## Contents

### INTRODUCTION
- Promoting an Ethical Industry 2
- Key Legislation 3
- Aims and Principles of the Code 4
- Interpreting the Code 6
- Administering the Code 6
- Implementation and Transition Period 7
- Transition Period to phase out direct support for HCP attendance at Third Party Organised Educational Events and for HCP speakers at satellite symposia 7

### PART 1: Guidelines on the Interactions with Healthcare Professionals and Healthcare Organisations

#### Chapter 1: General Criteria for Events
- Event Programme 10
- Event Location and Venue 11
- Guests 12
- Reasonable Hospitality 12
- Travel 13
- Transparency 14

#### Chapter 2: Third Party Organised Educational Events
- Third Party Organised Educational Conferences 15
- Third Party Organised Procedure Training 17
- Transition Period: Support of Individual Healthcare Professionals to Third Party Organised Educational Events 17

#### Chapter 3: Company Events
- General Principles 18
- Product and Procedure Training and Education Events 19
- Sales, Promotional and Other Business Meetings 19

#### Chapter 4: Grants and Charitable Donations
- General Principles 20
- Charitable Donations 22
- Educational Grants 23
- Research Grants 25

#### Chapter 5: Arrangements with Consultants
- General Principles 26
- Criteria for Genuine Consulting Arrangements 27
- Remuneration and Fair Market Value 28
- Disclosure and Transparency 28

#### Chapter 6: Research
- Member Company-Initiated Research 29
- Member Company Post-Market Product Evaluation 30
- Third Party-Initiated Research 31

#### Chapter 7: Royalties

#### Chapter 8: Educational Items and Gifts

#### Chapter 9: Demonstration Products and Samples
- General Principles 36
- Demonstration Products (Demos) 37
- Samples 38

### PART 2: Guidelines on Advertisements and Promotions addressed solely or primarily to Healthcare Professionals

#### Preamble 40

#### Guidelines 41
- Scope of Guidelines 41
- Accuracy and Substantiation of Claims and Information 41
- Comparative Advertising 43
- Requests for Substantiating Data 43
- Use of Published Data to Support Advertising 44
- No Disparagement 44
- Non-Referreed Articles 44
- Off-Label Use 45
- Quotations 45
- Material Commissioned by the Advertiser 45
- Testimonials and Endorsements 45
- Reimbursement of Expenses for Providers of Testimonials or Endorsements 46
- Effect of Background Collaboration or Sponsorship on Testimonials and Endorsements 47

#### Annex 1 General Advertising Law and Codes 48

### PART 3: Complaints Principles, Procedure & Panel Constitution

### PART 4: Glossary and Definitions 57
Introduction

Promoting an Ethical Industry

ABHI is the industry association for the medical technology sector in the UK.
ABHI’s mission is to champion the benefits and use of safe and effective medical technologies to deliver high quality patient outcomes. With over 250 company members ABHI leads the advocacy of the industry in order to advance access to medical technology. Our membership includes some of the leading multinational businesses in the sector in the UK right through to small and medium sized enterprises.

We engage with the NHS, Government, regulators and other key stakeholders both here in the UK and abroad, in order to represent this industry. ABHI’s work focuses on UK market, economic growth, regulatory and ethical compliance.

The Code sets out the minimum standards appropriate to the various types of activities carried out by the Members. The Code is not intended to supplant or supersede national laws or regulations or professional codes (including company codes) that may impose more stringent requirements upon Members and all Members should independently ascertain that their activities comply with all current national and local laws, regulations and professional codes.

Furthermore, Member Companies must be mindful of the fact that they may be liable for the activities of third party intermediaries who interact with Healthcare Professionals or Healthcare Organisations in connection with the sale, promotion or other activity involving Member Companies’ products. Accordingly, it is recommended that where such arrangements are entered into, the relevant contractual documentation impose obligations upon the third party (for example, third party sales & marketing intermediaries (SMIs), consultants, distributors, sales agents, marketing agents, brokers, commissionaire commercial agents and independent sales representatives) to comply with provisions set out in the Code or equivalent guidelines.

Key Legislation

The medical technology industry in the UK and Europe, in common with other industries, is subject to national and supranational laws which govern many aspects of their business operations. ABHI underlines compliance with the following laws and regulations as having particular relevance to the medical technology industry:

- Safety, Quality and Performance Laws;
- Advertising and Promotion Laws;
- Data Protection Laws;
- Anti-corruption Laws;
- Environmental Health and Safety Laws;
- Competition Laws.

National and European Union (EU) competition legislation applies not only to Members in their business operations, but also to ABHI, each of the association’s working groups and any sub-group within the association, irrespective of size and name. Liability under competition laws may be strict and a Member may become liable for the infringement of such laws by other Members of an association group in which it participates. Accordingly, Members must make every effort to observe UK and EU competition laws in all their interactions.

1. For further details, please refer to the Eucomed/AdvaMed Third Party SMIs guidance
CODE QUESTIONS AND ANSWERS

Aims and Principles of the Code

The interaction between Members and Healthcare Professionals and Healthcare Organisations is an important feature in achieving ABHI’s mission to make safe, innovative and reliable technology and related services available to more people. For example:

• **Advancement of Medical Technologies**
  The development of innovative medical devices, technologies and in vitro diagnostics and the improvement of existing products require collaboration between Member Companies and Healthcare Professionals and Healthcare Organisations. Innovation and creativity are essential to the development and evolution of medical technologies and/or related services.

• **Safe and Effective Use of Medical Technology**
  The safe and effective use of medical technology and related services requires Member Companies to offer Healthcare Professionals and Healthcare Organisations appropriate instruction, education, training, service and technical support.

• **Research and Education**
  Member Companies’ support of *bona fide* medical research and education, serves to enhance Healthcare Professionals’ clinical skills and thereby contribute to patient safety and increase access to new technologies and/or related services.

In each such interaction Member Companies must continue to respect the obligation of Healthcare Professionals to make independent decisions regarding treatment and safeguard the environment in which the interaction takes place to ensure the integrity of the industry. To achieve this aim, the Code provides guidance on the interactions of Member Companies with both Healthcare Professionals and Healthcare Organisations, based upon the following underlying principles:

Q1: Does the definition of Healthcare Professional include purchasing professionals employed in the retail sector, such as a purchasing professional employed by a supermarket chain?

A1: No, the definition of Healthcare Professional does not include a purchasing professional employed in the retail sector unless that individual purchaser arranges for the purchase of Member Companies’ medical devices for or on behalf of medical or clinical personnel. For example, if a Member Company’s medical devices are sold as part of the common merchandise of the retail outlet, interactions between the Member Company and the purchasing professional do not fall under the Code. However, where the Member Company’s medical devices are sold in a retail pharmacy (even if this is located within a supermarket unit), interactions between the Member Company and the responsible purchasing professional will fall under the Code.
• The Principle of Image and Perception
Member Companies should, at all times, consider the image and perception of the medical technology industry that will be projected to the public when interacting with Healthcare Professionals and Healthcare Organisations.

• The Principle of Separation
Interaction between industry and Healthcare Professionals / Healthcare Organisations must not be misused to influence through undue or improper advantages, purchasing decisions, nor should such interaction be contingent upon sales transactions or use or recommendation of Member Companies’ products.

• The Principle of Transparency
Interaction between industry and Healthcare Professionals / Healthcare Organisations must be transparent and comply with national and local laws, regulations or professional codes of conduct. In countries where specific provision is not made, Member Companies shall nevertheless maintain appropriate transparency by requiring prior written notification to the hospital administration, the Healthcare Professional’s superior or other locally-designated competent authority, fully disclosing the purpose and scope of the interaction.

• The Principle of Equivalence
Where Healthcare Professionals are engaged by a Member Company to perform a service for or on behalf of a Member Company, the remuneration paid by the Member Company must be commensurate with, and represent a fair market value for, the services performed by the Healthcare Professional.
• The Principle of Documentation

For interactions between a Member Company and a Healthcare Professional, such as where services are performed by a Healthcare Professional for or on behalf of a Member Company, there must be a written agreement setting out, inter alia, the purpose of the interaction, the services to be performed, the method for reimbursement of expenses as well as the remuneration to be paid by the Member Company. The activities envisaged by the agreement must be substantiated and evidenced by activity reports and the like. Adequate documentation such as the agreement, related reports, invoices etc. must be retained by the Member Company for a reasonable period of time to support the need for, and materiality of, the services as well as the reasonableness of the remuneration paid.

Interpreting the Code

The use of capital letters indicates that a word or expression is a defined term, the meaning of which is set out in the Glossary.

Any phrase introduced by the terms: including, include, in particular, or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.

Administering the Code

The Code operates within a procedural framework which includes procedures designed to provide an effective and efficient complaint-handling process, to ensure compliance with the Code. ABHI’s complaints handling system is based on the principle that disputes are best resolved through mediation.

The Conference Vetting System\(^2\) is an independently-managed system which reviews the compliance of Third Party Organised Educational Events with the Code.

\(^2\) For scope of application of CVS please refer to: www.ethicalmedtech.eu
Implementation and Transition Period

This edition of the Code comes into force as follows:

- PART 3: The Complaints Procedure & Panel Constitution shall enter into force on 1 January 2017; and
- The balance of the Code i.e. Introduction, PART 1 and PART 2, shall enter into force on 1 January 2018.

For the avoidance of doubt, during the transposition period 1 January 2017 to 31 December 2018, no material or activity will be regarded as being in breach of the Code if it fails to comply with its provisions only because of requirements which this edition of the Code newly introduces.

Transition Period to phase out direct support for HCP attendance at Third Party Organised Educational Events and for HCP speakers at satellite symposia

After the end of the Transition Period (see the Glossary) on 31 December 2018, Member Companies shall no longer provide financial or in kind support directly to individual Healthcare Professionals to cover costs of their attendance at Third Party Organised Educational Events with the exception of Third Party Organised Procedure Training meetings or pursuant to a consulting agreement with a Healthcare Professional speaker engaged by a Member Company to speak at a satellite symposium. This means that support of individual Healthcare Professionals to attend Third Party Organised Educational Events (as provided for at Chapter 2, Section 3) shall no longer be permitted under the Code.

After the Transition Period, Member Companies may provide financial or in kind support to Third Party Organised Educational Events only through Educational Grants or other types of funding in accordance with the rules of Chapter 2: Third Party Organised Educational Events and Chapter 4: Grants and Charitable Donations.
PART 1
Guidelines on the Interactions with Healthcare Professionals and Healthcare Organisations
General Criteria for Events

1. Event Programme

The Event programme should directly relate to the specialty and/or medical practice of the Healthcare Professionals who will attend the Event or be sufficiently relevant to justify the attendance of the Healthcare Professionals. For Third Party Organised Educational Events, the agenda should be under the sole control and responsibility of the third party organiser.

A Member Company shall not organise Events which include social, sporting and/or leisure activities or other forms of Entertainment, nor support such elements where

Q2: What is meant by “legitimate” or “genuine” as used in the definitions of ‘Company Event’ and ‘Third Party Organised Educational Conferences’?

A2: Any Event should be relevant to the Healthcare Professional attendees; the detailed programme should be available sufficient time prior to the Event; present a clear schedule with no gaps during the sessions, (e.g., the minimum duration for a full day Event should be 6 hours or 3 hours for a half day Event including refreshment breaks). If it is a Third Party Organised Educational Event the Faculty must be identified. It is also important that all supporting materials (e.g. flyers, brochures and website) are consistent with the scientific or promotional nature of the programme content, as the case may be.
part of Third Party Organised Educational Events. For Third Party Organised Educational Events, Entertainment must be outside of the educational programme schedule and paid for separately by the Healthcare Professionals. Entertainment should not dominate or interfere with the overall scientific content of the programme and must be held during times that do not overlap with a scientific session. The Entertainment should not be the main attraction of the Third Party Organised Educational Event.

2. Event Location and Venue

The Event location and venue should not become the main attraction of the Event. For the location and the venue, Member Companies must take into account at all times the following considerations:

a. Potential adverse public perceptions of the location and venue for the Event. The perceived image of the location and venue must not be luxury, or tourist/holiday-oriented, or that of an Entertainment venue.

b. The Event location and venue should be centrally located when regard is given to the place of residence of the majority of invited participants.

c. The need for ease of access for attendees.

d. The Event location and venue should be in or near a city or town which is a recognised scientific or business centre, suitable for hosting an Event which is conducive to the exchange of ideas and the transmission of knowledge.

e. Member Companies must take into account the season during which the Event is held. The selected time of year must not be associated with a touristic season for the selected geographic location.

Q3: Can a Member Company organise or support an Event at a hotel that offers leisure facilities such as golf, casinos or water sports?

A3: No, it would not be appropriate for Member Companies to organise or support Events at hotels centred around leisure facilities such as golf, casinos or ski/water sports. An important factor in evaluating a hotel is its suitability for business meetings, including the availability of conference facilities. For hotels which include minor leisure and sporting facilities, such as a spa, while it would not be reasonable to exclude these venues if otherwise appropriate, Member Companies must exercise caution. The Event agenda should be arranged in such a way that Healthcare Professionals attending the Event would not be free to make use of the leisure and sporting facilities during any significant part of a normal working day. Further, where hotels require additional payment to enable guests to use the leisure and sporting facilities, Member Companies may not make such payments on behalf of the Healthcare Professionals.

Q4: Under the Code, what is meant by “ease of access” in relation to Event location and venue?

A4: When originating location of the majority of attendees is considered, Event location and venue need to be in close proximity to an airport and/or train station with appropriate international connections, with associated reliable ground transportation infrastructure to the venue.

Q5: Under the Code, how does the “season” impact evaluation of Event location and venue?

A5: For European and international Events, ski resorts in the ski season, island resorts, beach resorts and other geographic locations renowned primarily as seasonal vacation or holiday destinations are not appropriate geographic locations during the season in question. Member Companies must not support or organise Events at these locations during those seasons.
3. Guests

Member Companies are not permitted to facilitate or pay for meals, travel, accommodation or other expenses for Guests of Healthcare Professionals, or for any other person who does not have a bona fide professional interest in the information being shared at the Event.

4. Reasonable Hospitality

Member Companies may provide reasonable hospitality to Healthcare Professionals in the context of Company Events and Third Party Organised Educational Events but any hospitality offered must be subordinate in time and focus to the Event purpose. Member Companies must in any event meet the requirements governing hospitality in the country where the Healthcare Professional carries on their profession and give due consideration to the requirements in the country where the Event is being hosted.

The Code seeks to find a balance between the courteous and professional treatment of Healthcare Professionals by Member Companies, with the desire to avoid even the appearance that hospitality may be used by Member Companies as a means to induce Healthcare Professionals to purchase, prescribe or recommend....

Q6: What does the term “facilitate” mean where used in connection with the Guest expenses?

A6: The term “facilitate” refers to the prior arrangement, organisation or booking of meals, travel or accommodation by or on behalf of a Member Company on behalf of the Guest of a Healthcare Professional participant. Such organisation or booking is not permitted unless the individual qualifies as a participant in his/her own right, irrespective of who pays. Such actions are open to misinterpretation. If Healthcare Professionals attending the Event wish to be accompanied by a Guest who does not have a professional interest in the information being shared, the Healthcare Professional must take sole responsibility for the payment and organisation of the Guest’s expenses.

Q7: In the event that a Healthcare Professional is accompanied by a Guest at the Event, may this Guest be admitted to any Company Event, or Third Party Organised Educational Events?

A7: It is not appropriate for a Guest of a Healthcare Professional to attend either Company Events (including Satellite Symposia) or Third Party Organised Educational Events (unless the individual qualifies as a participant in their own right), nor is it appropriate, in the interest of maintaining the scientific exchange, for a Guest to participate in related hospitality during such Events (for example, lunches and coffee breaks) even when the Healthcare Professional pays for the Guest’s expenses.

Member Companies, however, may financially support Third Party Organised Educational Events which offer extra-curricular programmes/activities beyond the scientific, educational or training sessions for Guests of Healthcare Professionals (such as touristic activities and hospitality), always provided that such an extra-curricular programme/activity (including attendance of the conference dinner or a cocktail reception) is subject to a separate charge which must not be paid for, facilitated or reimbursed by, a Member Company.

Q8: Is it acceptable to offer a cash advance by way of a cheque or bank transfer payable to a Healthcare Professional for a specific amount to cover all or part of the Healthcare Professionals’ travel or accommodation expenses for attendance at the Event?

A8: It is not acceptable to make an advance payment to a Healthcare Professional to cover prospective expenses. Payments should generally be made to the supplier/vendor or intermediary agency. Alternatively Member Companies may reimburse individual Healthcare Professional expenses retrospectively against original invoices or receipts.
Member Companies’ products. Accordingly, Member Companies must assess what is “reasonable” in any given situation and regional variations will apply. As a general guideline, “reasonable” should be interpreted as the appropriate standard for the given location and must comply with the national laws, regulations and professional codes of conduct. The term “hospitality” includes meals and accommodation and it is important that Member Companies differentiate between “hospitality” which is permitted and Entertainment which is not. Please refer to the Glossary for the definition of Entertainment.

Member Companies may not pay for or reimburse Healthcare Professionals’ lodging expenses at top category or luxury hotels. For the avoidance of doubt, if the Event venue is a hotel which complies with the requirements of the Code, it would be acceptable for Member Companies to offer participants meals and accommodation at the same hotel. However, accommodation and/or other services provided to Healthcare Professionals should not cover a period of stay beyond the official duration of the Event.

5. Travel

Member Companies may only pay or reimburse for reasonable and actual travel. Travel provided to Healthcare Professionals should not cover a period of stay beyond the official duration of the Event.

For air travel, in principle, this means that Member Companies can only pay or reimburse economy or standard class unless the flight time is of a duration of greater than 5 hours including connection flights, in which case business class can be considered. First class is never appropriate.

Q9: May Member Companies offer to cover the travel and accommodation expenses of Healthcare Professionals for periods that extend beyond the duration of the Event programme attended?

A9: Generally, travel and accommodation support offered by Member Companies to Healthcare Professionals should be tailored to the duration of the Event. Member Companies must always keep in mind the impression which may be created by the arrangements for any meeting.
6. Transparency

Member Companies must ensure full compliance with national laws with regard to the disclosure or approval requirements associated with such financial support and where no such requirements are prescribed, shall nevertheless maintain appropriate transparency, as a minimum, by requiring Employer Notification (as defined in the Glossary) is made prior to the Event.

Q10: Under the Code, is Employer Notification required for each interaction with a Member Company? For example, is such notification required each time a Member Company pays for a reasonably priced meal or gives a Healthcare Professional a gift, which is otherwise in line with the requirements of the Code?

A10: Employer Notification is required whenever a Member Company engages a Healthcare Professional or whenever a member makes a financial contribution to the Healthcare Professional’s medical education. Incidental interactions arising in the normal course of business such as meals associated with educational or business meetings or the receipt of modest gifts related to the Healthcare Professional’s practice, do not require Employer Notification.

Q11: Are members required to provide additional written notification under the Code to the hospital administration, Healthcare Professional’s superior (or other locally-designated body) for Member Company/Healthcare Professional interactions in countries where there are compulsory notification systems already in place?

A11: No. Only the compulsory notification is required. Additional notification under the Code is not required in countries where specific notification requirements of law or regulation govern the transparency of interactions between industry and Healthcare Professionals. The transparency provisions of the Code apply only in countries where there is an absence of national transparency laws and regulations.

Q12: When making Employer Notification, are Member Companies required to provide details of the proposed financial contribution Member Companies will make to the Healthcare Professional in exchange for the services rendered?

A12: The written notification must comply with national laws, regulations and professional codes of conduct. In countries where specific provision is not made, there is no requirement to notify employers of the amounts involved. Under the Code, Member Companies must ensure that the level of remuneration is commensurate with the services provided and not greater than a fair market value. However, the purpose of the Employer Notification is to provide transparency on the nature of the interaction between the Member Company and the Healthcare Professional and to enable the employer to raise objections if they perceive a potential conflict or have other issues concerning the interaction.
Member Companies may provide financial and/or in kind support (e.g. Member Company products) to Third Party Organised Educational Events in accordance with the rules of this Code. Such Events include:

- Third Party Organised Educational Conferences;
- and Third Party Organised Procedure Training meetings.

1. Third Party Organised Educational Conferences

Member Companies may support in cash and/or in kind Third Party Organised Educational Conferences (see the Glossary) which comply with:

- Chapter 1: General Criteria for Events;
- and where applicable, has approval via the Conference Vetting System³ (see the Glossary).

³ For scope of application of CVS please refer to: www.ethicalmedtech.eu
Where permitted under national laws, regulations and professional codes of conduct, Member Companies may provide financial and/or in kind support to Third Party Organised Educational Conferences (always provided that the Third Party Organised Educational Conference has been approved via the Conference Vetting System, where appropriate) through grants and other types of funding, such as:

a. Educational Grants

Please refer to Chapter 4: Grants and Charitable Donations for guidance on Educational Grants.

b. Promotional Activity

Member Companies may purchase packages that may include promotional and advertising services, for example, advertisement space and booth space for company displays. Member Companies should ensure that the overall image projected by the promotional activity at Third Party Organised Educational Conferences is perceived as professional at all times. It should never bring discredit upon or reduce confidence in the medical technology industry.

Q13: Please provide examples of appropriate booth activities which will be perceived as professional?

A13: Booth activities at Third Party Organised Educational Conferences should aim primarily at displaying Member Companies’ products and services and related literature. Therefore, other activities should be limited and reasonable and in principle, only soft drinks and snacks should be served.

Q14: Can a Member Company for example be present via a satellite symposium, rent booth space at a Third Party Organised Educational Conference which was assessed as non-compliant by the Conference Vetting System (CVS)?

A14: For conferences within the scope of CVS, if the Third Party Organised Educational Conference is assessed as not compliant by CVS, Member Companies cannot have any, whether educational or promotional, support or presence, including via Member Company-sponsored satellite symposia.

c. Satellite Symposia

Member Companies may purchase satellite symposia packages at Third Party Organised Educational Conferences and provide presentations on subjects that are consistent with the overall content of the Third Party Organised Educational Conference. Member Companies may determine the content of these satellite symposia and be responsible for speaker selection.

Q15: Can Member Companies directly support attendance by Healthcare Professionals engaged to speak only at satellite symposia at Third Party Organised Educational Conferences, e.g. registration fee, travel and/or accommodation?

A15: Member Companies must ensure compliance with the Code and enter into a consulting agreement with the HCP speaker engaged to speak at the satellite symposium. The consulting agreement may include payments in respect of registration fee, travel and/or accommodation where appropriate.
2. Third Party Organised Procedure Training

Member Companies may support Third Party Organised Procedure Training either via Educational Grants (in accordance with Chapter 4: Grants and Charitable Donations) or by providing financial support directly to individual Healthcare Professionals to cover the cost of attendance at Third Party Organised Procedure Training sessions in accordance with the following rules:

a. Financial support must comply with the criteria provided in Chapter 1: General Criteria for Events. Member Companies may therefore pay travel, hospitality and the registration fee.

b. Where applicable, the Third Party Organised Procedure Training has approval via the Conference Vetting System (see the Glossary).

c. For financial support to Third Party Organised Procedure Training meetings Member Companies must apply the requirements governing conduct and attendance at such meetings in the country where the Healthcare Professional carries on their profession and give due consideration to the requirements in the country where the meeting is being hosted.

3. Transition Period: Support of Individual Healthcare Professionals to Third Party Organised Educational Events

Member Companies may provide financial support directly to individual Healthcare Professionals to cover the costs of attendance at Third Party Organised Educational Events where this is permitted under national laws, regulations and professional codes of conduct. Such support shall be in accordance with the following rules:

a. Financial support must comply with the criteria provided in Chapter 1: General Criteria for Events. In addition Member Companies may pay the registration fee.

b. Where applicable, the Third Party Organised Educational Event has approval via the Conference Vetting System (see the Glossary).

c. For financial support to Third Party Organised Educational Events Member Companies must apply the requirements governing conduct and attendance at such Third Party Organised Educational Event in the country where the Healthcare Professional carries on their profession and give due consideration to the requirements in the country where the meeting is being hosted.

* For scope of application of CVS please refer to: www.ethicalmedtech.eu
1. General Principles

Member Companies may invite Healthcare Professionals to Company Events. Such events include, as defined in the Glossary:

- Product and Procedure Training and Education Events
- Sales, Promotional and Other Business Meetings

Company Events should comply with the principles mentioned in Chapter 1: General Criteria for Events.

Where there is a legitimate business purpose, Company Events may include or take place in Member Company’s manufacturing plant or Healthcare Organisations, used by the Member Company as reference centres.

Q16: Is it appropriate for Member Companies to invite Healthcare Professionals on company plant or factory tours where the Healthcare Professionals reside outside the country of location of the plant or factory?

A16: Yes, it is appropriate for Member Companies to invite Healthcare Professionals to plant or factory tours in countries outside their country of residence if there is a legitimate business purpose and the tour complies with the Code in all respects.
2. Product and Procedure Training and Education Events

Where appropriate, in order to facilitate the safe and effective use of medical technologies, therapies and/or services, Member Companies should make product and procedure training and education available to relevant Healthcare Professionals.

Member Companies shall ensure that personnel conducting the Product and Procedure Training and Education Events have the appropriate expertise to conduct such training.

3. Sales, Promotional and Other Business Meetings

Where it is appropriate, Member Companies may organise Sales, Promotional and Other Business Meetings where the objective is to discuss product and related services features and benefits, conduct contract negotiations, or discuss sales terms.

In addition to the principles laid down in the Chapter 3, Section 1, Sales, Promotional and Other Business Meetings should also comply with the following more stringent requirements:

a. Such meetings should, as a general rule, occur at or close to the Healthcare Professional’s place of business;

b. It is not appropriate for travel or accommodation support to be provided to Healthcare Professionals by Member Companies, except where demonstrations of non-portable equipment are necessary.

QUESTIONS AND ANSWERS

Q17: Are cruise ships or golf clubs appropriate venues for Product and Procedure Training and Education Events?

A17: No. Cruise ships, golf clubs or health spas and venues renowned for their entertainment facilities are not appropriate venues and should not be used. Appropriate examples include hospital, clinic or surgical centre laboratory, educational, conference, or other appropriate settings, including Member Companies’ own premises or commercially available meeting facilities, that are conducive to effective transmission of knowledge and any required “hands on” training.

Q18: What criteria should a Member Company apply when considering the country location of Product and Procedure Training and Education Events?

A18: If the participants are primarily of one country, the venue should be in the specific country involved. If the participants are from multiple countries in Europe, a European country affording ease of access for participants should be chosen. It is expected that the country selected is the residence of at least some of the participants of the Product and Procedure Training and Education Event.

Q19: Can a Member Company use a meeting venue outside Europe?

A19: Yes, provided the participants are from multiple countries outside Europe. If the participants are primarily from within Europe, the venue should be in Europe. It is expected that the country selected (and the state, if the location is in the United States) is the residence of at least some of the participants of the Product and Procedure Training and Education Event.
1. General Principles

a. Grants and Charitable Donations (see the Glossary) shall not be contingent in any way on past, present or potential future purchase, lease, recommendation, prescription, use, supply or procurement of the Member Company’s products or services. It is important that support of charitable and/or philanthropic programmes and activities by Member Companies is not viewed as a price concession, reward to favoured customers or as an inducement to purchase, lease, recommend, prescribe, use, supply or procure Member Companies’ products or services.

b. A Member Company shall not provide Grants or Charitable Donations to individual Healthcare Professionals. Grants and Charitable Donations must be provided directly to the qualifying organisation or entity, as the case may be. Grants and Charitable
Donations shall not be provided in response to requests made by Healthcare Professionals unless the Healthcare Professional is an employee or officer of the qualifying organisation or entity and submits the request in writing on behalf of the qualifying organisation or entity.

c. The payment (or provision of other support) by way of any Grant or Charitable Donation shall always be made out in the name of the recipient organisation and shall be paid directly to the organisation. A Member Company shall not provide Grants or Charitable Donations in the name of any Healthcare Professional. In addition, all Grants and Charitable Donations shall identify the Member Company as the provider of the Grant or Charitable Donation.

d. It must in all cases be lawful under applicable national laws and regulations for the Grant or Charitable Donation recipient to receive and benefit from the particular type of Grant/Charitable Donation.

e. Member Companies shall implement an independent decision-making/review process to identify, prevent and mitigate against potential bribery and corruption risks arising in connection with the provision of a Grant or a Charitable Donation to a specific prospective recipient. This process shall include a documented, prior evaluation of any such associated risks and of the relevant information concerning the intended recipient organisation or entity.

Q20: Under the General Principles in Chapter 4. Grants and Charitable Donations, what is meant by an “independent decision-making/review process”?

A20: In accordance with the Principle of Separation, an “independent decision-making/review process”, is a process where the decision-making criteria are not primarily sales-driven and where the Member Company’s sales function does not decide upon and/or approve a decision to provide a Grant or Charitable Donation. For example, such a process could be led by a Member Company’s legal, finance or compliance functions, operating within a robust governance framework and according to clear, consistent and transparent criteria for review and decision-making.

Q21: Under the Code, what is meant by “prior evaluation of any associated risks and of the relevant information” relating to a Grant or a Charitable Donation?

A21: Prior to deciding to provide a Grant or a Charitable Donation, the Member Company must evaluate the appropriateness of the award of the proposed Grant or Charitable Donation to the proposed recipient. Such an evaluation shall consider all the circumstances including, but not limited to, consideration of the legal status and structure of the requesting (i.e. prospective recipient) organisation as well as of the nature and scope of its activities and the terms and conditions to which the Grant or Charitable Donation will be subject. The evaluation shall be documented and shall be based on information available to the Member Company, such as information or documentation available from public sources.

For Educational Grants provided in relation to Third Party Organised Educational Events, this may also include information of how the funds have been applied by the recipient in relation to previous equivalent Events and whether funds have been spent in accordance with the terms and conditions of any previous Grant.
f. All Grants and Charitable Donations must be appropriately documented by the Member Company. Moreover, Grants and Charitable Donations shall only be provided in response to a written request submitted by the requesting organisation or documented initiative from a Member Company containing sufficient information to permit an objective evaluation of the request to be carried out by the Member Company. No Grant or Charitable Donation shall be provided until a written agreement documenting the terms of this is signed by both parties.

g. This section of the Code (Chapter 4: Grants and Charitable Donations) is not intended to address the legitimate practice by Member Companies of providing appropriate rebates, additional product and/or service offerings, including free of charge, or other comparable pricing incentive mechanisms (“value adds”) which are included in competitive and transparent centralised purchasing arrangements, such as, for example, tenders.

2. Charitable Donations

Member Companies may make unrestricted Charitable Donations for genuinely charitable or other philanthropic purposes. “Unrestricted” in this context means that Member Companies shall have no control over the final use of funds (or other support) they provide as Charitable Donations beyond general restrictions to ensure that the funds (or other support) are applied for charitable and/or philanthropic purposes.

Charitable Donations may be made only to charitable organisations or other non-profit entities which have charitable and/or philanthropic purposes as their main purposes and which are objectively engaged in genuine charitable or philanthropic activities. Charitable Donations shall always be made in accordance with the general principles set out in Chapter 4: Grants and Charitable Donations.

Restricted Charitable Donations to non-profit hospitals may be permissible in case of demonstrated Financial Hardship (see Glossary), when Charitable Donations serve exclusively the benefit of the patient, are limited in value, or explicitly permitted by applicable national laws.

This section of the Code (Chapter 4: Grants and Charitable Donations – Charitable Donations) is not intended to address legitimate commercial transactions by Member Companies in the form of leasing of stands or booth space at Third Party Organised Educational Events and/or at any conference or event organised by a charity or other philanthropic organisation. Such activity is considered to

Q22: What does “sufficient information” mean where used in connection with documentation of Grants and Charitable Donations?

A22: The written request by a requesting organisation should include as a minimum a detailed description of the scope and purpose of the programme, activity or other project, which is the object of the Grant or Charitable Donation. It shall also contain a description of the proposed recipient, its legal status and structure, and where relevant, a budget.

Q23: Under the Code, can a Member Company make a Charitable Donation to support the general running of a hospital or other Healthcare Organisation?

A23: No, a Member Company cannot make available a Charitable Donation to support the general running of a hospital or other Healthcare Organisation. A Charitable Donation shall only be given to a legal entity or body which has charitable and/or philanthropic purposes as its main purposes. For the purpose of the Code and irrespective of their legal status, hospitals and Healthcare Organisations are considered to generally have health functions as their main purposes and accordingly are not generally considered to have charitable and/or philanthropic functions as their main purposes. It is therefore not appropriate to provide Charitable Donations to support their general running. 

Q24: Is it permissible for a Member Company to make a Charitable Donation to a Healthcare Professional’s designated charity in instances where the Healthcare Professional has requested the Member Company to do so in lieu of receiving a professional fee for the provision of consultancy or speaking services to the Member Company?

A24: No. Under the Code it is not appropriate for a Member Company to support the favourite charity of a Healthcare Professional in response to a request by that Healthcare Professional irrespective of the underlying reasons. No exception can be made for sport events, such as payment of the registration charge to participate in a charity run.
be part of Member Companies’ normal marketing activity. Member Companies should, however, always consider the appropriateness of the location, venue and the general arrangements for any such events and the impression that may be created by the arrangements in order not to bring the industry into disrepute.

3. Educational Grants

Member Companies may provide restricted Educational Grants (see the Glossary) for the advancement of genuine medical education. “Restricted” in this context means that Member Companies shall specify the intended purpose of the Educational Grant in the Grant agreement. A Member Company shall also ensure that the Educational Grant agreement with the recipient organisation includes rights to enable it to verify that the Grant is in fact used for the agreed intended purpose.

Member Companies shall document and publicly disclose all Educational Grants in accordance with the Code’s Disclosure Guidelines, and publication shall commence no later than the end of the Transition Period.

Member Companies may provide Educational Grants for the following (non-exhaustive) purposes:

a. Support for Third Party Organised Educational Events:

As a general principle, any Third Party Organised Educational Event supported by way of an Educational Grant from a Member Company to a Healthcare Organisation must:

- Comply with Chapter 1. General Criteria for Events; and
- Where applicable, have approval via the Conference Vetting System (see the Glossary)

Q25: Under the Code, may a Member Company make a Charitable Donation such as the purchase of a table of dinner invitations at a fundraising dinner or entries to participate in, or attend at, a fundraising sports or other event?

A25: Yes, Charitable Donations made by Member Companies may take the form of dinner invitations for a fundraising dinner or participating in other recreational events such as a fundraising golf tournament, if arranged by a charitable or other non-profit philanthropic organisation. The Member Company may use some or all of its ticket allotment for its own employees and return any unused portion to the sponsoring charitable or non-profit philanthropic organisation for use as the sponsoring organisation sees fit. However, the Member Company should not invite Healthcare Professionals to attend such an event at the Member Company’s expense. Furthermore, the Member Company is not permitted to suggest to the sponsoring organisation, the names of Healthcare Professionals who could be invited to attend the event, irrespective of whether or not the specified Healthcare Professionals will be seated at the Member Company’s table.

Q26: How can Member Companies in practice ensure that Educational Grants made available for Third Party Organised Educational Events which are subject to the Conference Vetting System, are positively reviewed by CVS?

A26: It is the responsibility of Member Companies to individually ensure compliance with this Code obligation. For example, Member Companies may themselves consider submitting relevant Third Party Organised Educational Events for CVS review or they may decide to include appropriate contractual obligations making it a pre-condition for an Educational Grant that the Third Party Organised Educational Event be submitted and positively assessed via the CVS, for example by the prospective Grant recipient or by a third party.

Q27: Does Chapter 4: Donations and Grants – Educational Grants of the Code apply to requests received by Member Companies in the context of public procurement processes for educational support for Third Party Organised Educational Events from Healthcare Organisations and purchasing bodies?

A27: No. Such requests and any subsequent financial or other support provided by a Member Company are not considered to be Educational Grants for the purpose of the Code. Such arrangements are commercial in nature and not philanthropic and should be documented in a written commercial agreement in accordance with normal business practice.

5 For scope of application of CVS please refer to: www.ethicalmedtech.eu
a1. Support for HCP Participation at Third Party Organised Educational Events:

Where the Educational Grant is provided for the purpose of supporting Healthcare Professionals’ attendance at Third Party Organised Educational Events, the Healthcare Organisation receiving the Grant shall be solely responsible for selection of participants and this shall be expressly reflected in the written Grant agreement.

a2. Support for Third Party Organised Educational Events:

Where the prospective beneficiary of an Educational Grant is the organiser of the Third Party Organised Educational Event and is also a Healthcare Organisation, the recipient Healthcare Organisation shall be solely responsible for:

- The programme content;
- The selection of Faculty; and
- The payment of Faculty honoraria, if any.

Member Companies shall not have any detailed involvement in determining the content of the educational programme for selection of Faculty (see Glossary) and this shall be reflected in the written Grant agreement. If expressly requested to do so, Member Companies may recommend speakers or comment on the programme.

b. Scholarships and Fellowships

Member Companies may provide Educational Grants on a restricted basis in the form of Grants for Scholarships and Fellowships to support advancement of genuine medical education of Healthcare Professionals (see the Glossary). Only Healthcare Organisations where Healthcare Professionals are in training shall be eligible to request and/or receive such Educational Grants. A Member Company shall not provide Educational Grants to support Scholarships and Fellowships upon request of individual Healthcare Professionals. Similarly, the Member Company shall not have any involvement in any way in the selection of the HCPs who will benefit from the Educational Grant and this shall be reflected in the written Grant agreement between the Member Company and the recipient HCO.

c. Grants for Public Awareness Campaigns

Member Companies may also provide Educational Grants on a restricted basis to Healthcare Organisations for the legitimate purpose of providing information, promoting awareness and/or educating patients, carers or the general public about relevant healthcare topics or medical conditions or diseases in therapeutic areas in which the Member Company is interested and/or involved.

Q28: In the event that a Professional Conference Organiser (PCO) organises a Third Party Organised Educational Event independently of any Healthcare Organisation, is it appropriate for Member Companies to sponsor such events?

A28: Member Companies may enter into a commercial sponsorship arrangement with a PCO organising a Third Party Organised Educational Event independently of any Healthcare Organisation. However, such arrangements do not fall within the definition of Educational Grant as PCOs are for-profit conference organisations. These arrangements are therefore commercial in nature and Member Companies should consequently document these in a written commercial agreement in accordance with normal business practice and the requirements of the Code (Chapter 2: Third Party Organised Educational Events).

Q29: Can a Member Company pay for or reimburse travel costs to a Third Party Organised Educational Event for a Scholar or Fellow?

A29: No, a Member Company cannot additionally pay for, or reimburse, the travel or other participation costs incurred by a Scholar or Fellow attending a Third Party Organised Educational Event. Such costs shall be included in the Educational Grant supporting the Scholarship or Fellowship if it is intended that the Grant should extend to such attendance.

Q30: What are examples of relevant disease awareness and health education for patients, carers and the general public for which a Member Company may legitimately provide an Educational Grant?

A30: A Member Company may provide an Educational Grant to support the provision of high quality information to patients and the public about health and disease provided there is an objective patient or public need for such information and the topics covered are linked to the therapeutic areas in which the Member Company is interested and/or involved. Such disease awareness campaigns must not, however, promote the use of particular therapies, services or promote specific HCOs, nor may they aim to stimulate demand by the public for specific therapies or for specific Healthcare Organisations.
4. Research Grants

Where permitted by national laws, regulations, national guidelines and professional codes of conduct, Member Companies may provide restricted Research Grants (see the Glossary) to support clearly defined third party-initiated research studies for clinical or non-clinical research programmes in therapeutic areas in which the Member Company is interested and/or involved. Research Grants may include in kind or financial support for legitimate, study-related, documented expenses or services, and/or reasonable quantities of single-use and/or multiple-use free of charge product(s) for the limited duration of the research.

Member Companies providing Research Grants shall ensure that they do not influence the research. However, in order to ensure that Research Grants are provided on a “restricted” basis, Member Companies shall clarify the intended research scope and purposes for which the Grant is requested and shall ensure that the written Grant agreement with the recipient organisation includes rights for the Member Company to verify that the Grant is applied solely for the agreed intended research use. Such verification may include a request for study-related documentation, such as a copy of the research protocol, a copy of the ethics committee and/or regulatory approvals or a copy of the study report upon completion or earlier termination of the research.

All requests for Research Grants from prospective Grant beneficiaries must be in writing and must detail, as a minimum, the type, nature and objectives of the research activity, the milestones and budget, the approximate duration of the research, and where applicable, the requirements for ethics committee, regulatory and/or other authorisations or approvals. A Member Company may give consideration to a request for a Research Grant prior to ethics committee approval for the specific research project but shall not take any final decision regarding the Grant request unless and until the research receives formal ethics committee approval.

Research Grant agreements shall include provisions relating to adverse event reporting where appropriate, and shall require full disclosure of the Member Company and of the Grant by the Grant recipient organisation and the lead-investigator in all oral or written presentations of the results.

For guidance on how Member Companies may undertake Member Company-initiated research please refer to Chapter 6: Research: Member Company-Initiated Research.
1. General Principles

Member Companies may engage Healthcare Professionals as consultants and advisors to provide *bona fide* consulting and other services, including but not limited to research, participation on advisory boards, presentations at Company Events and product development. Member Companies may pay Healthcare Professionals reasonable remuneration for performing these services. In all cases, consulting arrangements must be permitted under the laws and regulations of the country where the Healthcare Professional is licensed to practise and be consistent with applicable professional codes of conduct in that country.

The principles in this chapter are applicable to all consulting arrangements between Healthcare Professionals and Member Companies including where a consultant Healthcare Professional declines a fee for provision of their services.
Consulting arrangements shall not be contingent in any way on the prospective consultant’s past, present or potential future purchase, lease, recommendation, prescription, use, supply or procurement of the Member Company’s products or services.

When selecting consultants, Member Companies shall implement an independent decision-making/review process to identify, prevent and mitigate against potential bribery and corruption risks arising in connection with use of consultants. This process shall include a documented, prior evaluation of any such associated risks and of the relevant background information concerning each prospective consultant.

2. Criteria for Genuine Consulting Arrangements

In addition to the general principles above, the arrangements which cover genuine consultancy or other services must, to the extent relevant to the particular arrangement, fulfil all the following criteria:

a. Consulting arrangements must be entered into only where a legitimate business need for the services is identified in advance.

b. The number of consultants retained must not be greater than the number reasonably necessary to achieve the identified need.

c. Selection of consultants must be based on criteria directly related to the identified business need and the relevance of the consultant’s qualifications, expertise and experience to address the identified need. The volume or value of business generated by a prospective consultant or the Healthcare Organisation where s/he performs her/his professional activity is not a relevant criterion.

d. Consulting arrangements with Healthcare Professionals must be documented in a written agreement, signed by the parties in advance of the commencement of the services, which must specify the nature of the services to be provided and the basis for payment for those services.

e. The hiring of the consultant must not be an inducement to purchase, lease, recommend, prescribe, use, supply or procure the Member Company’s products or services.

f. The remuneration for the services rendered must be reasonable and reflect the fair market value of the services provided.

g. Member Companies must maintain records of the services, and associated work products, provided by the consultant Healthcare Professionals and of the use made of those services by the Member Company.
h. The venue and other arrangements (e.g. hospitality, travel etc.) for Member Company meetings with consultants shall follow the rules for Events set out in Chapter 1: General Criteria for Events.

3. Remuneration and Fair Market Value

The remuneration paid to Healthcare Professionals engaged as consultants by Member Companies shall reflect fair-market-value for the services provided. It shall not be in any way contingent upon the value of products or services which consultants may purchase, lease, recommend, prescribe, use, supply or procure in the course of their own professional practice or that may be purchased, leased, recommended, prescribed, used, supplied or procured by HCOs where they carry on their professional activities.

All payments made for services must comply with all applicable tax and other legal requirements. Member Companies may pay for expenses reasonably incurred by consultants in providing the services which are the subject of the consulting agreement including reasonable travel, meals and accommodation expenses incurred by consultants if attending meetings with, or on behalf of Member Companies. The written consulting agreement must detail which expenses can be claimed by the consultant in relation to the provision of the services and the basis for payment of these by the Member Company.

4. Disclosure and Transparency

Member Companies shall ensure they fully comply with all applicable national laws, regulations and professional codes of conduct requiring any publication, disclosure or approval in connection with the use by Member Companies of Healthcare Professionals as consultants. All required consents and approvals shall be obtained, including from the hospital or other Healthcare Organisation administration or from the Healthcare Professional’s superior (or locally-designated competent authority), as applicable. Where no such national requirements apply, Member Companies shall nevertheless maintain appropriate transparency by requiring the relevant Employer Notification which shall disclose the purpose and scope of the consultancy arrangement.

Member Companies shall also include appropriate obligations on the consultant to ensure that the consultant’s status as a consultant for the Member Company and his/her involvement in the research for, or the preparation of, material for scientific publication is disclosed at the time of any publication or presentation.

Q31: What is meant by fair market value (FMV) in the context of consulting arrangements?

A31: Fair market value is the value of the specified consultancy services which would be paid by the Member Company to the consultant, each dealing at arm’s length in an open and unrestricted market, and when neither party is under any compulsion to buy or sell, and both parties have reasonable knowledge of the relevant facts.

Q32: How should Member Companies determine FMV for a service?

A32: A Member Company must be able to demonstrate internal methodology to determine fair market value. Amongst other matters this shall take account of the consultant’s qualifications, expertise and experience as well as the actual services to be provided to the Member Company.
1. Member Company-Initiated Research

Where there is a legitimate business need to do so, Member Companies may initiate, conduct, manage and finance scientifically valid research to generate data, whether pre- or post-market. In this context, legitimate business needs for data include medical needs, including patient safety; research and development; scientific purposes (e.g. performance indicators, comparing objective scientific parameters); regulatory, including post-market surveillance (PMS) and post-market clinical follow up (PMCF), vigilance, safety, or reimbursement and health economic, including clinical and cost-effectiveness and outcomes data relevant to health technology assessments (HTA) and reimbursement decision-making.
Where a Member Company uses a Healthcare Professional as a consultant, for example to lead a study on the Member Company’s behalf (i.e. act as Principal Investigator), the Member Company shall ensure that such consulting arrangements comply fully with Chapter 5: Arrangements with Consultants.

In accordance with the Documentation Principle, any arrangements made by a Member Company to procure research-related services shall be set out in a written agreement which shall reference a written research protocol, written schedule of work and provide for all required consents, approvals and authorisations to be obtained prior to the commencement of the study.

Member Companies must ensure that their research activities comply with all applicable national laws, regulations and researchers’ own professional codes of conduct, as well as with applicable Good Clinical Practice guidelines, if relevant.

In accordance with the Principles set out in the Introduction: Aims and Principles of the Code, Member Companies shall also ensure appropriate clinical trial transparency in relation to their research activities and results. This shall include appropriate disclosure of information about Member Companies’ clinical trials, for example in external public registries and peer-reviewed journals.

Where Member Companies engage third party intermediaries for research (e.g. contract research organisations (CROs)), they shall ensure that the research conducted by these third parties on behalf of the Member Company is carried out in accordance with all applicable legal and ethical requirements, including the applicable requirements of the Code.

Q33: What is an example of an external public registry for clinical trial transparency?
A33: Examples of an external public register for clinical trial transparency are www.clinicaltrials.gov or www.who.org.

2. Member Company Post-Market Product Evaluation

Where there is a legitimate business need to do so, Member Companies may initiate, post-market third party evaluation of their products, therapies and/or related services and may therefore provide Evaluation Products under a written contract for services in order to obtain defined user evaluation by Healthcare Organisations in relation to the Evaluation Products. Evaluation Products may be provided on a no charge basis in return for the requested user feedback from Healthcare Professionals at the Healthcare Organisation, which shall be formally described in a written protocol or questionnaire forming part of the contract.
Where the Evaluation Products are multiple-use Evaluation Products the defined period of time necessary for the evaluation and feedback to occur will depend on the frequency of anticipated use; the nature of the user evaluation feedback requested; the duration of any required training and similar considerations. Member Companies shall in all cases ensure that they retain title to multiple-use Evaluation Products and that they have a process in place for promptly removing such multiple use Evaluation Products and/or any unused single-use Evaluation Products from the Healthcare Organisation’s location at the conclusion of the evaluation period unless these are purchased by the Healthcare Organisation.

Provision of Evaluation Products and/or related services must not improperly reward, induce and/or encourage Healthcare Professionals and/or Healthcare Organisations to purchase, lease, recommend, prescribe, use, supply or procure Member Companies’ products or services. Any offer and/or supply of Evaluation Products shall always be done in full compliance with applicable national laws, regulations and industry and professional codes of conduct.

3. Third Party-Initiated Research

Please refer to Chapter 4: Grants and Charitable Donations; Research Grants.
Healthcare Professionals, acting individually or as part of a group in which they are an active participant, often make valuable contributions that improve products or medical technologies. They may develop intellectual property, for example, patents, trade secrets, or know-how, under a product or technology development or intellectual property licensing agreement.

A royalty arrangement between a Member Company and a Healthcare Professional should be entered into only where the Healthcare Professional is expected to make or has made a novel, significant, or innovative contribution to, for example, the development of a product, technology, process, or method, such that the Healthcare Professional would be considered to be the sole or joint owner of such intellectual property under applicable laws and regulations. The foregoing is without prejudice to Member Companies’
obligations to comply with any applicable obligations to pay royalties which may arise under applicable laws and regulations in some countries.

Arrangements involving the payment of royalties by or on behalf of Member Companies to a Healthcare Professional must be set out in a written agreement providing appropriate and reasonable remuneration in accordance with applicable laws and regulations. For example, royalties paid in exchange for intellectual property should not be conditional on:

a. A requirement that the Healthcare Professional purchase, order or recommend any product, services or medical technology of the Member Company or any product or technology produced as a result of the development project; or

b. A requirement to market the product or medical technology upon commercialisation.

Subject to national regulations and requirements, Member Companies should exclude from the calculation of royalties the number of units purchased, prescribed, used, or ordered by the Healthcare Professional and/or members of the Healthcare Professional’s practice or Healthcare Organisation.
Member Companies exceptionally may provide inexpensive educational items and/or gifts, in accordance with national laws, regulations and industry and professional codes of conduct of the country where the Healthcare Professional is licensed to practise. Member Companies may only provide such educational items and/or gifts in accordance of the following principles:

a. Educational items and/or gifts may be provided but these must relate to the Healthcare Professional’s practice, or benefit patients, or serve a genuine educational function.

b. No educational items and/or gifts should be provided in response to requests made by Healthcare Professionals.

c. Educational items and/or gifts must not be given in the form of cash or cash equivalents.

d. Educational items and/or gifts must be modest in value, and can be branded or non-branded items.

Q34: What are examples of items of modest value that are “related to the Healthcare Professional’s practice or for the benefit of patients”.

A34: Stationery items, calendars, diaries, computer accessories for business use and clinical items such as wipes, nail brushes, surgical gloves and tourniquets are examples of modest value items that could be appropriately provided as gifts to Healthcare Professionals provided their value falls within the maximum value prescribed under national laws, regulations and industry and professional codes of conduct. Food, alcohol and items which are primarily for use in the home or car are not appropriate as they are not related to the Healthcare Professional’s practice nor are they for the benefit of patients.
**e.** A Member Company may occasionally provide educational items of greater value to a Healthcare Organisation always provided that the item serves a genuine educational function for the Healthcare Professionals at that Healthcare Organisation and is of benefit to patients. Such items shall not be provided to Healthcare Professionals for their personal use. The item shall also be related to the therapeutic areas in which the Member Company is interested and/or involved. For higher value educational items, Member Companies must maintain appropriate records of their provision of such educational items to Healthcare Organisations. Such items should not be part of the Healthcare Organisation’s normal overheads or routine costs of operation.

**f.** Provision of educational items and/or gifts must not improperly reward, incentivise and/or encourage Healthcare Professionals to purchase, lease, recommend, prescribe, use, supply or procure the Member Company’s products or services. Prize draws and other competitions at Events are permissible if the prize awarded complies with Chapter 8, Educational Items and Gifts. In addition, it must comply with national laws, regulations and industry and professional codes of conduct.

This Chapter is not intended to address the legitimate practice of providing appropriate Evaluation Products, Demonstration products or Samples. For guidance on how Member Companies may provide Evaluation Products, Demonstration products or Samples, please refer to Chapter 6: Research and Chapter 9: Demonstration Products and Samples, as applicable.

**Q35:** May a Member Company provide a small gift to a Healthcare Professional to mark significant life events such as a marriage, birth, birthday or death?

**A35:** The Code restricts the types of gift that may be given to a Healthcare Professional and it would not be appropriate to give gifts to mark significant life events such as a marriage, birth or birthday. However, in the case of death, it is for each Member Company to determine the appropriateness of making a tasteful gift as a mark of respect.

**Q36:** Where Healthcare Professionals engaged by Member Companies as consultants or speakers decline a professional fee for their services, would it be appropriate for the Member Company to show its appreciation by giving the Healthcare Professional a small gift such as a bottle of wine or a bouquet of flowers?

**A36:** No, it would not be acceptable for the Member Company to make such a gift because to do so could be open to misinterpretation and would be likely to breach the Principle of Image and Perception. Moreover such gifts would not comply with Chapter 8, Educational Items and Gifts as they neither relate to a Healthcare Professional’s practice nor serve an educational function.

**Q37:** Please provide examples of educational items of greater value that can be provided to Healthcare Organisations under the Code?

**A37:** Examples of educational items of greater value that can be provided may include medical textbooks or anatomical models, but only if those relate to the therapeutic areas in which the Member Company is interested and/or involved.
1. General Principles

Member Companies may provide their own products as Demonstration Products and/or Samples (see the Glossary) at no charge in order to enable Healthcare Professionals and/or Healthcare Organisations (as applicable) to evaluate and/or familiarise themselves with the safe, effective and appropriate use and functionality of the product and/or related service and to determine whether, or when, to use, order, purchase, prescribe or recommend the product and/or service in the future.

Demonstration Products and/or Samples may be either single- or multiple-use products. Member Companies may also provide products from another company in conjunction with the Member Company’s own Demonstration Products and/or Samples on an exceptional basis if those other
company’s products are required in order to properly and effectively demonstrate, evaluate or use the Member Company’s products, e.g. computer hardware and software produced by a company other than the Member Company. Provision of Demonstration Products and/or Samples must not improperly reward, induce and/or encourage Healthcare Professionals and/or Healthcare Organisations to purchase, lease, recommend, prescribe, use, supply or procure Member Companies’ products or services. Any offer and/or supply of such products shall always be done in full compliance with applicable national laws, regulations and industry and professional codes of conduct.

Member Companies shall in all cases maintain appropriate records in relation to the provision of Demonstration Products and/or Samples to Healthcare Professionals and/or Healthcare Organisations, for example recording proof of delivery for any Demonstration Products and/or Samples provided and receipt of return for multiple-use Demonstration Products and/or Samples. Member Companies shall clearly record in the Member Company’s records as well as clearly disclose to Healthcare Professionals and/or Healthcare Organisations the no-charge basis and other conditions applicable for the supply of such Demonstration Products and/or Samples no later than the time of the supply. The disclosure to Healthcare Professionals and Healthcare Organisations shall be in writing.

This Chapter is limited to the provision of Demonstration Products and/or Samples and related services at no charge and is not intended to apply to provision of products or related services under any other arrangements, for example (but not limited to) provision within the framework for clinical trials and/or other research or commercial supplies by way of rebates or pricing incentives in a public procurement context.

2. Demonstration Products (Demos)

Member Companies may provide examples of their products to Healthcare Professionals and/or Healthcare Organisations in the form of mock-ups (such as unsterilised single use products) that are used for Healthcare Professionals and patient awareness, education and training. For example, a Healthcare Professional may use a Demonstration Product to show a patient the type of technology which will be implanted in the patient or may use the Demo to train other Healthcare Professionals in the use of the product.
Demonstration Products are not intended for clinical use in any patient care nor are they intended for on-sale or other transfer. Member Companies shall clearly record in the Member Company’s records as well as clearly disclose to Healthcare Professionals and/or Healthcare Organisations the no-charge basis and other conditions applicable for the supply of such Demonstration Products no later than the time of the supply. It is recommended that the disclosure to Healthcare Professionals and Healthcare Organisations be in writing.

3. Samples

Member Companies may provide a reasonable number of Samples at no charge to allow Healthcare Professionals and/or Healthcare Organisations to familiarise themselves with the products and/or related services, to acquire experience in dealing with them safely and effectively in clinical use and to determine whether, or when, to use, order, purchase, prescribe or recommend the product and/or service in the future.

For Samples, which are single-use products, the quantity provided for purposes of familiarisation must not exceed the amount reasonably necessary for the Healthcare Professionals/Healthcare Organisation to acquire adequate experience in dealing with the products.

For Samples, which are multiple-use products, the specific length of time necessary for a Healthcare Professional to familiarise him/herself with the product will depend on the frequency of anticipated use; the duration of required training; the number of Healthcare Professionals who will need to acquire experience in dealing with the product and similar considerations. Member Companies shall in all cases ensure that they retain title to multiple-use Samples and that they have a process in place for promptly removing such multiple use Samples from the Healthcare Professional’s location at the conclusion of the familiarisation period.
PART 2

Guidelines on advertisements and promotions addressed solely or primarily to Healthcare Professionals
Introduction

These Guidelines are published by ABHI because under current UK law and other advertising codes it is difficult to take legal action or to complain against a person or company who publishes misleading promotional material directed solely or primarily at Healthcare Professionals.

Consumer advertising is governed both by legislation (the main legal instruments being listed in Section 1) and by the codes of advertising practice issued by the Committee of Advertising Practice and the Broadcast Committee of Advertising Practice and administered by the Advertising Standards Authority. However, Advertising directed at Healthcare Professionals is not clearly caught by these provisions.

The intention of these Guidelines is to set out principles to be applied to Advertising directed solely or primarily at Healthcare Professionals. These principles will be part of the ABHI Code of Ethical Business Practice with which all ABHI Members agree to comply. The principles apply to all such Advertising issued by or on behalf of ABHI Members where it is directed at Healthcare Professionals in the UK.

The principles set out in these Guidelines are, however, based upon the general principles contained in existing laws and codes of practice and are therefore generally applicable to all medical devices advertising. ABHI therefore encourages all persons advertising medical devices, not just ABHI Members, to ensure that Advertising published by them or on their behalf complies with these Guidelines.

Complaints that any ABHI Member has failed to comply with these Guidelines will be handled in accordance with the established Complaints Procedure set out in the ABHI Code of Ethical Business Practice Complaints Procedure and Panel Constitution, as amended from time to time.

Interpretation

The singular includes the plural.

Reference to any “commissioned” article, study or material is a reference to work done at the request or on behalf of an Advertiser, often in return for payment or some reward or other support. It may include the work of a journalist or opinion leader carried out directly or indirectly as a result of such request. However, reports on collected medical device clinical data (including reports on clinical investigations, as the expression is used in the Medical Devices Directives) that are written by or at the direction of the clinical investigator (“investigator-initiated reports”) shall not be considered to be “commissioned” whether or not payments have been made in respect of the investigators’ services or expenses reimbursed or other in-kind support has been provided if they meet the conditions below. Equally, reports on collected medical device clinical data (including clinical investigations, as the expression is used in the Medical Devices Directives) that are written by or at the direction of the Advertiser pursuant to an agreement to conduct the clinical data collection (“Advertiser-initiated reports”) shall not be regarded as “commissioned”, always provided that such investigator-initiated or Advertiser-initiated reports relate to clinical data collection and evaluation processes which are:

a. performed according to scientifically valid standards;
b. subjected to ethical review independent of the Advertiser, e.g. hospital ethics committee; and
c. initiated and conducted for scientifically and/or medically legitimate purposes.
1. Scope of Guidelines

1.1 These Guidelines apply to all Advertisements produced by or on behalf of Advertisers.

Advertising directed wholly or mainly at consumers, patients or others who are not Healthcare Professionals is not covered by these Guidelines. However, such advertising is subject to general UK advertising law as well as to the industry regulatory codes administered by the Advertising Standards Authority, and it should consequently comply with the law and with those rules.

ABHI and its Members encourage all persons advertising medical devices, not just ABHI Members, to ensure that advertising directed at non-Healthcare Professionals which is published by them or on their behalf complies with these Guidelines.

1.2 The following is a non-exhaustive list of the forms of Advertising that may be captured by these Guidelines:

- Advertisements in Healthcare Professional journals, brochures, leaflets, circulars, mailings, e-mails, text transmissions (including SMS and MMS), social media sites, fax transmissions, catalogues, follow-up literature and other electronic or printed material and/or verbal communications;
- detail aids and other printed material used by representatives;
- posters and other promotional media in public places at Healthcare Professional events, including moving images;
- video and DVD Advertisements intended solely or primarily for release or use at Healthcare Professional events;
- audio-cassettes, films, records, tapes, video recordings intended solely or primarily for release or use at Healthcare Professional events;
- Advertisements in non-broadcast electronic media, including but not limited to: online Advertisements (including banner or pop-up Advertisements and online video Advertisements); search listings; commercial classified Advertisements;
- Advertisements transmitted by Bluetooth;
- Advertisements distributed through web widgets and online sales promotions and prize promotions
- web-based data services;
- Advertisements in marketing databases containing Healthcare Professionals’ contact information;
- Advertorials.

1.3 To comply with these Guidelines, Advertising must also comply with all other applicable laws and regulations. For example, Advertising that is in breach of the requirements of the Business Protection from Misleading Marketing Regulations 2008 will also be a breach of these Guidelines and therefore of the ABHI Code.

1.4 Advertising must be suitable for the intended audience and must conform to generally acceptable standards of good taste. It should respect the principles of fair competition generally accepted in business.

1.5 An Advertisement should be readily recognisable by the intended audience as an Advertisement and its commercial intent must be made clear if that is not obvious from the context.

2. Accuracy and Substantiation of Claims and Information

2.1 Information, claims and comparisons included in or as part of any Advertisement must be accurate, balanced, fair, objective and unambiguous and must be based on a fair evaluation of appropriate evidence and reflect that evidence clearly. They must not mislead the intended audience either directly or by implication, by distortion, exaggeration or undue emphasis. All reasonable efforts must be used to ensure that the substantiation for all information, claims and/or comparisons in an Advertisement is in accordance with an up to date evaluation of all the relevant clinical and scientific evidence.
Material used in or as part of any Advertisement must be sufficiently complete to enable the intended audience to form their own opinion of the therapeutic value of the device.

**2.2 Different types** of evidence are permissible to support claims in Advertisements. The evidence may include clinical data (which could be pre- or post-market data, including registry data); the results of a clinical investigation; laboratory data and testing, including in vitro test data; engineering data; and historical post-market experience.

All evidence must be relevant, balanced, comprehensive and credible and must in all cases be consistent with any specified device’s CE marked Intended Purpose, as must the overall impression created by the Advertisement, including any graphics or artwork. Advertisers must in all cases hold documentary evidence (which includes equivalent recorded evidence, e.g. video) to substantiate all claims (direct or implied). This documentary evidence must be in existence before or at the time of the publication of the Advertisement.

**2.3 Claims or comparisons** made, or information included, in Advertisements must accurately reflect the balance of all relevant evidence. If justification for the content of an Advertisement relies on any selection from the available evidence, that selection must be fair and balanced so that the Advertisement does not mislead or give a false impression.

Evidence should be scientifically robust. If there is a significant division of scientific, medical or other expert opinion about any claims made in an Advertisement, those claims must not be presented as being generally agreed and it should be clear from the Advertisement that there is a division of opinion on the relevant matter.

Advertisers must make clear whether the evidence relied upon to substantiate claims used in an Advertisement is clinical or some other type of evidence or a combination. If the Advertisement includes claims that rely on a particular clinical investigation, that investigation must have been carried out to a standard equivalent to that required for clinical evaluation of a device under Annex X of Directive 93/42/EEC or Annex 7 of Directive 90/385/EEC, as applicable, as at the date of the Advertisement. Advertisers must not imply that claims are based upon peer-reviewed clinical investigation evidence where this is not the case as this will create a misleading impression.

**2.4 Testimonial evidence** on its own is not sufficient substantiation for objective claims. However, provided the overall effect is not misleading, it may be sufficient to use testimonial evidence to justify subjective claims (for example based upon subjective perception) or opinions. Testimonial evidence must not be misleading and must illustrate typical examples only. (See also section 11.1 below.)

**2.5 If engineering data** or in vitro or other laboratory test data is used to substantiate claims made in Advertisements it must be directly relevant to, and significant for, the product being advertised. Particular care must be taken in extrapolating from such data to avoid any misleading impression as to the significance of the data.

**2.6 Information** and claims about side-effects used in or as part of any Advertisement must reflect available evidence or be capable of substantiation by clinical experience. It must not be stated that a product has no side-effects. The word ‘safe’ must not be used without qualification. Medical devices are all CE marked on a risk-benefit balance. No medical device is 100% safe and advertising claims should not create such an impression i.e. that the medical device is absolutely or completely safe as this is likely to be misleading.

**2.7 Advertisements** must encourage the appropriate use of a device (or Related Service) by presenting it objectively and without exaggerating its properties. Exaggerated or all-embracing claims must not be made, and superlatives must not be used except for those limited circumstances where they relate to a clear fact about a device.

Any claim that a device (or a particular material, component comprised in a device or an active ingredient forming an integral part of that device) has some special merit, quality or property must be substantiated.

**2.8 The word ‘new’** must not be used for more than twelve months from the date on which a device or an Intended Purpose of that device or any Related Service has been generally available in the UK in the form referred to in the Advertisement.

The claim that the medical device or Related Service (or new indication or feature) is “new” is no longer acceptable after the device or Related Service (or new indication or feature) has been available for
more than a year as this is no longer up-to-date and therefore misleading. While Advertising already in circulation need not be actively withdrawn, Advertisers should not be continuing to use these once the new device or Related Service (or new indication or feature) has been placed on the market in the UK for more than 12 months.

Where a device or Related Service (or new indication or feature) has been available in the UK in only one sector but subsequently becomes available in additional sectors (e.g. private healthcare sector availability is expanded to include NHS availability) it is still not possible to claim the device or Related Service (or new indication or feature) is “new” though it is allowable to refer to the fact that the device or Related Service (or new indication or feature) is “new to the NHS” provided the overall impression this creates is not misleading.

3. Comparative Advertising

3.1 A comparison used in or as part of any Advertisement is only permitted if:

- it is not misleading;
- devices or services for the same needs or for the same Intended Purpose are compared;
- one or more material, relevant, substantiable and representative features are compared;
- no confusion is created between the device or service advertised and that of a competitor or between the Advertiser’s trade marks, trade names, other distinguishing marks and those of a competitor;
- the trade marks, trade names, other distinguishing marks, products, services, activities or circumstances of a competitor are not discredited or denigrated;
- no unfair advantage is taken of the reputation of a trade mark, trade name or other distinguishing marks of a competitor; and
- the Advertiser’s devices or services are not presented as imitations or replicas of goods or services bearing a competitor’s trade mark or trade name.

3.2 Where comparative claims are made there should be clear evidence to support the claim bearing in mind the potential commercial impact of comparative claims. The intent of any comparison should be that it provides valuable, objective and accurate information comparing products and/or associated services for the benefit of Healthcare Professionals and their patients. It should not simply be a means of denigrating a competitor’s product or Related Service.

3.3 Care must be taken not to mislead when expressing data as percentages. Patient numbers should be included whenever possible. Differences which do not reach statistical significance must not be presented in such a way as to mislead.

3.4 It is acceptable for a member to report on the outcomes of comparative testing of medical devices in an Advertisement provided:

a. the devices have been subjected to the same and appropriate testing; and
b. the outcomes are reported in a fair and balanced manner; and each outcome is referenced and consistent with the body of evidence.

3.5 It is acceptable to report on the outcomes of separate testing of medical devices in an Advertisement provided a qualifying statement is included to make clear that the substantiating data comes from separate studies.

3.6 Hanging comparisons whereby a device or Related Service is described as being better or stronger or such like without stating that with which the device is compared must not be made.

4. Requests for Substantiating Data

4.1 If a bona fide request is made to an Advertiser to substantiate any information, claim or comparison used in or as part of any Advertisement, the enquiry must be acknowledged within ten working days of the date when the Advertiser has sufficient information to understand the nature of the enquiry or complaint. The initial response should where relevant indicate when a full response will be provided.
Unless section 4.2 applies, a full response together with relevant substantiating data must be provided within thirty working days of an adequately clear request being received.

A *bona fide* request means one received from an independent Healthcare Professional or from another person (including from companies) having a legitimate interest in the substantiation requested. However, there is no requirement to respond to fishing expeditions by competitors or others that are simply designed to obtain confidential or commercially sensitive information about the Advertiser’s products or business.

There is no need to supply information relating to the validation of a device’s explicit CE marked Intended Purpose or for claims that are expressly covered by the Intended Purpose of the device.

### 4.2 In justifying an Advertisement

the Advertiser must be prepared to give relevant technical, clinical and scientific data. The Advertiser may be justified in requiring the person requesting substantiation of the Advertisement to enter into a confidentiality agreement in relation to information disclosed.

An Advertiser shall not be obliged to disclose confidential or commercially sensitive data or material directly to the person requesting it where such disclosure might cause financial harm or otherwise damage the business of the Advertiser. In such cases confidential disclosure to an independent mediator or expert or, (if a formal complaint is to be lodged under the Code) to the Panel, for consideration may be appropriate. Confidential disclosure of this type shall not be appropriate in cases where it is primarily the insufficiency of the Advertiser’s substantiating data, which is likely to result in the financial harm or damage to the Advertiser’s business.

### 5. Use of Published Data to Support Advertising

#### 5.1 When promotional material

used in or as part of any Advertisement refers to published studies, including clinical investigations, clear references must be given.

#### 5.2 All artwork

used in or as part of any Advertisement including illustrations, graphs and tables must conform to the letter and spirit of these Guidelines and of the CoBP. If artwork or data is taken from published studies a reference must be given. Graphs and tables must be presented in such a way as to give a clear, fair, balanced view of the matters with which they deal, and must not be included unless they are relevant to the claims or comparisons being made.

If a graph or table is reproduced from a published study, it should not be altered unnecessarily. In any event, the way in which the material is used must not distort or give a false impression of the evidence published in that study and the Advertiser must clearly state that the material has been modified.

#### 5.3 Advertisers may use scientific peer-reviewed journals, clinical or otherwise, to substantiate claims made in an Advertisement. There may also be relevant data to be found in publications of patient data and case studies, whether or not it is published in a scientific journal. The key issues are the quality, relevance and overall credibility of the data when relied upon to support claims made in an Advertisement. (See also section 7.1 of these Guidelines).

### 6. No Disparagement

#### 6.1 The products and activities

of other medical device companies must not be disparaged in an Advertisement.

#### 6.2 Healthcare Professionals and the clinical and scientific opinions of Healthcare Professionals must not be disparaged in any Advertisement.

### 7. Non-Refereed Articles

#### 7.1 Journal or other articles which have not been refereed are unlikely to be sufficiently robust to justify science-based claims about a device’s safety or performance on their own. It also follows that reprints of such material must not be provided to Healthcare Professionals unsolicited.

However, if claims in an Advertisement are based upon subjective patient or consumer perceptions, it may be acceptable to use non-refereed articles to promote those specific aspects of a product.
8. Off-Label Use

8.1 If Journal articles discuss off-label use of a particular device, such discussion must not be used with the intention of promoting such off-label use. For example, the unsolicited supply of such materials to Healthcare Professionals would be an infringement of these Guidelines. However, it is permissible to supply such articles upon receipt of a bona fide unsolicited, written request from a Healthcare Professional. Care should be taken to record the written request and the response sent.

9. Quotations

9.1 Quotations from medical and scientific literature or from personal communications must be accurate and must reflect the meaning of the author. The precise source of the quotation must be identified.

9.2 Quotations relating to devices taken from public broadcasts, for example on radio and television, and from private occasions, such as medical conferences or symposia, must not be used without the formal permission of the speaker.

9.3 Where references are made to medical and scientific literature or to personal communications these must accurately reflect the author’s meaning.

9.4 All reasonable care must be taken to avoid ascribing claims or views to authors when these no longer represent the current views of the authors concerned.

10. Material Commissioned by the Advertiser

10.1 An article or piece of information that is commissioned by or on behalf of the Advertiser must be clearly identified as such on its face and the Advertiser must also be clearly identified.

In line with the Introduction, Section 1.2 of these Guidelines, “commissioning” of an article in this context means the provision of any financial or other support or reward to the author for the purpose of producing the article. This includes the provision of any in-kind support, e.g. products, facilities, secretarial or administrative support by Advertisers.

However, reports on collected medical device clinical data (including reports on clinical investigations, as the expression is used in the Medical Devices Directives) that are written by or at the direction of the clinical investigator (“investigator-initiated reports”) shall not be considered to be “commissioned” whether or not payments have been made in respect of the investigators’ services or expenses reimbursed or other in-kind support has been provided if they meet the conditions below. Equally, reports on collected medical device clinical data (including clinical investigations, as the expression is used in the Medical Devices Directives) that are written by or at the direction of the Advertiser pursuant to an agreement to conduct the clinical data collection (“Advertiser-initiated reports”) shall not be regarded as “commissioned”, always provided that such investigator-initiated or Advertiser-initiated reports relate to clinical data collection and evaluation processes which are:

a. performed according to scientifically valid standards;

b. subjected to ethical review independent of the Advertiser, e.g. hospital ethics committee; and

c. initiated and conducted for scientifically and/or medically legitimate purposes.

10.2 Where such a commissioned article is used solely or primarily for the purpose of supporting a claim, including a comparative claim, the article cannot be the sole or primary evidence relied on to substantiate the claim – the claim must also be separately substantiated by other, additional evidence of sufficient quality and quantity to meet the standards specified in these Guidelines. Investigator-initiated or Advertiser-initiated reports which meet the conditions set out in the Preamble, Interpretation of these Guidelines may, however, provide independent substantiation for the safety or performance of a device or Related Service.

11. Testimonials and Endorsements

11.1 For testimonials and/or endorsements (including but not limited to blogs) to be used in or in support of any Advertisement, the Advertiser must ensure that the testimonials or endorsements (whether from patients, suitably qualified Healthcare Professionals, celebrities or members of the public generally) whether written or spoken, are documented,

11.2 Where such a testimonial or endorsement is used solely or primarily for the purpose of supporting a claim, including a comparative claim, the testimonial or endorsement cannot be the sole or primary evidence relied on to substantiate the claim – the claim must also be separately substantiated by other, additional evidence of sufficient quality and quantity to meet the standards specified in these Guidelines. Investigator-initiated or Advertiser-initiated reports which meet the conditions set out in the Preamble, Interpretation of these Guidelines may, however, provide independent substantiation for the safety or performance of a device or Related Service.
genuine, not misleading and illustrate typical examples only, except where these are obviously fictitious.

In this context “typical” means something that is experienced by the great majority of patients or users, as applicable. If a testimonial or endorsement refers to a condition or situation experienced by only one or very few patients or users, this must be made clear. Also in this context “suitably qualified Healthcare Professionals” means persons who can provide suitable credentials evidencing relevant professional expertise or qualifications and accreditation by a professional or regulatory body that has systems for dealing with complaints and taking disciplinary action and has registration based on minimum standards for training and qualifications.

If a testimonial or endorsement which is used in Advertising is presented by a person other than the person originally providing the testimonial / endorsement – for example when presented by an actor or model – the effect must not mislead or otherwise distort the nature of the testimonial or endorsement. For example, Advertisers could include a suitable caption or other notice where an actor speaks the words of the actual provider of the testimonial to make the actual position clear.

Testimonials or endorsements must relate to the product being Advertised.

If a testimonial or endorsement is used in or in support of any Advertisement, the Advertiser must hold signed and dated documentary evidence, including contact details, for the provider of the testimonial or endorsement in question. The Advertiser must also ensure that he has the consent of the person providing the testimonial or endorsement both to use it in connection with Advertising and (if necessary) to disclose it in connection with the substantiation of any claim.

Testimonials or endorsements taken from published articles should be treated in the same way as quotations (Section 9 above) and in accordance with any other relevant provisions in these Guidelines.

12. Reimbursement of Expenses for Providers of Testimonials or Endorsements

12.1 Any payment made to a person providing a testimonial statement or endorsement (or any other in kind benefit or advantage provided) must not be an inducement or reward for giving that statement. Similarly, no testimonial or endorsement (including any blog) by any person should be used in or to support Advertising if the provider of the testimonial or endorsement has been paid directly or indirectly (including via in kind benefits or advantages) on behalf of the Advertiser to endorse the device or Related Service or to provide the testimonial.

Reimbursement of reasonable and proportionate expenses either by or on behalf of an Advertiser, where the expenses have been incurred by an individual or a company providing a testimonial or an endorsement for use in or in support of Advertising, is permitted always provided such reimbursement:

a. is limited to out-of-pocket expenses reasonably incurred by the provider of the testimonial or endorsement in connection with its provision (e.g. reasonable travel costs to reach the filming location provided the location chosen and the mode of travel do not themselves constitute an inducement or reward for providing the testimonial / endorsement); and

b. is either paid to a third party travel agent / vendor to organise the travel / accommodation or only reimbursed to the testimonial / endorsement provider against original invoices or receipts; and

c. is kept entirely separate from any payments or other arrangements relating to any background collaboration or sponsorship activities so that the reimbursement is not, and does not appear to be, a payment made in connection with, or as part of a broader scheme of, paid collaboration or sponsorship between the provider of the testimonial / endorsement and the Advertiser (or any person or organisation connected to him); and

d. specifically in the case of Healthcare Professionals, such reimbursement is only paid in circumstances where the reimbursement payment does not in any way amount to a
payment (i.e. as an inducement or reward) for the testimonial or endorsement to be provided as a service by the Healthcare Professional (nor does it have the appearance of being such a payment).

12.2 There should be a written agreement (e.g. letter agreement) signed and dated by or on behalf of both the Advertiser and the provider of the testimonial / endorsement setting out which expenses will be reimbursed and the mechanism of reimbursement (as well as also meeting the other requirements stated at sections 11 and 12.1 above). Expenses should only be reimbursed to the testimonial / endorsement provider by or on behalf of the Advertiser against original invoices or receipts.

If the provider of the testimonial / endorsement is a Healthcare Professional, the written agreement must also comply with the requirements of Part 1, Chapter 5 of the ABHI Code (Arrangements with Consultants).

It is important that any reimbursement of out-of-pocket expenses should not be, or appear to be, a contrived payment for a testimonial or endorsement. No payment is permitted simply to obtain the testimonial / endorsement of a Healthcare Professional or any other person, and the written agreement must make this clear.

13. Effect of Background Collaboration or Sponsorship on Testimonials and Endorsements

13.1 Advertisers may use testimonials or endorsements of a device or a Related Service by patients, celebrities, suitably qualified Healthcare Professionals or members of the public in, or in support of, Advertising where there is background collaboration or sponsorship by or on behalf of the Advertiser only if:

a. the background collaboration with or sponsorship by the Advertiser of the individual or company providing the testimonial or endorsement is made clear in the Advertisement; and

b. the testimonial or endorsement meets the requirements for testimonials and endorsements contained in these Guidelines (see Sections 11 and 12).

“Background collaboration or sponsorship” in this context means any relationship or arrangement(s) (including for example consultancy arrangements or any other type of service provision) between the provider of the testimonial or the endorsement and the Advertiser (or its representatives or affiliates) which is not connected with the provision of the testimonial or the endorsement, irrespective of whether such relationship or arrangement involves any payments (or any other in kind benefit or advantage) or not.

Examples of background collaboration or sponsorship could include arrangements for research, participation on advisory boards or product development.

Reports of clinical investigations shall not be regarded as testimonials or endorsements of a product or Related Service. Rather, they may provide independent substantiation for the safety or performance of a device or Related Service.

Statements made of his/her own volition by a Healthcare Professional (including but not limited to off-the-cuff statements) shall not be treated as testimonials or endorsements even if they have been made at an occasion (such as a conference or meeting) where the meeting organizer is directly or indirectly supported by the Advertiser, always provided such support is incidental to the statement made. If the Advertiser subsequently wishes to use such a statement in or in support of Advertising the Advertiser must ensure all the requirements of these Guidelines regarding testimonials or endorsements (see under sections 11 and 12) are met.

13.2 When Advertisers enter into written agreements covering potential background collaboration or sponsorship activities, Advertisers should anticipate the possibility that the party providing the services under the relevant agreement may at some future time provide a testimonial or endorsement in relation to a device or a Related Service. Advertisers should therefore include provisions in such agreements to cover this eventuality (specifically points (i) and (ii) below) in order to ensure that they will be able to meet the requirements in these Guidelines relating to transparency of background collaboration and sponsorship and use of testimonials and endorsements generally. Such agreements should
therefore include written agreement by the potential future testimonial / endorsement provider to:

a. disclose clearly and conspicuously in any testimonial / endorsement any background collaboration with, or sponsorship by or on behalf of, the Advertiser; and

b. promptly withdraw, or revise and re-publish any testimonial / endorsement at the Advertiser’s reasonable request where the request is made on objective grounds of ensuring safety and effective use within the Intended Purpose of the device or Related Service.

Such agreements should be in writing and signed and dated by both the Advertiser and the potential provider of the testimonial / endorsement.

14. General Advertising Law and Codes

The Business Protection from Misleading Marketing Regulations 2008

The Consumer Protection from Unfair Trading Regulations 2008

The UK Code of Non-Broadcast Advertising, Sales Promotion and Direct Marketing (CAP Code)

The UK Code of Broadcast Advertising (BCAP Code)
PART 3

Complaints procedure and panel constitution
A Code of Ethical Business Practice (“Code”) has been adopted by the Association of British Healthcare Industries (“ABHI”) to set standards for ethical behaviour and to govern ethical promotion and sales practices in the medical devices industry in the UK (“the Industry”). The Code is administered by the ABHI secretariat in conjunction with the “Chairman” of the “Panel” which comprises a number of individuals with relevant industry and/or other experience. Compliance with the Code and with this Procedure is mandatory for members of ABHI and companies which (although not members) (together “Applicable Companies”) have agreed to comply with the Code and this Procedure and accept the jurisdiction of the Panel. “Complaints” made under the Code include direct complaints, as well as indirect complaints made to MedTech Europe and referred to ABHI for adjudication, and may also include issues raised in the media or otherwise that fall within the remit of the Code.

The Panel is not an investigatory body as such. It asks the company whose activities are the subject of a complaint (“respondent”) for a complete response and may ask the parties to a case for further information in order to clarify the issues. The company or individual making the complaint (“complainant”) has the burden of proving their complaint on the balance of probabilities.

Any company wishing to make a complaint against an Applicable Company utilising this Complaints Procedure must initially attempt to reconcile any dispute with that company through conciliation or mediation procedures or mutual settlement. Any individual wishing to make a complaint against an Applicable Company utilising this Complaints Procedure must initially attempt to resolve the complaint utilising that company’s internal or external whistleblowing and/or dispute resolution procedures. If, in either case, this does not prove possible then complaints are initially considered by the Chairman who will determine, if appropriate in consultation with the complainant and/or respondent, whether there is a case to answer.

Anonymous complaints (where the complainant does not disclose their identity to the Panel or Chairman but requests (whether at the outset or during the course of the complaint) that their identity remains confidential) are not encouraged but may be accepted at the discretion of the Chairman, however the ability of the respondent to properly respond to information or matters put to them and therefore the Panel’s ability to properly adjudicate on any particular complaint may be adversely affected if the identity of the complainant is kept confidential, and therefore in certain instances it will also not be possible for such a complaint to proceed. Confidential complaints will not be accepted from Applicable Companies.

Reports on cases that are subject to a Panel decision are published and are available on request and on the ABHI Code of Business Practice website www.abhicodeofpractice.org.uk. Information on cases that are resolved through mediation are published in an annual summary report although the names of the companies or individuals involved will not be disclosed.

Complaints about the conduct of any Applicable Company under the Code should be submitted to:

Telephone: +44 (0)20 7960 4360,
Facsimile: +44 (0)20 7960 4361,
E-mail: complaints@abhi.org.uk.
Dispute Resolution Principles

General framework
The procedures set out below are intended to provide an effective and efficient complaint-handling process, the object of which is to ensure compliance with the Code. It is based on principles of proportionality, speed, due process, fairness and transparency.

Applicability of the Code
Member Companies must comply with the Code as a minimum standard when:

a. Member Companies interact with Healthcare Professionals and Healthcare Organisations registered and practising in the UK irrespective of where the activity takes place; and/or

b. Activities take place in MedTech Europe Geographic Area, irrespective of where Healthcare Professionals and Healthcare Organisations are registered and practicing. MedTech Europe Geographic Area includes the countries in the European Economic Area as well as those countries where MedTech Europe Member Associations are located.

Structure and Responsibilities

1. The Panel
   1.1 The Panel is responsible for resolving complaints made under the Code. It may also assist in arranging for conciliation and/or mediation between companies when requested to do so.
   1.2 The Panel and Chairman report to the ABHI Board in respect of their activities and the operation and administration of this Complaints Procedure.

2. The Panel – Constitution and Procedure
   2.1 The members of the Panel and the Chairman and Vice-Chairman shall be appointed yearly by the ABHI Board. The Panel shall comprise individuals with a background in the industry and who have relevant expertise for assessing Complaints under the Code. The names of the members of the Panel shall be published on the ABHI website. There is no limit on the length of time that the Chairman, Vice-Chairman or other members of the Panel may serve in those capacities.
   2.2 In the event that a Complaint cannot be resolved through mediation by the Secretariat, Chairman and such members of the Panel who may be enlisted for this mediation, the Complaint shall be referred to the Panel for formal adjudication. Each individual Panel appointed to consider any particular complaint shall, so far as possible, comprise of an appropriate cross-section of Panel members and shall be appointed by the Chairman from the wider list of Panel members referred to. The Chairman shall ensure that a Panel contains as far as possible individuals with expertise in relevant areas, e.g. legal, ethical compliance, advertising and promotion, scientific, business, as appropriate. Each individual Panel shall comprise of a minimum of the Chairman and three further Panel members and decisions shall be made by majority voting. The Chairman, and in his absence, the Vice-Chairman, acts as Chairman of the Panel and has both an original and a casting vote.
   2.3 Rulings are made on the basis that a complainant has the burden of proving their complaint on the balance of probabilities.
   2.4 In advance of their appointment to an individual Panel to consider any particular complaint, all Panel members involved shall sign an agreed form statement of independence confirming that they
have no conflict of interest in adjudicating on the particular complaint.

2.5 **The Panel** may obtain expert assistance in any field. Expert advisers who are consulted may be invited to attend a meeting of the Panel, but have no voting rights. Each such expert shall also be required to confirm that they have no conflict of interest in providing expert assistance on any particular case.

2.6 **Subject to** paragraphs 2.7 and 2.8 below, any decision of the Panel shall be final, and there shall be no appeals procedure against any Panel rulings.

2.7 **At any time** during a complaint handling process the Chairman or the Panel shall be entitled to refer questions of interpretation of the Code in writing to the MedTech Europe Compliance Panel. The MedTech Europe Compliance Panel may at its discretion either decline to entertain the matter if it is felt that no question of principle is at issue or accept the interpretation referral, and review and provide guidance on the interpretation of the Code. Where such a request has been made, the Chairman and the Panel shall be obliged to follow and apply any such guidance provided by MedTech Europe unless so doing would conflict with UK law. For the avoidance of doubt MedTech Europe shall not rule on the merits or facts of any particular complaint but only on questions of interpretation of the Code.

2.8 **This Procedure** shall not preclude complainants from having recourse to courts or other tribunals to seek resolution of complaints and any complaints made under the Code and this Procedure should not be initiated or should be suspended in case of initiation of formal civil court proceedings with respect to the same subject matter. Where a governmental or regulatory investigation or criminal proceedings are either initiated or threatened against an Applicable Company with respect to the same subject matter, that company shall notify the Chairman of the same in confidence, who shall then have the discretion whether or not to suspend any relevant proceedings under this Procedure.

2.9 **For the avoidance of doubt**, all companies or individuals that wish to utilise this Complaints Procedure to submit a Complaint, and all Applicable Companies that have agreed to submit to the jurisdiction of the Panel in respect of a Complaint, shall not, save in respect of fraud, fraudulent misrepresentation, manifest error or gross negligence by the Panel (or a member thereof) in arriving at a Panel ruling, commence legal proceedings or any analogous contentious or complaint proceedings against ABHI, the Panel, or any Panel member, in respect of any loss or damage they may suffer as a consequence of any such Panel ruling.

### Complaints Procedure

#### 3. Action on Complaints

3.1 **Prior** to lodging a formal complaint against an Applicable Company under this Procedure, any company wishing to make a complaint against an Applicable Company shall first attempt a genuine mediation with that company in an attempt to reach an amicable solution. For complaints between Applicable Companies, such genuine attempt at mediation shall be a pre-condition before a complaint can be made utilising this Procedure and any such complainant shall adduce sufficient evidence to the Panel to prove such genuine attempts at mediation have been made. Any individual wishing to make a complaint against an Applicable Company utilising this Complaints Procedure must initially attempt to resolve the complaint utilising that company’s internal or external whistleblowing and/or dispute resolution procedures. If, in either case, no amicable resolution of the complaint can be reached through such means within a reasonable timeframe however, the complainant shall be entitled to pursue the matter further directly via this Procedure.

3.2 **Any individual** or company making a complaint under this Procedure that is not an Applicable Company shall be required (in the case of a company for a minimum of 18 months, and in the case of an individual for the duration of the Procedure) to undertake to abide by the provisions of the Code and of this Procedure as a pre-condition before a complaint can be made utilising this Procedure.

3.3 **If a complaint** is received about a company other than an Applicable Company, such company will be invited to agree to comply with the Code and accept the jurisdiction of the Panel. In the absence of such agreement however, the complaint will not be accepted for adjudication using this Procedure. Notwithstanding the foregoing, where a complaint is brought in respect of activities undertaken or instigated by an Applicable Company’s parent
or other affiliated company which is not itself an Applicable Company, the Applicable Company will be deemed as the respondent company for the purposes of this Procedure and the complaint will proceed accordingly.

3.4 **When** the Chairman receives information from which it appears that an Applicable Company may have contravened the Code, the Chairman shall undertake an initial review of the complaint and will determine (if appropriate, in consultation with the complainant and/or respondent) whether there is a *prima facie* case to answer.

3.5 **If, in the view** of the Chairman, a complaint does not show that there may have been a *prima facie* breach of the Code, the complainant shall be so advised. If the complainant does not accept that view, the following paragraphs of this Section 3 shall apply.

3.6 **In the event** that the Chairman determines that there is either a *prima facie* case to answer, or (pursuant to paragraph 3.5) the complainant insists that the complaint is referred to the Panel for adjudication, then the Chairman shall write to the managing director or chief executive or equivalent of the Applicable Company against whom the complaint has been made requesting that it provide a complete response to the matters of complaint.

3.7 **The respondent** company shall provide such a response in writing to the Chairman within 10 working days. If no such response is provided by the respondent company within these timescales then, save as otherwise provided in paragraph 7, the Panel shall make it's adjudication on the basis of the information provided by the complainant only. Following receipt by the Chairman of the respondent company’s response, the case shall be referred to the Panel to determine whether or not there has been a breach of the Code.

3.8 **To assist** companies in ensuring that a complete response is submitted, the Chairman may suggest relevant supporting material to be supplied, although it is the responsibility of the respondent to ensure that a full response is submitted.

3.9 **In addition,** the Chairman may request (whether at the suggestion of the complainant or respondent or at the behest of the Panel) such further clarifications or documents from either the complainant or respondent within such reasonable timescales as he shall deem prudent and necessary to assist the Panel in making its determination.

3.10 **If the complainant** is not an Applicable Company, the Chairman may suggest the paragraphs of the Code to be addressed, however when the complaint is from an Applicable Company, the complaint must be signed or authorised in writing by the company’s managing director or chief executive or equivalent and must state those paragraphs of the Code which are alleged to have been breached.

3.11 **Unless** the information is disclosed in the complaint, any complainant other than an Applicable Company will be asked to confirm in writing whether or not they have any commercial, financial or other interest in the matter of complaint or in the company concerned, such as whether the complainant is an employee or ex-employee, a consultant or ex-consultant. Adjudication of a complaint without this written confirmation will not be permitted to proceed. Such interests will be disclosed to the respondent company and will normally be included in the case report.

3.12 **When** an Applicable Company advises the Chairman or Panel that it may have breached the Code, the Chairman shall treat the matter as a complaint if it relates to a potential breach of the Code or if the company fails to take appropriate action to address the matter. The company’s response is invited and the procedure set out in this Section 3 shall be followed.

4. **Complaints Arising from Media Criticism**

4.1 **If it appears** to the Chairman from media reports that an Applicable Company may have breached the Code, the Chairman may at his discretion treat such reports as a complaint if it relates to a potential breach of the Code or if the company fails to take appropriate action to address the matter. The company’s response is invited and the procedure set out in Section 3 shall be followed.

4.2 **The author** or editor (as applicable) of the relevant media report may be asked if they want to be involved in the case and whether they have any additional information to submit. If the editor or author declines involvement, this is stated in the case report.

4.3 **A published letter** from which it appears that an Applicable Company may have breached the Code may also at the discretion of the Chairman be treated as a complaint. The procedure set out in Paragraph 4.1 above shall be followed.
5. Panel Rulings

5.1 Where the Panel rules that there is a breach of the Code, the Panel shall advise the complainant and the respondent of such in writing and give their reasons for the decision.

5.2 The respondent company has ten working days to provide a written undertaking that the activity in question (if not already discontinued) will cease forthwith and that all possible steps will be taken to avoid a similar breach of the Code in the future. This undertaking must be signed by the managing director or chief executive or equivalent of the company and must be accompanied by details of the actions taken by the company to implement the undertaking, including dates and timings and training undertaken.

5.3 In extenuating circumstances, an extension in the time allowed in which to respond may be granted at the discretion of the Chairman in accordance with paragraph 7.

5.4 The respondent company must also pay within twenty working days an administrative charge based on the cost of convening the Panel and dealing with the complaint as determined by the Chairman.

5.5 Where the Panel rules that there is no breach of the Code, the Panel shall advise the complainant and the respondent of such in writing and give their reasons for the decision. Where the complaint is from an Applicable Company, the complainant must pay within twenty working days an administrative charge based on the cost of convening the Panel and dealing with the complaint as determined by the Chairman.

5.6 In addition to the foregoing, the Panel may impose additional or alternative sanctions on either of the respondent company (in the event of its breach of the Code) or complainant company (in the event of no breach of the Code) as appropriate in respect of any particular complaint. In particular, the Panel may:

a. Require the relevant company to publish any communication required by the Panel, including but not limited to explanatory information or statements of future intent or policy;

b. Issue a formal reprimand;

c. Recommend to the ABHI Board to suspend the offender from membership of ABHI for a specified period and impose conditions on readmission;

d. Recommend to the ABHI Board to expel the offender from ABHI;

e. Set time-limits for compliance with any sanction imposed or order made by the Panel in addition to those specified in paragraphs 5.1 to 5.5 above;

f. Order that either party pay the costs of the Panel, in whole or part, having regard to a standard scale published by ABHI and any other matters considered appropriate;

g. Provide for further sanctions in the event of further breaches of or non-compliance with the Code or any order, sanction or requirement of the Panel (including time limits), with or without the right to make further representations before such further sanctions are to take effect.

6. Case Reports

6.1 At the conclusion of any case under the Code, the Panel shall advise the complainant and the respondent of the outcome and a report shall be published summarising the details of the case.

6.2 In a case where the complaint was initiated by an individual, other than in those circumstances where an anonymous or confidential complaint is accepted for adjudication, that individual shall be named in the report.

6.3 In a case where the complaint was initiated by a company or by an organisation or official body, that company or organisation or official body shall be named in the report. The respondent company and the product(s) concerned will usually be named in the report unless the Chairman in his discretion deems this inappropriate. Any information given must not, however, be such as to identify any individual person within such company, organisation or official body.

6.4 Where expert assistance has been obtained by the Panel, the report will include the name and qualifications of the expert concerned.

6.5 Where guidance has been sought from MedTech Europe, the question raised by the Chairman or the Panel and the guidance received from MedTech Europe shall be included in the report.

6.6 Where a company has been required to issue a statement of its corrective actions, the report will reproduce its text and provide details of how the corrective actions statement was disseminated.

6.7 A copy of the report on a case is made available to both the complainant and the respondent
company prior to publication. Any amendments to the report suggested by these parties are considered by the Chairman, consulting with the other party where appropriate. The Chairman’s decision is final.

6.8 **Full case reports** will appear on a specified section of the ABHI Code of Business Practice website. Access to the relevant section of the relevant ABHI website referring to cases or decisions is unrestricted.

## General Provisions

### 7 Amendments to Time Periods

7.1 **The Chairman shall**, in extenuating circumstances and at his discretion, be entitled to grant any party to this Procedure an extension in time or amend any timescales specified in this Procedure to the extent that to do so would be fair and reasonable in the circumstances.

### 8 Withdrawal of Complaints

8.1 A **complaint** may be withdrawn by a complainant with the consent of the respondent company up until such time as the respondent company’s comments on the complaint have been received by the Chairman, but not thereafter. In either case, the complainant shall pay an appropriate administrative charge.

### 9 Charges

9.1 **The administrative** charges referred to in Paragraphs 5.4, 5.5 and 8.1 above are determined by the Chairman based on the costs of formally convening the Panel and in dealing with the complaint.

9.2 **Administrative charges** are payable only by Applicable Companies, and these companies are liable for such charges whether they are members of the ABHI or not.

9.3 Where **two or more** companies are ruled in breach of the Code in relation to a matter involving a joint activity, each company shall be separately liable to pay any administrative charge which is payable.

9.4 **Failure to pay** any of the administrative charges provided for by this paragraph must be reported by the Chairman or the Panel to the ABHI Board. In such circumstances, the Panel shall be entitled to impose or recommend such further sanctions as it deems appropriate, including (but not limited to) those referred to in paragraph 5.6.

### 10. Anonymity and Confidentiality

10.1 **Any complainant** or respondent shall be entitled to request that any document or information provided to the Panel or Chairman pursuant to this Procedure is not disclosed further on the grounds of confidentiality, in particular to either the complainant or respondent as the case may be or in any case report. The Chairman shall decide in his discretion whether to grant such request, in particular taking into account the ability of either the complainant or the respondent to properly respond to information or matters put to them if such documents or information is excluded and therefore the Panel’s ability to properly adjudicate on any particular complaint. The Chairman’s decision on this issue shall be final.

10.2 **Anonymous complaints** (where the complainant does not disclose their identity to the Panel or Chairman) may be accepted in exceptional circumstances at the discretion of the Chairman, however the weight to be attached to any evidence may be adversely affected if the source is anonymous, and thus in many instances it will not be possible for such a complaint to proceed.

10.3 **Confidential complaints** (where the complainant does disclose their identity to the Panel or Chairman but requests (whether at the outset or during the course of the complaint) that their identity remains confidential) are not encouraged but may be accepted at the discretion of the Chairman, however the ability of the respondent to properly respond to information or matters put to them and therefore the Panel’s ability to properly adjudicate on any particular complaint may be adversely affected if the identity of the complainant is kept confidential, and therefore in certain instances it will also not be possible for such a complaint to proceed. Confidential complaints will not be accepted from Applicable Companies.

### 11. Amendments to the Code of Business Practice and Complaints Procedure

11.1 **The Code** and this Procedure may be amended by a simple majority of those present and voting at the ABHI Board.

11.2 **The Panel** may, in the light of their experience, make recommendations for amendment of the Code and this Procedure.
PART 4
Glossary and Definitions
**ABHI:** Association of British Healthcare Industries

**Advertiser:** the ABHI Member by or on behalf of whom an Advertisement is placed and/or the ABHI Member supplying the relevant product or Related Service if he has approved the Advertisement or the Advertisement has been approved or placed by the Member’s affiliated company which is not a Member of ABHI.

The ABHI Member shall be treated as the Advertiser where the ABHI Member, or the Member’s affiliated company which is not a Member of ABHI, has approved Advertisements placed by a third party distributor or other service provider.

**Advertisement or Advertising:** any marketing communication or Advertorial issued by or on behalf of an Advertiser in whatever form (including but not limited to verbal communications) and through whatever media (including the world wide web) that is intended wholly or mainly to influence Healthcare Professionals or Healthcare Organisations directly or indirectly in (i) their choice of medical devices (or Related Services) to be purchased, leased, used or supplied for use by, or in connection with the treatment of, human patients or in (ii) any recommendation that they make to others about such purchase, lease, use or supply.

An example of Advertising intended to influence Healthcare Professionals or Healthcare Organisations indirectly would be information provided by or on behalf of an Advertiser to journalists working for publications which are directed primarily at Healthcare Professionals or Healthcare Organisations.

For the avoidance of doubt product labelling, packaging and instructions for use shall not in the ordinary course be treated as Advertising for the purpose of these Guidelines.

**Advertorial:** any communication, feature, announcement or promotion in a form that resembles independent editorial comment published by or on behalf of an ABHI Member, the content of which is controlled by the Advertiser, not the publisher, irrespective whether it is disseminated in return for a payment or other reciprocal arrangement, or free of charge.

**Applicable Company:** a member of ABHI or an organisation that has undertaken to comply with the provisions of the ABHI Code of Business Practice.

**Charitable Donations:** means provision of cash, equipment, company product or relevant Third Party product, for exclusive use for charitable or philanthropic purposes and/or to benefit a charitable or philanthropic cause. Charitable Donations may only be made on an unrestricted basis and to bona fide charities or other non-profit entities or bodies whose main objects are genuine charitable or philanthropic purposes.

**CoBP or Code:** the code of ethical business practice published by ABHI as amended from time to time.

**Company Events:** means activities of any type that are planned, budgeted, managed and executed in whole or in part by or on behalf of Member Companies to fulfil a legitimate, documented business need of the Member Company, including but not limited to a legitimate business need to interact with customers including Healthcare Professionals and/or Healthcare Organisations.

**Conference Vetting System (CVS):** means the centralised decision-making process which reviews the compliance of Third Party Organised Educational Events with the Code and which is managed independently of ABHI under the supervision of the ABHI Compliance Panel. For more information see: www.ethicalmedtech.eu

**Disclosure Guidelines:** means the Code provisions setting out the public disclosure requirements under the Code.

**Demonstration Products (Demos):** means either single-use or multiple-use products provided free of charge by or on behalf of a Member Company to HCOs or HCPs, who are equipped and qualified to use them. Demos are supplied solely for the purpose of demonstrating safe and effective use and appropriate functionality of a product and are not intended for clinical use. Demos do not include the following:
- Samples;
- Evaluation Products;
- Products provided at no charge as part of a Charitable Donation or as part of a Research or Educational Grant; or
- Products provided at no additional charge as part of the overall purchase price in a commercial supply arrangement, e.g. as part of an agreed discount arrangement, or as substitute products provided pursuant to a warranty agreement.
**Educational Grants:** means provision of funding, Member Company or third party products or other in kind support to a Healthcare Organisation by or on behalf of a Member Company on a restricted basis for use solely for the support and the advancement of genuine medical education of Healthcare Professionals, patients and/or the public on clinical, scientific and/or healthcare topics relevant to the therapeutic areas in which the Member Company is interested and/or involved.

**Employer Notification:** means the prior written notification provided to a Healthcare Organisation (e.g. hospital administration), a Healthcare Professional’s superior or other locally-designated competent authority of any interaction, collaboration or other matter concerning any Member Company and any Healthcare Professional, the purpose and/or scope of which requires notification under this Code.

**Entertainment:** Entertainment includes, but is not limited to, dancing or arrangements where live music is the main attraction, sight-seeing trips, theatre excursions, sporting events (e.g. skiing, golf or football match) and other leisure arrangements. For the avoidance of doubt, incidental, background music shall not constitute Entertainment.

**Evaluation Products:** means either single-use or multiple-use products and/or equipment provided free of charge to a Healthcare Organisation by or on behalf of a Member Company for purposes of obtaining defined, evaluative user feedback over a defined period of use when used within the scope of their intended purpose, as per the authorisation in the country where the supply occurs. Evaluation Products do not include the following:

- Demos;
- Samples;
- Products provided at no charge as part of a Charitable Donation or as part of a Research or Educational Grant;
- Products provided at no additional charge as part of the overall purchase price in a commercial supply arrangement, e.g. as part of an agreed discount arrangement, or as substitute products provided pursuant to a warranty agreement.

**Event:** means either a Company Event or Third Party Organised Educational Event.

**Faculty:** means a podium speaker, moderator and/or chair, who presents during a Third Party Organised Educational Event. Poster- and abstract-presenters are not considered to be Faculty.

**Financial Hardship:** means in relation to a Healthcare Organisation extreme and unavoidable financial distress resulting from matters outside the Healthcare Organisation’s control where the Healthcare Organisation is unable to operate and where patient care is consequently jeopardised. Financial distress resulting in whole or in part from mismanagement of the Healthcare Organisation’s funds or other matters within its control is not considered to be financial hardship. Financial Hardship must be documented and objectively substantiated.

**Grants:** means either an Educational Grant or a Research Grant, or both.

**Guests:** means spouses, partners, family or guests of Healthcare Professionals, or any other person who does not have a *bona fide* professional interest in the information being shared at an Event.

**Healthcare Organisation (HCO):** means any legal entity or body (irrespective of its legal or organisational form) that is a healthcare, medical or scientific association or organisation which may have a direct or indirect influence on the prescription, recommendation, purchase, order, supply, utilisation, sale or lease of medical technologies or related services such as a hospital or group purchasing organisation, clinic, laboratory, pharmacy, research institution, foundation, university or other teaching institution or learned or professional society (except for patient organisations); or through which one or more Healthcare Professionals provide services.

**Healthcare Professional (HCP):** means any individual (with a clinical or non-clinical role; whether a government official, or employee or representative of a government agency or other public or private sector organisation; including but not limited to, physicians, nurses, technicians, laboratory scientists, researchers, research co-ordinators or procurement professionals) that in the course of their professional activities may directly or indirectly purchase, lease, recommend, administer, use, supply, procure or determine the purchase or lease of, or who may prescribe medical technologies or related services.

**Intended Purpose:** the use for which the device is intended according to the data supplied by the manufacturer on the labelling, in the instructions and/or in promotional materials (Medical Devices Directive 93/42/EEC). Medical Device
Directives means either or both of Directives 93/42/EEC and 90/385/EEC as the same may from time to time be amended.

Members: means all full and associate corporate members ("Member Companies") of ABHI as well as association members of ABHI ("Member Associations"), as defined in the ABHI statutes, as applicable and as amended from time to time.

Professional Conference Organiser (PCO): a for-profit company or organisation which specialises in the management of congresses, conferences, seminars and similar events.

Product and Procedure Training and Education Event: means a type of Company Event that is primarily intended to provide Healthcare Professionals with genuine education, including information and/or training on:
- The safe and effective use of medical technologies, therapies and/or related services, and/or
- The safe and effective performance of clinical procedures, and/or
- Related disease areas.
In all cases the information and/or training directly concern a Member Company’s medical technologies, therapies and/or related services.

Related Service: in relation to a medical device, a related service means an activity necessary to make the device available for use. This may include specialist installation services; repair and maintenance services; or end-of-use services such as specialist disposal of the device.

Research Grants: means the provision by or on behalf of a Member Company of funding, products/equipment and/or in kind services to any organisation that conducts research which is made for the sole, restrictive purpose of supporting the development or furtherance of bona fide, scientifically valid and legitimate research by the recipient the purpose of which is to advance medical, scientific and healthcare knowledge, medical technologies and/or clinical techniques designed to improve patient outcomes.

Sales, Promotional and Other Business Meetings: means any type of Company Event the objective of which is to effect the sale and/or promotion of a Member Company’s medical technologies and/or related services, including meetings to discuss product features, benefits and use and/or commercial terms of supply.

Samples: means single-use or multiple-use products provided free of charge by or on behalf of a Member Company to HCOs or HCPs who are equipped and qualified to use them in order to enable HCPs to familiarise themselves with the products in clinical use. Samples do not include the following:
- Demos;
- Evaluation Products;
- products provided at no charge as part of a Charitable Donation or as part of a Research or Educational Grant;
- or
- products provided at no additional charge as part of the overall purchase price in a commercial supply arrangement, e.g. as part of an agreed discount arrangement, or as substitute products provided pursuant to a warranty agreement.

Scholarships and Fellowships: means Educational Grants provided to a Healthcare Organisation by or on behalf of a Member Company to support fellowships or scholarships offered by the Healthcare Organisation. Scholarships in this context means an Educational Grant provided to support a medical school undergraduate whereas a fellowship is a period of intensive training for post-graduate physicians in a chosen clinical sub-specialty (e.g. medical training after a residency). “Scholars” and “Fellows” shall be understood accordingly.

Third Party Organised Educational Events: means activities of any type that are planned, budgeted, managed and executed in whole or in part by or on behalf of a person or entity other than a Member Company to fulfil Healthcare Professional medical educational needs.

Third Party Organised Educational Conferences: means a type of Third Party Organised Educational Event that is a genuine, independent, educational, scientific, or policy-making conference organised to promote scientific knowledge, medical advancement and/or the delivery of effective healthcare and which is consistent with relevant guidelines established by professional societies or organisations for such educational meetings. These typically include conferences organised by national, regional, or specialty medical associations/societies, hospitals, Professional Conference Organisers (PCOs), patients organisations or accredited continuing medical education providers.

Third Party Organised Procedure Training: means a type of Third Party Organised Educational Event that is primarily intended to provide Healthcare Professionals with information and training on the safe and effective performance of one or more clinical procedures in
circumstances where the information and training concern:

- Specific therapeutic, diagnostic or rehabilitative procedures, namely clinical courses of action, methods or techniques (rather than the use of medical technologies); and

- Practical demonstrations and/or training for HCPs, where the majority of the training programme is delivered in a clinical environment.

For the avoidance of doubt, proctorship and preceptorship are not considered to constitute Third Party Organised Procedure Training.

**Transition Period:** means the period from 1 January 2017 up to and including 31 December 2018, following which Member Companies shall no longer provide financial or in kind support direct to Healthcare Professionals to cover costs of their attendance at Third Party Organised Educational Events with the exception of Third Party Organised Procedure Training meetings or pursuant to a consulting agreement with a Healthcare Professional speaker engaged by a Member Company to speak at a satellite symposium.