

PROTOTEK NON-DISCLOSURE AGREEMENT

This Prototek 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 name/person name], [a [state] [entity type],] having [its/his/her] principal place of business at [address] (“**Recipient**”).

Background. Prototek is engaged in the business of digital based manufacturing services including CNC machining, precision sheet metal fabrication, additive manufacturing and visual modeling services. Recipient may from time to time be engaged to provide services to Prototek. In the course of providing such services, Recipient may receive from or be granted access by Prototek or its affiliates or otherwise come to possess certain information deemed confidential and proprietary by Prototek. This Agreement allows Recipient to receive or gain access to the Confidential Information (defined below) for the Purpose (defined below), subject to Recipient’s agreement to abide by the terms and conditions provided herein.

NOW THEREFORE in consideration of the foregoing premises, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Recipient agrees as follows:

- 1. Confidential Information Defined.** Recipient may use any Confidential Information obtained from Prototek or its affiliates in the course of providing services solely for the purpose of Recipient providing such services (the “**Purpose**”). The term “**Confidential Information**” shall mean any information, material or data of any nature whatsoever, whether written or oral, and whether or not patentable, and whether or not being clearly designated, labeled or marked as confidential or its equivalent at the time of disclosure, including, but not limited to, trade secrets, system designs, schematics, inventions, discoveries, improvements, concepts, technology, pricing policies, financial information of any nature whatsoever, or any information regarding Prototek’s, or its affiliates’ customers, services, sales, marketing techniques and strategies and any information, whether or not clearly designated, labeled or marked as confidential, when the nature of such information would cause a reasonable person to believe that it is information that Prototek or its affiliates would not want disclosed and/or that Prototek or its affiliates would consider proprietary and/or confidential. Confidential information shall additionally include any information belonging to Prototek’s or its affiliates’ customers but in Prototek’s or its affiliate’s possession, where such information would constitute Confidential Information if it belonged to Prototek or its affiliates. The following information will not be considered Confidential Information: (i) information that was at the time of disclosure by Prototek to Recipient in the public domain; (ii) information that, prior to the disclosure by Prototek, was in the possession of Recipient as a matter of written record; (iii) information that was independently developed by Recipient; (iv) information that was approved for release by written authorization of Prototek; or (v) information that Recipient can show was received from a third party who was not under an obligation of confidentiality to Prototek.
- 2. Disclosure Period and Termination.** This Agreement controls Confidential Information which is disclosed from the Effective Date until terminated. Recipient’s duty of non-disclosure under this Agreement shall extend beyond the term of this Agreement for a period of five (5) years from the date of last disclosure. This Agreement may be terminated by either party upon thirty

(30) days written notice to the other party. The parties agree that Confidential Information constituting a trade secret shall remain subject to the confidentiality obligations of this Agreement for so long as such Confidential Information qualifies as a trade secret under applicable law (other than due to an act or omission by the Recipient or its representatives).

- 3. Duty to Protect.** Recipient shall protect the disclosed Confidential Information by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized use, dissemination or publication of the Confidential Information as the Recipient uses to protect its own Confidential Information of a similar nature. Such care shall include at least that the Recipient shall (i) limit access to all Confidential Information to its employees who shall reasonably require access to the Confidential Information for the purpose set forth above, (ii) shall insure that all such employees have signed a nondisclosure agreement in content substantially similar to this Agreement, (iii) shall use the Confidential Information solely in connection with the Purpose, and (iv) shall use due diligence to insure that all such persons comply with the provisions of this Agreement. Recipient shall be liable for any breach of this Agreement by its employees or representatives.
- 4. Court Orders.** Nothing contained in this Agreement shall restrict Recipient from disclosing Confidential Information that is required to be disclosed under any subpoena or court order provided that the Recipient provides Prototek with prompt written notice so that Prototek may seek a protective order or take other appropriate measures. If no protective order or other remedy is obtained prior to the time the disclosure of such Confidential Information is required, Recipient shall disclose only that portion of the Confidential Information that is legally required to be disclosed (as advised by Recipient's counsel) and exercise reasonable efforts to obtain assurance that confidential treatment will be accorded to such of the disclosed Confidential Information that Prototek so designates.
- 5. No Further Rights or Duties Implied.** Prototek does not warrant that the Confidential Information it discloses, either by itself or when combined with other information or when used in a particular manner, will be sufficient or suitable for the Recipient's purposes. The Confidential Information is provided "AS IS" with all faults. Prototek shall not be liable for the accuracy or completeness of the Confidential Information. Nothing contained herein shall grant a license under any patent or other intellectual property right, nor shall this Agreement or any transmission of information constitute any representation or warranty to the Recipient with respect to infringement of any intellectual property rights of others. Prototek has no obligation under this Agreement to (a) purchase any item or service from the Recipient or (b) sell any item or service to the Recipient.
- 6. Return of Confidential Information.** Within ten (10) days after any written request by Prototek, the Recipient shall promptly return all copies of the Confidential Information except copies required for backup, disaster recovery, or business continuity and in such case the obligations hereunder shall survive until such copies are destroyed, and will promptly certify to Prototek in writing that it has done so.

- 7. 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 hereto 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 Prototek 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 hereto 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 hereto 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.
- 8. Remedies.** Recipient agrees that its obligations hereunder are necessary and reasonable in order to protect Prototek and its affiliates and their businesses, and expressly agrees that monetary damages will be inadequate to compensate Prototek for any breach by the Receiving Party of any covenants and agreements set forth herein. Accordingly, Recipient agrees and acknowledges that any such violation or threatened violation will cause irreparable injury to Prototek and that, in addition to any other remedies that may be available, in law, in equity or otherwise, Prototek will be entitled to seek injunctive relief against the threatened breach of this Agreement or the continuation of any such breach, without the necessity of proving actual damages and without the necessity of posting bond. Recipient further agrees to pay all fees and costs, including reasonable attorney's fees, that Prototek incurs in any action arising out of or related to this agreement
- 9. Export Restrictions.** Recipient acknowledges its obligations to control access to technical data under the U.S. export laws and regulations and agrees to adhere to such laws and regulations with regard to any technical data received under this Agreement.
- 10. Notice.** Any notice or communication required to be given by either party under this Agreement shall be in writing and shall be hand delivered, sent by certified or registered mail, return receipt requested, or sent by a nationally recognized overnight courier to the addresses stated in the preamble or such other address as either party may specify in writing to the other party. Such notices shall be deemed given: on the date delivered, if hand delivered; or on the date officially recorded as delivered by return receipt, or recordation if by overnight courier service. All notices shall be accompanied by email which shall alone not constitute notice.
- 11. Entire Agreement.** This document contains the complete and exclusive Agreement between the parties, and it is intended to be final expression of their agreement. No promise, representation, warranty or covenant not included in this document has been or is relied upon by any party. Each party has relied upon its own examination of the warranties, representations and covenants expressly contained in the Agreement itself. No modification or amendment of this



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Document No.
PF-01-S

Rev.
1

Date
05/13/24

Owner: Chief Financial Officer

Agreement shall be of any force unless in writing executed by all parties hereto.

12. Miscellaneous. Recipient shall not assign or delegate this Agreement or any right or obligation under this Agreement, and any attempted assignment or delegation shall be void. Prototek and Recipient are independent contractors, and nothing in this Agreement shall be construed as creating a partnership, joint venture, agency, or fiduciary relationship between the parties. The term “including” and similar terms in this Agreement shall not be construed to be limiting. No waiver of any provision of or right under this Agreement shall be effective unless it is in writing and signed by the party agreeing to the waiver. The failure of Prototek at any time or times to require performance of any provision hereof or claim damages with respect thereto shall in no manner affect its right at a later time to enforce the same. No waiver by Prototek of any condition or of any breach of any term, covenant, representation or warranty contained in this Agreement in any one or more instances shall be deemed to be a further or continuing waiver of any such condition or breach in other instances or a waiver of any other condition or breach of any other term, covenant, representation or warranty. This Agreement may only be modified by a written agreement signed by both parties. This Agreement may be executed in multiple counterparts which shall together constitute one and the same instrument. The parties agree electronic signatures of this Agreement shall be valid. If any provision of this Agreement shall be determined to be void, invalid, unenforceable or illegal for any reason, the validity and enforceability of all of the remaining provisions hereof shall not be affected thereby.

The parties hereto hereby execute this Non-Disclosure Agreement as of the Effective Date.

PROTOTEK

RECIPIENT

[insert Prototek operating entity name]

[insert company/person's name]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Revisions

Revision	Description	Revision Date	Approved by
-	Original Issue	unknown	CEO
1	Rewrite of NDA	05/13/24	CEO