

## Non-Disclosure Agreement MedPhab Demo-cases evaluation

This Non-Disclosure Agreement MedPhab Demo-cases evaluation (hereinafter the “Agreement”) is effective as from ..... (hereinafter the “Effective Date”) for a period of ..... (hereinafter the “Disclosure Period”) by and between:

1) MedPhab participating parties acting as Evaluator(s)

....., with registered office situated at ..... and hereby duly represented by ....., hereinafter referred to as “Evaluator” or “receiving Party”

2) Customer

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

3) MedPhab participating party(ies) acting as Coach(es):

3.1. ...., with registered office situated at ..... and hereby duly represented by ....., hereinafter referred to as “.....”

3.2. ...., with registered office situated at ..... and hereby duly represented by ....., hereinafter referred to as “.....”

3.3. ....

The parties under 2) and 3) also collectively referred to as “disclosing Parties” and individually as “disclosing Party” hereinafter individually referred to as the “Party” and collectively the “Parties”

- WHEREAS MedPhab (Photonics Solutions at Pilot Scale for Accelerated Medical Device Development) is a 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 while participating in the work of evaluating demo-case proposals submitted for funding under MedPhab and performing the evaluation selected demo-cases during and after implementation of these demo-cases, it is anticipated that the Evaluator will receive Confidential Information, which the disclosing Parties regard as confidential;
- WHEREAS the Evaluator(s) will give input (in the form of questions and judgement on the proposal) to the disclosing Parties but the Evaluator(s) will not add any new information or data in its/their input;

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

### **Article 1 – Confidential Information**

“Confidential Information” means any data and information, whether in document or other (in)tangible form, that is not generally known to the public or has not yet been revealed, whenever and however disclosed pursuant to this Agreement by the disclosing Party to the receiving Party as well as the input (in the form of questions and judgement on the proposal) provided by the Evaluator for the Purpose.

### **Article 2 – Obligations of the receiving Party**

- 2.1. The receiving Party will appoint an employee who shall participate in a cooperative manner in the performance of the Purpose as detailed in article 2.3 below. The receiving Party may appoint a substitute of the appointed employee.
- 2.2. The receiving Party will not disclose and will keep confidential the Confidential Information except to its substitute who needs to have access to the Confidential Information for the purpose of carrying out the duties in connection with the Purpose specified in article 2.3. The receiving Party will inform the substitute about the confidential nature of the Confidential Information and will ensure that their agreement is obtained to keep it confidential on terms and conditions at least as strict as those contained herein.
- 2.3. The receiving Party undertakes to use the Confidential Information solely for the purpose of evaluation of the demo-case proposals for funding under MedPhab as well as the evaluation of the selected demo-cases during and after their implementation (the “Purpose”) and not use the Confidential Information for its own purposes or benefit.
- 2.4. The receiving Party further undertakes not to, disclose, distribute and/or disseminate any and all parts of the Confidential Information, in any form or format, to any third party not mentioned in article 2.1, without the prior written approval of the disclosing Party.
- 2.5. 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.
- 2.6. 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.
- 2.7. 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.
- 2.8. 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 3 - Exceptions**

- 3.1. The obligations of article 2 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.
- 3.2. 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 4 – Title and rights**

- 4.1. The receiving Party hereby acknowledges that the Confidential Information is and remains the sole and exclusive property of the disclosing Party(ies).  
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.
- 4.2. The extent of disclosure hereunder by the disclosing Party to the receiving Party of Confidential Information shall be entirely at the disclosing Party's (Parties') discretion consistent with the Purpose.

#### **Article 5 – Warranty and liability**

- 5.1. 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".
- 5.2. 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.
- 5.3. 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 6 – Term and termination**

- 6.1. This Agreement shall be effective as of the Effective Date (see above) during the Disclosure Period. It may be terminated with respect to further disclosures upon thirty (30) days' prior written notice. The receiving Party's confidentiality and restricted use obligations hereunder with respect to each item of Confidential Information shall survive the expiration or termination of this Agreement for a period of five (5) years from the date of expiration or termination of the Agreement.

- 6.2. The receiving Party undertakes to destroy or delete 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 delete 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 7 – 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 8 - General provisions**

- 8.1. 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.
- 8.2. This Agreement may not be assigned by either Party, without the prior written consent of the other Parties.
- 8.3. 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.
- 8.4. 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 Coach(es),

.....

Name:

Title:

Date:

For Evaluator,

Name:

Title:

Date: