

Stakeholder Organisation Confidentiality Acknowledgment and Undertaking

- 1) We, _____ ("**We**", "**Our**", "**Us**" or the "**Organisation**"), acknowledge that We may receive Confidential Information in relation to our participation in NICE's consultation process.

"**Confidential Information**" means all confidential information (however recorded or preserved) disclosed or made available, directly or indirectly, by NICE or its employees, officers, representatives or advisers to Us and/or Our employees, officers, representatives or advisers. Often this material will be commercially sensitive, or will have been provided to the Institute on an academic-in-confidence basis (for example research that has not yet been published). Confidential Information may include, but is not limited to:

- (a) information relating to the existence, content or outcome of confidential discussions;
 - (b) any information that would be regarded as confidential by a reasonable business person or health professional;
 - (c) any information or analysis derived from Confidential Information
 - (d) economic models.
- 2) Subject to paragraph 3 below, We undertake to NICE that We shall:
- (a) keep all Confidential Information strictly confidential and, except as expressly permitted under this agreement shall not disclose, use, copy in whole or in part or modify or adapt any Confidential Information in any way without NICE's prior written consent which may be given or withheld in its absolute discretion;
 - (b) not use any Confidential Information for any purpose other than participating in the consultation process and any appeal that We may lodge;
 - (c) limit access to any Confidential Information to such individuals within the Organisation as require access for the purpose set out in paragraph 2)(b) above;
 - (d) procure that any individual within the Organisation with access to any Confidential Information complies with this agreement;
 - (e) apply the same security measures and degree of care to the Confidential Information as We apply to Our own confidential information, which We warrant as providing adequate protection from unauthorised disclosure, copying or use;
 - (f) securely destroy or return all Confidential Information to NICE on publication of the guideline, or on written demand; and;
 - (g) not disclose any Confidential Information to any third party without the prior written consent of NICE, and in the event that such disclosure is permitted, We shall procure that such third party is fully aware of and complies with this agreement as if he were a party to it.
- 3) The undertakings set out in paragraph 2 above (the "**Undertakings**") shall not apply to information which:
- (a) is in the public domain otherwise than through a breach of any of the Undertakings or a breach of any other confidentiality obligation owed by any person to NICE;

Stakeholder Organisation Confidentiality Acknowledgment and Undertaking

- (b) was lawfully within Our possession before it was disclosed to Us by NICE, and neither the Organisation nor our alternative source of the information owed any confidentiality obligation to NICE in respect of it;
 - (c) is required to be disclosed by any court of competent jurisdiction or any government agency lawfully requesting the same provided that We use Our best endeavours to notify the Institute in advance of such disclosure; or
 - (d) is approved for release by prior written authorisation of NICE.
- 4) If the Organisation is a public authority as defined by the Freedom of Information Act 2000 ("the Act") then We will have to deal with any request for Confidential Information in accordance with the Act.
- (a) We acknowledge that NICE considers that as it is careful only to undertake to keep information confidential where there is good reason to do so, any request for Confidential Information is likely to be exempt from disclosure under section 41 of the Act.
 - (b) If We receive a request under the Act for Confidential Information and Our initial view is that the Confidential Information should be released then We shall:
 - promptly notify NICE of this fact, providing a copy of the request and of the information requested;
 - allow NICE a period of at least five working days to make representations on how it considers the request should be responded to;
 - conscientiously consider those representations; and
 - if We decide to release any Confidential Information, provide NICE in advance with a copy of that information and the covering letter We propose to send to the applicant.
 - (c) If We decide not to release Confidential Information in response to a request, We shall notify NICE if the requestor challenges that decision by appealing to the Information Commissioner or the First-tier Tribunal (Information Rights).
- 5) We acknowledge that:
- (a) breach of any of the Undertakings could cause NICE harm that is irreparable and that cannot be compensated by damages, and that in the event of any actual or threatened breach of any Undertaking NICE shall be entitled to apply for and obtain (regardless of any rights NICE may have to claim damages) an injunction or other equitable relief against the Organisation;
 - (b) maintaining confidentiality is of fundamental importance to NICE's consultation processes. We acknowledge that if We breach any of the Undertakings, NICE shall be entitled to refuse to provide Us with Confidential Information in the future, whether relating to this or any other matter.

Stakeholder Organisation Confidentiality Acknowledgment and Undertaking

- 6) We acknowledge that:
- (a) this agreement constitutes the entire agreement between the Organisation and NICE relating to the Confidential Information;
 - (b) any amendments to or waiver of any of the terms of this agreement must be set out in writing and signed on behalf of the Organisation and NICE;
 - (c) this agreement is governed by English law and subject to the exclusive jurisdiction of the English courts.

Signed by

Print name

a duly authorised officer for and on behalf of.....

Date