

Non-Disclosure Agreement

MedPhab proposal discussion, preparation & implementation

This Non-Disclosure Agreement MedPhab proposal discussion, preparation & implementation (hereinafter the "Agreement") is effective as from (hereinafter the "Effective Date") by and between:

1) Customer:

....., with registered office situated at and hereby duly represented by hereinafter referred to as "Customer"

2) MedPhab Participating Party(ies):

2.1., with registered office situated at and hereby duly represented by hereinafter referred to as "....."

2.2., with registered office situated at and hereby duly represented by hereinafter referred to as "....."

hereinafter individually referred to as the "Party", "disclosing Party" or "receiving Party" and collectively the "Parties"

- WHEREAS MedPhab (Photonics Solutions at Pilot Scale for Accelerated Medical Device Development) is an Horizon 2020 funded pilot line project (Grant Agreement number: 871345) dedicated to manufacturing, testing, validation and upscaling of new photonics technologies for medical diagnostics;
- WHEREAS within MedPhab the participating Parties aim to bring high-quality infrastructure and extensive know-how within easy reach of the SME's and other European Industry customers thereby enabling accelerated product launch with reduced R&D cost;
- WHEREAS MedPhab aims to demonstrate its open access business model and services and to integrate the needs of the end-users and future customers of the pilot line through demo-cases with third parties, the funding for which is at least partly covered by the H2020 grant budget;
- WHEREAS for the Permitted Purpose (defined below), the disclosing Party may share Confidential Information with the receiving Party subject to the terms and conditions set forth below;

NOW, THEREFORE, the Parties enter into the following agreement:

Article 1 – Definitions

For the purposes of the Agreement, the following words shall have the meaning as provided hereunder:

- 1.1. "Affiliates" means any legal entity which is (a) Controlling a Party, or (b) under the same Control as a Party, or (c) Controlled by Party. Control(led) and Controlling as referred to in sub items (a), (b) and (c) above shall exist through the (i) direct or indirect ownership of more than 50 % of the nominal value of the issued equity share capital or of more than 50 % of the shares entitling the holders to vote for the election of directors or persons performing similar functions, or (ii) direct or indirect right by any other means to elect or appoint directors, or persons performing similar functions, who have a majority vote. An entity shall be deemed to be an Affiliate only as long as the above defined ownership or control lasts.

- 1.2. “Confidential Information” means any information and data that is not generally known to the public or has not yet been revealed, including but not limited to proprietary, technical, developmental, marketing, sales, operating, performance, cost, know-how, business and process information, computer programming techniques, and all record-bearing media containing or disclosing such information and techniques which are disclosed pursuant to this Agreement by the disclosing Party to the receiving Party. Confidential Information shall, if in written form, be marked “Confidential” or “Proprietary” or similarly legended by the disclosing Party before being turned over to the receiving Party. All oral disclosures of Confidential Information shall be summarized, in writing, by the disclosing Party and said summary will be given to the receiving Party within thirty (30) calendar days of the subject oral disclosure. The receiving Party must make any objections to the contents of the summary, in writing, within thirty (30) days of receipt.

Article 2 – Purpose

The purpose of this Agreement is to define the terms and conditions applicable to the Confidential Information belonging to or held by the disclosing Party and disclosed to the receiving Party or to which the receiving Party might have access (notably during meetings, visits or presentations) through the disclosing Party, in order to investigate discuss and prepare a proposal for a Project under MedPhab and/or implement upon approval this project and/or to cooperate on this approved project, and, as the case may be, pending the signature of the related agreement for the project (hereinafter referred to as the “Permitted Purpose”).

Article 3 – Obligations of the receiving Party

- 3.1. The receiving Party acknowledges that the disclosing Party has an interest in maintaining the confidentiality of the Confidential Information disclosed in relation to the Permitted Purpose. The receiving Party undertakes not to, and shall not, use, disclose, distribute and/or disseminate any and all parts of the Confidential Information of the Disclosing Party, in any form or format, to any third party other than the persons detailed in article 3.2 hereunder, without the prior written approval of the disclosing Party.
- 3.2. The receiving Party has the right to disclose the Confidential Information to persons (e.g. employees, consultants and/or advisors) within its organization (i) with a need to know for the Permitted Purpose, (ii) who are informed of the confidential nature of the Confidential Information and (iii) who agree to be bound or are already bound by existing agreements with the receiving Party) by terms no less stringent than the ones set forth in this Agreement.
Furthermore, this Agreement shall also cover the disclosure of any Confidential Information to or by Affiliates engaged in the performance of the Permitted Purpose. Disclosure by or to an Affiliate shall be deemed to be a disclosure under this Agreement, regardless to whom the Confidential Information belongs. In addition, this Agreement shall also cover disclosures of Confidential Information by and to each Party’s consultants and representatives engaged in the performance of the Permitted Purpose according to the terms herein and for the Permitted Purpose only.
- 3.3. The receiving Party shall treat any and all part(s) of the Confidential Information it receives from the disclosing Party with – at least – the same degree of due and diligent care as it applies with respect to its own confidential information, which standard shall in no instance be less than reasonable care. The receiving Party shall be liable for disclosure of Confidential Information of the disclosing Party if such care is not used. The burden shall be upon receiving Party to show that such care was used.
- 3.4. The receiving Party undertakes to use the Confidential Information solely for the Permitted Purpose and not use the Confidential Information for its own purposes or benefit.

- 3.5. The receiving Party shall not use the disclosing Party's Confidential Information in the design, development, production, stockpiling or use of weapons of mass destruction, such as nuclear, chemical or biological weapons or missiles, nor for any use supporting these weapon activities.
- 3.6. The receiving Party shall promptly cease to use the Confidential Information and all copies thereof upon first request of the disclosing Party and, in any event, upon termination of this Agreement.
- 3.7. The receiving Party shall have the right to refuse to accept any Confidential Information under this Agreement if it believes the receipt of such information would limit or restrict in any way the use of its own technology or otherwise impair its business interests and nothing herein shall obligate the disclosing Party to disclose to the receiving Party any particular information.

Article 4 - Exceptions

- 4.1. The obligations of article 3 shall not apply to any information, which the receiving Party can prove:
 - (a) Is or becomes part of the public domain, through no breach of this Agreement by the receiving Party;
 - (b) Was in the receiving Party's possession prior to receipt from the disclosing Party;
 - (c) Is received by the receiving Party from a third party free to disclose such information;
 - (d) Is independently developed by or on behalf of the receiving Party, without use of the disclosing Party's Confidential Information; or
 - (e) Is approved for release by prior written authorization of the disclosing Party.Confidential Information shall not be deemed to be in the public domain merely because any part of said information is embodied in general disclosures or because individual features, components or combinations thereof are, or become, known to the public.
- 4.2. Notwithstanding other provisions of this Agreement, if the receiving Party is required to disclose by operation of law or by final court or administrative order the disclosing Party's Confidential Information the receiving Party may disclose such Confidential Information provided that to the extent reasonably feasible the receiving Party furnishes prior notice of such requirement to the disclosing Party and cooperates with the disclosing Party in contesting disclosure or obtaining confidential treatment of such disclosure.

Article 5 – Title and rights

- 5.1. The receiving Party hereby acknowledges that the Confidential Information is and remains the sole and exclusive property of the disclosing Party. No patent or other proprietary rights are directly or indirectly licensed, granted or transferred to the receiving Party through this Agreement or upon disclosure of Confidential Information. The disclosure of Confidential Information shall not result in any obligation to grant the receiving Party rights therein.
- 5.2. The extent of disclosure hereunder by the disclosing Party to the receiving Party of Confidential Information shall be entirely at the disclosing Party's discretion consistent with the Purpose. No Party shall have an obligation to enter into any further agreement with one of the other Parties except as each Party, in its sole judgement, may deem advisable.

Article 6 – Warranty and liability

- 6.1. The disclosing Party makes no representation or warranty, express or implied, as to the fitness for purpose, accuracy or completeness of the Confidential Information, which is disclosed "as is".

- 6.2. The disclosing Party shall incur no liability with respect to the use, whether or not in accordance with the terms of this Agreement, by the receiving Party of any Confidential Information disclosed by the disclosing Party.
- 6.3. The Parties agree and acknowledge that monetary damages may not be a sufficient remedy for any breach of the Agreement and that, in addition to all other remedies, the disclosing Party shall be entitled to seek the remedy of injunction, specific performance and any other equitable relief for any breach of the provisions of this Agreement.

Article 7 – Term and termination

- 7.1. This Agreement shall be effective as of the Effective Date (see above) and shall continue until its termination pursuant to article 7.
- 7.2. This Agreement will terminate automatically with immediate effect in one of the following events, whichever occurs first:
 - (i) formal notification that the project proposal is not awarded funding under MedPhab;
 - (ii) mutual agreement of the Parties to terminate the Agreement;
 - (iii) execution by the Parties of the agreement for the implementation of the project for which funding under MedPhab is awarded;
 - (iv) if within twelve (12) months of submission of the project proposal no decision to award funding to the project proposal under MedPhab is awarded, except that such period may be extended by mutual agreement of the Parties.
- 7.3. Each Party is entitled to terminate this Agreement with immediate effect, if
 - (i) a Party is in breach of any provisions of this Agreement and fails to remedy such breach within thirty (30) calendar days of receipt of written notice from the other Party(ies) requiring such remedy; or
 - (ii) a Party shall make any assignment for the benefit of creditors, have a receiver appointed over all or any of its assets, become bankrupt or go into liquidation other than for the purpose of a bona fide solvent reconstruction or amalgamation.
- 7.4. In any event, notwithstanding the termination of the Agreement, the confidentiality obligations contained herein shall survive the expiration or termination of this Agreement for a period of five (5) years from the date of termination of the Agreement.
- 7.5. The receiving Party undertakes to destroy all such documents, records, computer software, information, data, equipment, and/or other media or support (including in electronic format) containing Confidential Information and supplied to it by the disclosing Party, or reproductions thereof, upon request of the disclosing Party by such date as the disclosing Party may reasonably require, notified to the receiving Party even prior to any termination of this Agreement, , except that the receiving Party shall not be required to destroy copies of electronically exchanged Confidential Information made as a matter-of-routine information technology back-up and provided always that the receiving Party may keep one copy for archival purposes subject to confidentiality.

Article 8 – Governing law

All disputes between the Parties in connection to this Agreement shall first be discussed in good faith between the Parties in order to try to find an amicable solution within forty-five (45) days after giving notice to the defaulting Party. If no amicable solution can be found, the dispute is submitted to the competent courts located in Brussels (Belgium) This Agreement shall be governed by and construed in accordance with the laws of Belgium; no effect

shall be given to any conflict of law principles. However, nothing in this article shall prevent any Party from seeking or obtaining injunctive or other relief or remedies elsewhere. Each Party will comply with all mandatory laws and regulations applicable to its disclosure of Confidential Information under this Agreement.

Article 9 - General provisions

- 9.1. Each Party hereby represents and warrants to the other Party that it is duly authorized and empowered by to execute, deliver and perform this Agreement.
- 9.2. This Agreement may not be assigned by either Party, without the prior written consent of the other Parties.
- 9.3. Each Party shall comply with all applicable laws, rules and regulations in effect, including but not limited to export laws and regulations, and each Party shall obtain all necessary export licenses in connection with any subsequent export, re-export, transfer or use of all Confidential Information disclosed under this Agreement. The receiving Party agrees that it will not export or re-export, directly or indirectly, any Confidential Information received from the disclosing Party to any Affiliates or persons if so prohibited by the applicable laws or if a necessary export license is not obtained.
- 9.4. The signature of a Party via a scanned or digitized image of a handwritten signature (e.g. scan in PDF format) or an electronic signature (e.g. via DocuSign), shall have the same force and effect as an original handwritten signature for the purposes of validity, enforceability and admissibility. Each Party receives a fully executed copy of the Agreement. Delivery of the fully executed copy via e-mail or via an electronic signature system shall have the same force and effect as delivery of an original hard copy.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representative

For Customer,

Name:
Title:
Date:

For MedPhab Participating Party,

Name:
Title:
Date:

DRAFT