

Appendix 3
General Conditions of a NON DISCLOSURE AGREEMENT

**Recommendations for
Guidelines Production**

A document for Task Force Members
Responsible for the Production and Updating of ESC
Guidelines

*Committee for Practice Guidelines (CPG) of the
European Society of Cardiology (ESC)*

To reduce the burden of cardiovascular disease. 

Headquarters: The European Heart House - Les Templiers - 2035, Route des Colles - CS 80179 BIOT - 06903 Sophia Antipolis Cedex - France
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Association immatriculée au registre des opérateurs de voyages n° IM006110075

Appendix 3

General Conditions of a NON DISCLOSURE AGREEMENT

THESE CONDITIONS SHALL BE ACCEPTED BY ALL EXPERTS INVOLVED IN ESC GUIDELINES ACTIVITIES: CHAIRPERSONS AND MEMBERS OF THE COMMITTEE FOR PRACTICE GUIDELINES, CHAIRPERSONS AND MEMBERS OF TASK FORCES, REVIEW COORDINATORS AND REVIEWERS

Confidential Information will be created, shared, and disclosed between:

ESC (European Society of Cardiology),

A French *Association* governed by the provisions of the French law dated 1 July 1901,
Having its head office at The European Heart House, 2035 Route des Colles - Les Templiers,
06903 Sophia Antipolis,
Registered with the *Sous-Préfecture* of Grasse (France) under number 10006 X 92,

VAT#FR 89403299480

Represented by Isabel Bardinet, duly authorised for the purpose hereof,

Hereinafter referred to as the "ESC",

AND:

CHAIRPERSONS AND MEMBERS OF THE COMMITTEE FOR PRACTICE GUIDELINES, CHAIRPERSONS AND MEMBERS OF TASK FORCES, REVIEW COORDINATORS OR REVIEWERS

Hereinafter referred to as the "ESC Guidelines Experts"

ESC and ESC Guidelines Experts being individually or collectively referred to as the «Parties».

RECITALS

The Parties are entering a collaboration starting from the signature of this document and end at the publishing of the guidelines on the ESC and EHJ websites.

Whereas the Parties, with regards to their own experiences are participating in a ESC Guidelines activity and are entering a ("Collaboration") where information of extremely confidential and strategic nature for the ESC, can be exchanged.

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Whereas the Parties decided to settle the rules of confidentiality, that shall be strictly applicable to the transmission, distribution and use of the aforesaid information, and to determine and set up the terms and conditions hereinafter defined.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

ARTICLE 1. DEFINITIONS

For the purpose of this Agreement, capitalised terms shall have, except as otherwise stated, the meanings set out below:

« **Confidential Information** » means any information, regardless of its nature, its support, including by written, oral, magnetic, electronic, graphic or digital and whatever form it has (including figures, tables, recommendations, text, etc.) relating to a Party (« **ESC** ») or its affiliates and coming to the knowledge of the other Party ("**ESC Guidelines Expert**"), which is:

- in writing as confidential, with a legend or stamp appropriate, or by any other means so obvious confidential information before it is sent by the Disclosing Party,
- OR,**
- which the Receiving Party could not, in good faith, ignore the confidential nature.

In particular, the Confidential Information includes, but is not limited to, the following information:

Technical, scientific and business information relating to Discloser's proprietary ideas, patentable ideas copyrights and/or trade secrets, existing and/or contemplated products and services, software, schematics, research and development, production, costs, profit and margin information, finances and financial projections, customers, members or clients information, any personal and private information, marketing, and current or future business plans and models, regardless of whether such information is designated as "Confidential Information" at the time of its disclosure.

« **Personal Data** » means all information relating to an identified individual, or which can be identified, directly or indirectly, by reference to an identification number or to one or more items which are of its own (including its Personal Health Information).

« **Personal Health Information** » means

- (i) Information relating to the physical or mental health of an individual, living or deceased,
- (ii) Information concerning any health services provided to an individual,
- (iii) Information concerning the donation by the individual of any body part or any bodily substance of the individual, or information derived from the testing or examination of a body part or bodily substance of the individual,

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(iv) Information that is collected in the course of providing health services to the individual, or information that is collected incidentally to the provision of health services to the individual.

« **Third Party** » means any person, other than the Parties.

ARTICLE 2. PURPOSE OF THE AGREEMENT

This agreement is made and entered into between the Parties in order to prevent the unauthorized disclosure of Confidential Information, and, to determine and set out the terms and conditions under which the Parties undertake to exchange, keep and use the Confidential Information.

ARTICLE 3. OBLIGATIONS OF THE RECEIVING PARTY

The Receiving Party hereby undertakes to keep secret and confidential any Confidential Information from the Disclosing Party. The Receiving Party especially undertakes:

(a) not to communicate to any Third Party the Confidential Information, and not to use them for any other purpose than the one as set forth herein.

(b) to hold and maintain the Confidential Information in strictest confidence for the sole and exclusive benefit of the Disclosing Party.

The Receiving Party shall carefully restrict access to Confidential Information to employees, contractors, and third parties as is reasonably required and shall require those persons to sign nondisclosure restrictions at least as protective as those in this Agreement. In this regard, the Receiving Party shall take any necessary measures to prevent any communication, transfer and/or use of such information, which would not be in accordance with the contractual provisions of the Agreement.

Any written or oral publication or communication of the Confidential Information shall only be made, upon prior express written consent of the Disclosing Party, owner of the Confidential Information.

The Receiving Party shall return to Disclosing Party any and all records, notes, and other written, printed, or tangible materials in its possession pertaining to Confidential Information within a maximum of ten (10) days following a written request from the Disclosing Party, or automatically at the termination of a contractual agreement, either returned by the Receiving Party or destroyed by the latter.

In the case of such a request, the Receiving Party shall certify in writing to the Disclosing Party within the period stated above, all provisions of this Article have been met.

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Any breach of these confidentiality obligations, even if caused by negligence or imprudence, will be likely to engage the responsibility of the Disclosing Party which found its origin in respect of any consequential damage.

The Parties expressly agree that the existence of the Agreement and its whole content are deemed as strictly confidential, and, shall be considered as a Confidential Information.

ARTICLE 4. EXCEPTIONS

Notwithstanding the provisions as set forth herein in Article 3, the Parties may disclose the Confidential Information, to which they provide evidence that the disclosed Confidential Information:

- (a) Was publicly known prior to its disclosure, or later provided that no negligence can be attributed to the Disclosing Party,
- (b) Was lawfully learnt by a Third Party (through legitimate means other than from the Disclosing Party or Disclosing Party's representatives),
- (c) Was already in its possession prior to the effect of the Agreement, or,
- (d) Was disclosed by the Receiving Party with the Disclosing Party's prior express written approval.

ARTICLE 5. PERSONAL DATA

Each Party, including all of their employees, officers, associates, and contractors, understands that by being in other Party's place of business or by handling material from other Party, it may have access to Personal Data. Which Personal Data may pertain to, but is not limited to, clients, staff, patients, or professionals.

In this regard, the Parties undertakes to strictly act in accordance with the provisions of the French Law about the Personal Data protection, dated January, 6th 1978, as amended. In particular, the Parties must take any necessary measures to safeguard Personal Data in their custody, including and especially with regards to the Personal Health Information.

Especially, each Party undertakes to make every reasonable effort to have any organization that provides services to Party hold as confidential any Personal Data that it may be exposed to in the performance of a service.

The Parties will safeguard from disclosure and hold as confidential any Personal Data that they may handle, have access to, or be exposed to while carrying out their contractual obligations under the Agreement or the Related Contract.

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The Parties will not copy, remove or disclose any information relating to the Personal Data without the express consent of the other Party, providing that such consent shall be in accordance with the provisions of the above-mentioned French Law.

In the unlikely case, a breach may occur in regard to the obligations of the Parties relating to the confidentiality and/or security of the Personal Data, the Party who discover such the unlikely case shall immediately inform the other Party.

ARTICLE 6. INTELLECTUAL PROPERTY OF THE RESULTS OF THE RELATED COLLABORATION

The ESC Guidelines experts shall transfer to the ESC the full ownership and rights to use, duplicate, distribute or modify the originals, written materials, any type of content or support arising out from this collaboration.

The ESC Guidelines Experts have no right to use or duplicate any information that has been created, written and/or delivered within the scope of this collaboration.

The ESC shall remain the sole owner of any content or information provided within the scope of this collaboration.

ARTICLE 7. DURATION

The ESC Guidelines Experts' obligations shall remain in full effect until the Confidential Information is no longer qualified as a Confidential Information (publication on the ESC and EHJ websites) or until the ESC provides the ESC Guidelines Experts written notice releasing them from this non-disclosure agreement, whichever occurs first.