the other Party, which may be withheld in its sole discretion, and any attempted assignment or delegation without that consent shall be void.

Governing Law; Venue. This Agreement shall be governed by the laws of the State of New York, without regards to its conflict of laws principles. The Parties agree that the New York state courts and the United States District Court for the Southern District of New York in New York County shall constitute the sole and exclusive judicial forum(s) and venue and, therefore, shall have sole and exclusive jurisdiction over the adjudication and resolution of any and all such actions, suits or proceedings arising out of or relating to this Agreement, except that a Disclosing Party may institute an action for equitable or comparable relief (including without limitation an action for temporary or permanent injunctive relief) in another forum or venue. Each Party hereby consents and submits to the exercise of personal jurisdiction over it by the New York state courts and the United States District Court for the Southern District of New York in New York County. Each Party hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

Severability. If any provision of this Agreement or portion thereof is found to be invalid, illegal or unenforceable then, notwithstanding such invalidity, illegality or unenforceability, this Agreement shall remain in full force and effect and there shall be substituted for such invalid, illegal or unenforceable provision or portion thereof a like but legal and enforceable provision or portion that, in the judgment of a court of competent jurisdiction, most nearly implements the intention of the Parties. If a like but legal and enforceable provision or portion cannot be substituted under the laws of a particular jurisdiction, then the illegal or unenforceable provision or portion shall be deemed to be deleted from this Agreement and the remaining provisions shall continue in full force and effect.

Miscellaneous. All requests and notices under this Agreement must be in writing and addressed to the relevant Party at its address set forth in the preamble to this Agreement (or to such other address such Party specifies in a subsequent notice provided in accordance with this Section 13). All such requests and notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), e-mail (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Any such notice shall be deemed to be delivered, given and received for all purposes (a) as of the date of actual receipt if delivered personally or sent by certified or registered mail, (b) on the next business day if sent by nationally-recognized overnight courier service, (c) as of the date the e-mail is transmitted, unless it is transmitted after 5:00 pm ET, in which case it shall be deemed delivered, given and received the next day. Each Party is an independent contractor, and nothing in this Agreement shall be construed as creating a partnership, joint venture, agency or fiduciary relationship between the Parties. This Agreement is the entire agreement between the Parties regarding, and supersedes all prior and contemporaneous agreements, negotiations and understandings regarding, the subject matter of this Agreement. The Parties may amend this Agreement only by a written amendment executed and delivered by the Parties. The Parties acknowledge and agree that they have participated in the negotiations and



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preparation of this Agreement. Accordingly, no presumption or burden of proof shall be raised in any question of interpretation of this Agreement based upon any assertion that one party or the other has drafted this Agreement or any provision hereof. No failure or delay by a Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial waiver thereof preclude any other or future exercise thereof or the exercise of any other right, power or privilege hereunder. This Agreement may be executed in one or more counterparts, each of which shall be an original instrument, but all of which shall constitute one and the same agreement. This Agreement may be signed electronically or by other similar means, and such signature shall have the same effect as a manual signature. The exchange of executed copies of this Agreement by e-mail in .pdf or another similar electronic format shall constitute effective execution and delivery of this Agreement.

The Parties hereby execute this Mutual Non-Disclosure Agreement as of the Effective Date.

PROTOTEK

[PARTY B]

[insert Prototek operating entity name]

[insert company/person's name]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Revisions

Revision	Description	Revision Date	Approved by
0	Previous NDA	Unknown	CEO
1	Rewrite of NDA	05/13/24	CEO