



CODE OF PROFESSIONAL CONDUCT

As Adopted 12/16/2016, unless otherwise indicated

PREAMBLE

Independent Corporate Monitors (“Monitors”) serve a unique and critical role in governance and judicial processes worldwide. Monitors may be given different titles or roles, but their essential function is to report to governmental agencies and other oversight organizations (the “Reporting Agency”) on the compliance of organizations (the “Host Organization”) with the terms and conditions of legal agreements between the Reporting Agency and Host Organization (an "Agreement"). Monitors may be required or assigned in a variety of circumstances, often as a result of a judicial or regulatory proceeding where there is ongoing concern about misconduct, compliance & ethics programs, and/or governance/ethical tone by or within the Host Organization.

In fulfilling their duties, Monitors aspire to guide the Host Organization to successfully meet both the letter and the spirit of an Agreement's requirements. This generally involves creating self-administered, robust, and effective compliance mechanisms. Such mechanisms may include compliance and ethics programs, internal controls, accounting controls, and other measures designed to instill and generate ethical business conduct, as well as prevent, detect, and remediate future misconduct, fraud, waste, abuse, and/or regulatory non-compliance.

The successful achievement of these aspirations protects, among others: the Host Organization itself, investors, consumers, suppliers, vendors, employees, the business community/industry, government and regulatory agencies, and the public at large. A Monitor’s role, therefore, requires the highest standards of professionalism, integrity, independence, competence, and trust.

This Code of Professional Conduct ("Code") expresses the Corporate Monitoring profession’s recognition and acceptance of its responsibilities and the trust placed in Monitors. The Code is applicable to the work of Monitors in all countries, across all industries and regardless of mission or size of the Host Organization. The Code has been adopted by the International Association of Independent Corporate Monitors (“IAICM”) for IAICM Members, with the recognition that it may also be relevant and useful in terms of best practices and guidance to non-IAICM Member Monitors, Reporting Agencies, Host Organizations, the public, and others interested in the practice and conduct of Corporate Monitoring.

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IAICM's Code is congruous with the American Bar Association's ("ABA") Standards on Corporate Monitors, which are intended for a different and broader audience than our Code. The IAICM applauds the work of the ABA in passing its Standards on Corporate Monitors and supports and endorses those Standards. Accordingly, some parts of this Code, including particularly the conventions (definitions of terms) used in the Code, naturally bear similarity with and/or may incorporate the ABA's Standards.

Commentary is included within this Code where appropriate and helpful in facilitating a better understanding or greater clarity regarding the Code's application. The following conventions are used throughout the Code and are intended to assist readers of the Code apply them with uniformity:

- **Agreement.** A written agreement between a Host Organization and a Reporting Agency in which the Reporting Agency requires, and the Host Organization agrees to engage, a Monitor, and which establishes the objectives of the Monitorship, including the Monitor's mandate, authorities, duties, and responsibilities.
- **Compliance Program.** Collectively, a Host Organization's policies, procedures and processes that are designed to prevent, detect, respond to, and remediate misconduct by directors, officers, or employees and agents of the Host Organization and encourage ethical business conduct within the Host Organization.
- **Court Order.** An order issued by a Judge, regulatory body, or administrative authority that requires a Host Organization to engage a Monitor.
- **Engagement Letter.** A contract defining the legal relationship, authority, and duties of a Monitor under an Agreement. The Engagement Letter should contain the terms and conditions of the Monitor's appointment, including the scope of the Monitorship, the Monitor's compensation, and relevant timelines. The Engagement Letter should include a statement that the Monitorship shall be conducted in accordance with this Code.
- **Financial Interest.** A financial interest is any interest that is financial in nature and material enough that it may be influenced by the success, failure, or financial decisions of the Host Organization. A financial interest may be held directly or indirectly, including by a family member or other person related to a Monitor. A financial interest is material if a reasonable person would believe the interest could affect the Monitor's judgment in discharging his or her responsibilities. A presumptive financial interest exists and is deemed material if the Monitor, family member of the Monitor, or person related to the Monitor is the direct or indirect beneficial owner of any security of the Host Organization, regardless of whether such security is held in trust, or is the direct or indirect beneficial owner of any mutual fund or other pooled or collective holding of securities where such fund beneficially owns five percent or more of any class of security of the Host Organization or ten percent of that fund's holdings are in any class of security of the Host Organization.
- **Host Organization.** The entity, regardless of its legal form, that is a party to an Agreement and/or whose conduct is the subject of a Monitor's appointment.
- **Member.** A person admitted to membership in IAICM.
- **Monitor.** An individual or an organization engaged by or on behalf of a Host Organization as a requirement of a voluntary agreement, administrative mandate or judicial order and subject to the approval of the Reporting Agency and terms of an Engagement Letter.

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- **Monitoring Team.** Any employees, subcontractors, experts, consultants, administrative staff, professionals, or organizations, supervised and directed by the Monitor to assist with and support the Monitor's obligations and role pursuant to any Agreement.
- **Monitorship.** The work of the Monitor and Monitoring Team.
- **Reporting Agency.** The party or parties to the Agreement to whom the Monitor reports. Frequently, the Reporting Agency is a court or government agency, department, or ministry, but may be any entity that has regulatory or contractual authority over the Host Organization.
- **Work Plan.** A written, step-by-step, methodical plan demonstrating how a Monitor intends to fulfill and prioritize the Monitor's responsibilities, including specific tasks, assignments, responsibilities, and timetables for completion, review, and reporting, including form of reporting. A Work Plan is necessarily evolutionary and may require modification(s), including expansion or restriction, depending on the facts, circumstances, and findings gathered during the course of a Monitorship.

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INTRODUCTION

The Code is comprised of two sections: (1) Principles and (2) Standards of Practice (SOP). The Principles are broad standards that provide the framework for the Standards of Practice, which are more specific best practices governing the performance of Corporate Monitoring services by IAICM Members and to which IAICM Members agree to adhere with in serving as a Monitor.

The Code provides guidance to all IAICM Members, who come from various fields of service and professions, some of whom also may be subject to other codes of professional conduct or standards, including the ABA's Standards on Corporate Monitors. Effective compliance with the Code depends primarily on each Member's understanding of, and commitment to, the Code, as well as on reinforcement by IAICM leaders and Members, peers, and the public at large.

The Code sets the standards for membership in IAICM; a proven willful and material violation is grounds for a Member's removal from IAICM membership, pursuant to the exclusive, unreviewable discretion of IAICM's Board of Directors, consistent with the Board's By-Laws and operating procedures. The Code does not and is not intended to give rise to any legal obligations, a private right of action, or authorize or provide a basis for disciplinary action by any other association or organization in the event of a violation of the Code or allegation(s) of a violation by a Member.

Subject to an overriding vote of the full IAICM Board, interpretation of the Code ("Interpretations") lies exclusively with the Board's Code and Standards Committee, which shall adopt and issue written opinions after consulting with impacted parties and entities, practitioners, Special Advisers, Members, other interested parties, or consultants. The purpose of Interpretations is to provide guidelines to aid Members to adhere with the scope and application of the Code. Interpretations provide guidance, but do not override other applicable legal rights, obligations, or governing professional standards of conduct.

Code Rulings ("Rulings") consist of formal rulings made by the Code and Standards Committee of IAICM's Board after consulting with relevant entities, practitioners, Special Advisers, and other interested parties. Rulings summarize the application of the Code to a particular set of factual circumstances.

Publication of an Interpretation or Ruling in "*The Monitor*" (IAICM's Newsletter) or as communicated directly with Members by mail (to include electronic forms) constitutes notice to Members. Hence, the effective date of the pronouncement is the last day of the month in which the pronouncement is published in "*The Monitor*" or the last day of the month of direct communication(s) with Members.

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PRINCIPLES AND STANDARDS OF PRACTICE

Preamble

Membership in IAICM is voluntary. By accepting membership, a Member commits to adhering to this Code and performing as a Monitor with integrity, objectivity, independence, excellence, professionalism, competence, discretion, and trust that may exceed other professional ethical obligations.

The Principles of the Code express the monitoring profession's recognition of its responsibilities to:

- Reporting Agencies
- Host Organizations
- IAICM Members
- Fellow professionals
- Interested third-party beneficiaries
- The public at large

These Principles serve to guide IAICM and its Members in the performance of their duties as Monitors and to promote best practices and confidence in the practice of Monitorships. The values incorporated in this Code reflect the core and fundamental values of professional and ethical conduct. By adopting this Code, our Members agree to commit themselves to and conduct themselves with the highest degree of integrity and honor in the ethical performance of their duties as Monitors and members of the profession, even if doing so may require or result in sacrificing personal or professional gains.

Applicability

The Code applies to all Members of IAICM.

For purposes of the applicability of the Code, a "Member" is a person admitted to membership in IAICM, who is in good standing, and whose membership dues are paid in full and up-to-date. IAICM Members are publicly identified on IAICM's website (www.IAICM.org), unless a Member chooses not to be so listed or identified.

- i. The Code applies to Members acting in the capacity of a Monitor, as defined herein, and does not govern that Member in any other professional capacity or offering other professional services.
- ii. A Member shall not knowingly permit a person, whom the Member has authority or capacity to control or influence, to carry out on the Member's behalf, with or without compensation, acts that, if carried out by the Member, would place the Member in violation of the Code.

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1. Professional Responsibility

In serving as a Monitor, Members perform a unique and important role. All Members have a duty to fulfill their responsibilities under the appointing Agreement or Court Order. Members also have an obligation to the Monitorship profession to maintain public confidence and strive to improve the profession's reputation, skills, knowledge, and level of practice.

IAICM Members agree to conduct themselves with the highest degree of professionalism in performing the duties of Corporate Monitors. Serving as a Monitor requires Members to exercise sound professional and moral judgment, as well as extraordinary care and sensitivity in executing their duties under an Engagement Letter and its corresponding Agreement or Court Order.

SOP 1.1 Access to Information and Witnesses. Members must ensure that they have the authority to access all information necessary to execute their duties under the appointing Agreement or Court Order. To the fullest extent in which they are able, Members should require that the Engagement Letter clearly and specifically sets forth the resources to which the Member will have access in order to perform his or her duties. The Engagement Letter should detail the Host Organization's individuals, employees (current or former), agents, and third parties to whom the Member will have access for interviews, as well as the types and locations of information and records reasonably necessary for the Member to discharge his or her obligations under the Agreement or Court Order.

SOP 1.2 Safeguarding Information. Members must use all reasonable and necessary safeguards to protect any confidential, sensitive, and/or proprietary information belonging to the Host Organization, Reporting Agency, and/or other parties. This includes exercising diligence to protect, to the extent so permitted, attorney-client privileged documents and communications so that the privilege is preserved in situations where the Host Organization wishes to preserve the privilege.

SOP 1.3 Use and Retention of Information. A Member may never use a Host Organization's proprietary, confidential, or non-public information for any purpose unrelated to the scope of the Monitorship. Such information may not be used for personal gain or to the benefit of any third parties.

Members should ensure their Engagement Letters detail the process for returning all information to the Host Organization at the termination of the Monitorship, if it is not required to be maintained by law, the Agreement or Court Order, or otherwise by professional standards or requirements.

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SOP 1.4 Disclosure to Witnesses. A Member should fully disclose to witnesses his or her identity and role during interviews and investigations unless disclosure would hinder the objectives of the Agreement. The Member should inform witnesses about the purpose of the interview and that the Member may disclose the information to the Reporting Agency, Court, or Host Organization.

SOP 1.5 Witness Rights and Preventing Retaliation. In some cases, witnesses have the right to retain counsel or seek the assistance of his or her union representation before being interviewed. Members must respect a witness' choice to retain counsel or representation and must not suggest or otherwise condone retaliation against a witness for invoking these rights. Once a witness retains counsel or representation, a Member should cease all direct communications with the witness unless and until the witness' counsel or representation expressly directs otherwise.

SOP 1.6 Withdrawal of a Monitor. A Member may withdraw from a Monitorship if, after providing notice and a request to cure, the Host Organization continues to: act in a manner that prevents the Member from performing his or her obligations under the Agreement or Court Order; fail to make payment to the Member under the terms of the Engagement Letter; or fail to perform reasonably or respect any other conditions of the Engagement Letter.

Members should ensure that the Engagement Letter sets forth with particularity the terms and conditions under which a Member may or must withdraw from the Monitorship. The Engagement Letter should include details on the withdrawal process, such as timing and notice, and should address other factors such as the handling of sensitive information and financial matters.

Commentary:

Monitors come from a wide variety of professional backgrounds and may carry multiple credentials or professional licenses. The Principle of Professional Responsibility requires that a Member and his or her Monitoring Team be familiar and compliant with the applicable professional codes, rules, standards, best practices, and/or governing legislation of their profession(s) as required in the context of a particular Monitorship, and seek professional guidance as necessary.

There are many ways in which Members can demonstrate their dedication to professional excellence and service. Because Monitors require an unusually broad base and depth of professional knowledge and experiences, Members can seek and attain training, accreditation, and/or certifications in areas of relevance to Monitorships, such as compliance and ethics. Peer networking and collaboration also significantly contributes to improved practices.

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Members are encouraged to use and/or contribute templates, presentations, and other resources, to IAICM's Member Resource Center or share them directly with other Members. Additionally, Members may write articles sharing experiences, relevant current developments, best practices, and thought leadership on relevant issues for the IAICM Newsletter, IAICM Blog, or other information outlets.

Exercising sound judgment, a Member has a duty of candor to a Reporting Agency and Host Organization with respect to sharing concerns, opinions, and findings. The duty of candor attaches even in those circumstances where a Member has incomplete or developing information and/or where further investigation may prove the Member's concerns, opinions, or findings incorrect or incomplete. In those circumstances where a Member expresses concerns, opinions or findings under incomplete or developing information, a Member's duty of candor requires the Member to recognize and state the limited or incomplete nature of the information expressed.

To promote such candor, the Engagement Letter should include an indemnification clause that specifies whether and under what circumstances the Host Organization must indemnify, defend, and hold harmless the Member from any and all claims arising from the Member's good faith performance under the Agreement or Court Order.

Access to and Safeguarding Information

Generally, Monitors must be aware of, sensitive to, and respectful of a Host Organization's desire to protect information, including that which is privileged. Members should neither require a Host Organization to compromise attorney-client privileged information or attorney work-product, nor compel production of information in a manner inconsistent with applicable laws and/or regulations. For example, a Member must not compel production of classified material if the Member does not have the required security clearance(s) and requisite "need to know".

When a Member and the Host Organization disagree concerning access to information, a Member should be flexible and creative in seeking alternative means to appropriately and legally obtain the relevant information from the Host Organization. The relevant underlying facts about misconduct, events, or circumstances within the scope of the Member's Monitorship should not be withheld by the Host Organization on a claim of privilege.

If the Member and Host Organization remain in dispute, the Member shall abide by the process for resolving disputes over a particular privilege as per the Agreement or Court Order. In the absence of an Agreement or Court Order addressing the issue, the Member should promptly advise the Reporting Agency and, if appropriate, seek professional guidance.

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Disclosure to Witnesses

Members frequently interview witnesses when serving as a Monitor. Under normal circumstances, a Member should disclose his or her identity and purpose whenever gathering information relevant to the Monitorship, whether formally or informally. Examples of an informal gathering of information would be where a Member communicates with employees in a company cafeteria, break-room, or designated smoking area. In such instances, the Member should disclose his or her identity and purpose if he or she determines that the information being sought or provided is relevant to the Monitorship and to the Member's obligations and scope under the Agreement or Court Order and Engagement Letter.

In rare instances, and only where a Monitor has been authorized by an Agreement, Court Order, or law, a Member may conduct interviews or otherwise gather information from employees or others without disclosing the Member's identity, or possibly even through deception, as would be the case in undercover investigations. In the rare instances where deception is lawful, authorized, and appropriate, a Member must also be mindful of other relevant ethical, professional, and legal obligations and standards, such as those that apply to attorneys or other professionals. Where a Member anticipates using undercover techniques that require deception or the concealment of the Monitor's identity, the Member should seek professional guidance and confer with the Reporting Agency prior to taking any such actions.

Witness Rights and Preventing Retaliation

Members must pay close attention to the rights of the Host Organization's employees, such as, but not limited to, rights to privacy, legal counsel, or union representation. Members are obligated to be familiar with the legal rights of witnesses in the jurisdiction in which the Member is working, even if these rights are not addressed in the appointing Agreements, Court Orders, or the Engagement Letters.

A person's right or choice to counsel or union representation must be respected. A Member must weigh the value of the information sought against other relevant considerations, such as the reasonableness of expectations when particularly sensitive information may be exchanged. In such instances, it may be best not to conduct an interview and seek other avenues to obtain the relevant information.

Members should consider, in coordination with the Host Organization, developing an interview "preamble" to be used in the Member's introductory part of an interview. Such a preamble should seek to sufficiently and reasonably inform the person(s) interviewed of the Monitor's role, scope, authority, purpose, confidentiality provisions, rights, how and to whom the information provided by the interviewee may be used, and any other relevant information.

To the extent that it does not conflict with a Member's Monitorship duties and functions, Members should take reasonable measures to protect the identity of witnesses and others who provide information, while also maintaining confidentiality. Confidentiality can serve to enable and encourage witnesses to provide more complete and truthful information to a Monitor. Such authority to grant confidentiality should be clearly articulated in the Agreement or Court Order and Engagement Letter, along with any exceptions.

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If a Monitor has been given authority to grant a degree of confidentiality to a witness, the Monitor shall clearly explain the degree of confidentiality afforded to the witness so that the witness understands the ramifications of any disclosures.

Witnesses should also be informed that any statements made to the Monitor: 1) likely will not be subject to the attorney-client privilege (if the Member is an attorney or has counsel present with him or her); 2) do not constitute legal notice to the Host Organization; and 3) may be disclosed to the Reporting Agency, Host Organization, and/or other appropriate authorities, if required under the Agreement or Court Order, or if the Monitor deems it appropriate and/or necessary.

A Member should exercise due care in both written and oral communications to ensure that confidentiality and the protection of a witness' identity is maintained. Where a witness provides information regarding a crime, an imminent danger, or other activity that a Member determines must be reported immediately, or that a Member cannot present to the Reporting Agency or Host Organization through other means, a Member may be required to reveal the witness' identity or position to the Reporting Agency, Host Organization, and/or other relevant authorities.

2. The Public Interest

Members must always conduct themselves in a manner that supports and maintains public trust and confidence. To do this, Members must commit to preserving objectivity, independence, integrity, thoroughness, and discretion.

SOP 2.1 Responsibility to the Public. Fundamental to the role of a Monitor is the stewardship of public trust and a unique responsibility to the collective well-being of the entities, institutions, and individuals that Monitors serve. For Members, the public consists of the Reporting Agencies, Host Organizations, shareholders and other investors/owners, credit grantors, governments, employers, the business and financial community/industry, vendors, sub-contractors, and others who rely on the objectivity and integrity of Monitors when discharging their responsibilities.

SOP 2.2 Objectivity and Independence. Objectivity is a mindset and an essential, necessary, and distinguishing feature of Corporate Monitoring. It does not permit a Member to be influenced by personal feelings or gains, professional goals, or the desired opinions/goals/outcomes of others in considering, representing, or reporting facts. Members must maintain objectivity and be free from personal and organizational conflicts of interests. They should be independent in fact and appearance, and avoid conduct that might reflect negatively upon their independence. A Member should continuously ascertain whether he or she, or any member of the Monitoring Team, has any potential conflicts of interest.

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The Member has a duty to disclose any identified conflicts of interest to the Reporting Agency and the Host Organization within adequate time for those parties to consider whether the identified conflict may require remediation, limitation, or termination of the Member from an existing Monitorship, or disqualification from a pending Monitorship.

SOP 2.3 Avoiding Influence. Members may encounter conflicting pressures from the parties to the Agreement and interested third parties, as well as potentially from within their own employing organizations or from members of the Monitoring Team. The public interest is best served when a Member remains immune to such pressures and acts in alignment with personal integrity, independence, and objectivity. Members must, at all times, act with integrity, guided by the precept that the public interest is best served when Monitors fulfill their responsibilities faithfully and with independence and objectivity. In choosing to bear the burden of public trust, the Member and its employer must forgo future non-Monitorship business and other professional opportunities of any kind with a Host Organization for at least one year after the termination of the Monitorship.

SOP 2.4 Maintaining Trust. Members must always endeavor to provide the highest quality of services, maintain independence and objectivity, and report accurately and timely in accordance with the Agreement or Court Order and Engagement Letter. Members must strive to enter into fair and reasonable fee arrangements, without seeking to exploit the situation under which Host Organizations seek to engage them. Members must have a genuine interest in serving the public and be dedicated to professional excellence.

Commentary:

Objectivity and independence are foundational and requisite attributes of Monitors.

Independence is not limited only to the Member's relationship with the Host Organization, but also to the Reporting Agency and/or any other parties where such a relationship could be perceived to affect and/or impair a Member's objectiveness and judgment. Similarly, independence is not demanded and necessary of just the Member, but also of the Member's employer, if any, and the entire Monitoring Team.

When considering whether a Member is independent, the questions asked, using an objective standard, should be: *“Could anyone reasonably challenge the Member's independence?” “Could anyone reasonably challenge the independence of a member of the Monitoring Team?” “Would any relationship(s) or work previously performed by a Member or member of the Monitoring Team for the Host Organization, Reporting Agency, or other entity with a material interest in the matter lead a reasonable person to believe that person's judgment(s), monitoring techniques, findings, costs, or actions were or could have been influenced?”*

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Conflicts of Interest

Members have a duty to conduct reasonable due diligence to determine what, if any, real, potential, or perceived conflicts of interest might exist or foreseeably come to exist for all members of the Monitoring Team and to disclose all such real or potential conflicts of interest to the Host Organization and Reporting Agency. Such due diligence and duty to disclose not only applies during the application and approval process for a Monitorship, but during and throughout the course of a Monitorship.

During the course of a Monitorship, if a Member develops or discovers a Financial Interest or any other conflict of interest that impairs the Member's independence, the Member should provide full disclosure. Following full disclosure, the Member should begin the withdrawal process unless the conflict of interest is cured, or is waived by the Host Organization and the Reporting Agency.

Candidates for Monitorships are frequently proposed to a Host Organization by external counsel to a Host Organization. Under such circumstances, the proposed Member should be candid with the Reporting Agency regarding the nature and extent of the relationship between the candidate and external counsel. Such candor is necessary so that the Reporting Agency may determine if that relationship might impair or affect, or be perceived to impair or affect, the proposed Member's independence. The question to be asked is: *“Could the external counsel to the Host Organization exert influence over the Member (e.g. by the withholding of future referrals of business)?”*

A Member must not allow the prospect of future work to influence his or her independence. Throughout the course of a Monitorship, a Member and the Host Organization shall not discuss the possibility of employment, business partnership, or referrals, including continuing service in a monitoring role until at least one year from the termination of the Monitorship. Members employed by professional service firms that could potentially serve a Host Organization in numerous and varied ways, cannot entertain the notion of “cross-selling” services to a Host Organization. Where appropriate and necessary, and only after full disclosure, proposed Members may need to construct firewalls to separate employees and organizational members who may operate under an actual or perceived conflict of interest.

There are instances where a Member may be serving as a Monitor of a Host Organization that is subject to multiple unresolved investigations or examinations by agencies or organizations other than the Reporting Agency. In some of those instances, the resolution of those matters may involve an Agreement or Court Order requiring a Monitor. The current Member's service as a Monitor should not preclude the Member from being considered for and/or serving in a new Monitorship role over the same Host Organization. In many instances, doing so may better serve the public's well-being, the Host Organization, and the Reporting Agencies, among other constituents.

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When assessing a potential conflict of interest, the following factors should be considered carefully to determine the extent to which the conflict may impair or affect, or be perceived to impair or affect, the Member or members of the Monitoring Team's objectivity or independence:

- If the Member or member of the Monitoring Team has previously performed work for the Host Organization that was unrelated to the acts or omissions leading to the Agreement, with appropriate consideration and weight given to the significance, nature, scope, duration, and timing of that work;
- If the Member or member of the Monitoring Team has previously engaged in monitoring work for the Host Organization, including when, under what circumstances, and with what recommendations, findings, and/or outcomes;
- If the Member or member of the Monitoring Team has a prior affiliation with a firm that provided legal or other professional services to the Host Organization during the time of the Member's affiliation and if such an affiliation existed, the significance, nature, scope, duration, and timing of those services should be considered; and
- Any other factor(s) that may reasonably bias, impair, or affect, or reasonably be perceived to bias, impair, or affect, the Member's objectivity or independence.

Members should not serve as Monitors or on a Monitoring Team if the Member:

- Has any conflict of interest, including a potential Financial Interest related to the Host Organization; or if the Member had any involvement in, or supervisory role over, the actions or omissions that are the subject of the Monitorship;
- Was involved in designing, assessing, or supervising the compliance program or internal controls existing at the time of the misconduct, where third party review of such program or controls may uncover deficiencies or defects in the program or controls;
- Provided legal, accounting, or other professional services or advice to the Host Organization relating to the events or activities giving rise to the Monitorship; or
- Formerly served as a government and/or Reporting Agency employee who had non-public, inside knowledge of the facts, circumstances, and internal deliberations relating to the matter giving rise to the Monitorship.

Freedom from External Influence(s)

A Member must be wary of pressures that may come from various parties interested in or affected by the Member's scope of work, monitoring activities, findings, recommendations, or compensation that might conflict with the Member's mandate, duties, and responsibilities. For example, a Host Organization may exert improper or undue pressure upon a Member to lessen its Work Plan in order to limit the scope of the Member's engagement or reduce costs.

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Conversely, a Reporting Agency may ask a Member to look into areas that fall outside of the scope of the Monitor's authority under the Agreement or Court Order. Similarly, a Member's employing organization may pressure a Member to expand or reduce its scope or Work Plan, or begin laying the foundation for offering other professional services ("cross-selling") or business referrals in the future.

Such pressures may not be restricted only to the parties to the Agreement or Court Order and the Member's employer. For example, the underlying misconduct of the Host Organization that led to the Agreement or Court Order may result in public "expectations" that conflict with, among other considerations, the Monitor's actual work, scope, findings, recommendations, and compensation. Also, where a Member was referred into a Monitorship by a particular party, such as the external law firm that represents the Host Organization in the underlying matter, such a party may attempt to exert pressures upon the Member (e.g. the loss of future business referrals) that conflicts with the Member's duty to serve the public interest.

During the course of a Monitorship, a Member and the Monitoring Team should not accept anything of value from the Host Organization, excluding incurred reasonable fees and expenses or items of nominal or token value. In appropriate circumstances, a Member may accept services or items that mitigates the Host Organization's expenses (e.g. the use of a Host Organization's housing or transportation instead of commercial housing or transportation, where the costs of the Host Organization's housing or transportation is less than the commercial costs).

3. Integrity

To sustain the trust and confidence of the public and broader community, Members must maintain their professional responsibilities with integrity.

SOP 3.1 Core Trait. Integrity is the pillar and foundation of positive ethical behavior and tone, and a core character trait that a Member must always uphold, safeguard, and exercise.

SOP 3.2 No Compromise. Amidst the pressures encountered by Monitors from Host Organizations, Reporting Agencies, or third parties, Members must not compromise or abandon integrity.

SOP 3.3 Letter and Spirit of the Code. Integrity requires that Members pursue both the letter and spirit of this Code. In the absence of a specific rule, requirement, best practice, guidance, or standard, or when facing incomplete or conflicting information, pressures, or opinions, a Member should ask "*Am I doing the right thing? Could this action compromise my integrity?*"

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Commentary:

Integrity is a hallmark of Monitors. It cannot be compromised. It guides all actions and decisions, and underlies the Principles of this Code. In addition to guiding Members towards what is right, personal integrity also guides Members towards what is fair and just, which weaves its way into every aspect of what a Monitor does, from proposals to fee arrangements to work-planning to conduct of the Monitorship to reporting.

Integrity requires a Member to be honest and candid; to admit when mistakes or errors in judgment have been made and strive to promptly correct them. It requires a Member to take responsibility for his or her work and be honest and frank in all activities, findings, invoicing, recommendations, and reports. It also requires that a Member plan and perform his or her work professionally and efficiently, assuring that the most qualified and available cost effective resources are applied to each task.

As a core character trait, integrity must be necessarily exercised in all aspects of a Member's life. If, for example, a person acts with integrity in his or her personal life, yet practices deception in his or her professional life, that person does not have integrity as a core character trait. Integrity therefore applies not just in a Member's professional life, but also in his or her personal affairs. Members shall not commit any acts of moral turpitude or take any actions, personally or professionally, that compromise or impair the Member's integrity, honesty, or commitment to the highest of ethical standards.

4. Standard of Performance

Members shall strive to continuously improve the benefits and value of Corporate Monitoring through increasing professional competencies and quality of monitoring services and mitigating the Host Organization's Monitorship costs and operational disruption(s). Members should observe the bounds of the Monitor's authority and scope, and strive to fulfill the Monitor's responsibilities to the best of the Member's abilities.

SOP 4.1 Due Care. Members always should aspire to excellence. The essence of "due care" is discharging professional responsibilities with competence and diligence, with concern for the best interest(s) of the parties served. Members should seek to discharge his or her responsibilities with excellence.

SOP 4.2 Maintaining and Providing Competent Services. For a Monitor to serve with facility and acumen, he or she must attain and maintain a level of understanding, experience, and knowledge commensurate with the responsibilities, authorities, and obligations of each respective Agreement or Court Order. If a Monitorship exceeds the competency of a Member, it is his or her responsibility to consult with, subcontract for, and/or refer a Host Organization to a professional with the appropriate level of knowledge or skill.

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- SOP 4.3 Commitment to Professional Development.** Maintaining competence requires a continual commitment to professional improvement and learning throughout a Member's career. Members must also ensure the quality of his or her services meet the high level of professionalism required by this Code.
- SOP 4.4 Diligence.** Members must diligently discharge their responsibilities to Reporting Agencies, Host Organizations, employing organizations, and the public. Diligence requires that a Member render services promptly, be careful and thorough, and observe applicable technical and ethical standards and/or best practices. Members must maintain records that accurately reflect the work performed.
- SOP 4.5 Declining or Withdrawal.** If a Member determines that he or she cannot provide or obtain the expertise, resources, or capabilities necessary to effectively conduct or complete a Monitorship, or, having accepted a Monitorship, cannot do so within the designated time frame, the Member should promptly advise the Reporting Agency and Host Organization, and either reject or withdraw from the Monitorship, as appropriate.
- SOP 4.6 Supervision.** Members must direct and adequately supervise all services and activities under a Member's Monitorship authority, including those of the Monitoring Team.
- SOP 4.7 Management.** Members should actively manage the progress of work and continuously and actively seek ways to ensure that the Work Plan maximizes the efficiency of the tasks comprising it, while maintaining its effectiveness in accomplishing the Monitor's obligations.
- SOP 4.8 Costs.** Due care requires that a Member be transparent and conscious of costs to the Host Organization, incurring only those costs that are reasonable and necessary for performance of the obligations in the Agreement, and to maintain accurate records of costs and fees incurred, including those by the Monitoring Team. A Member should provide an initial estimate and on-going reasonable estimates of the costs of the Monitorship, based on a Work Plan, to the Host Organization.
- SOP 4.9 Leveraging Resources.** Members should continuously seek to effectively utilize resources belonging to the Host Organization. This enables the Host Organization not only to reduce the costs of the Monitorship, but to learn from the Monitor methods or techniques that it may use or implement upon expiration of the Monitorship. Where it is impractical or inappropriate for the Member to supervise or otherwise be substantially involved with such work assigned to the Host Organization's employees or agents, the Member's due care requires that the Member sufficiently explain the task(s) to be performed, provide guidance on how to perform them, and review and assess the work before relying upon any work performed by a Host Organization's employees or agents.

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Commentary:

Qualifications of a Monitor

The Reporting Agency and Host Organization should carefully consider the qualifications necessary in the selection of a Monitor in light of the particular facts and circumstances involved in each Monitorship. During the selection and approval process, Members must provide a complete, accurate, and honest account of his or her qualifications, as well as those of the proposed Monitoring Team.

Where the Member lacks any of the required qualifications or experience or objectively falls short on what a reasonable person would recognize is being sought, the Member should advise the parties. In such instances, Members should consider referring the matter to another IAICM Member, teaming with an otherwise appropriately qualified professional, or subcontracting relevant experts or other professionals in order to meet the necessary requirements; however, Members should ensure that those parties accurately represent their qualifications before including them as part of the Monitoring Team.

Members should continuously assess their experience and ability to fulfill the obligations of a Monitorship throughout its term. If a Member determines that he or she cannot provide or obtain the expertise, resources, or capabilities necessary to effectively conduct or complete a Monitorship, the Member should promptly advise the Reporting Agency and Host Organization and consider withdrawal from the Monitorship.

Competence

Competence is built upon training, education, and experience. For Members, it begins with substantial and relevant experience in the field of Corporate Monitoring and a mastery of corporate compliance and business ethics. Competence is enhanced with the addition of training, education, and experience in the disciplines relevant to a given Monitorship. These disciplines frequently include, among other areas: legal, accounting, data gathering, information/document management, internal controls, quality control, regulatory requirements, investigations, business management and operations, project management, finance, professional training/education, auditing, consulting, and international operations.

Withdrawal

If a Member believes that he or she cannot complete the entire term of a Monitorship (e.g. a merger that creates an untenable conflict, a health condition that may impact performance or timing, or going out of business), then the Host Organization and Reporting Agency should be promptly notified and the Member's withdrawal considered. Where a Member must withdraw from a Monitorship and a new Monitor is put in place, the Member must be cooperative and make all reasonable efforts to ensure the transition to a new Monitor is effected efficiently, completely, and effectively.

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Work Plan

Members should develop reasonably thorough Work Plans based upon and closely following the Agreement or Court Order at the start of the Monitorship. The Work Plan should detail the actions the Member believes necessary to fulfill the Monitor's responsibilities for each relevant term and obligation of the Agreement or Court Order subject to the Monitor's scope. Even in cases where a Work Plan is not required under the Agreement or Court Order or by relevant Reporting Agency or Host Organization policies, Members should develop and appropriately share such a Work Plan, as it helps ensure a firm understanding of scope among the parties, sets a tone of transparency and cooperation, and identifies actions that might be appropriately assigned to the Host Organization or otherwise be performed with greater efficiency and knowledge transfer.

In some matters, a Member may determine that sensitive or "investigative" activities, such as unannounced audits, interviews, or site inspections, among others, might be necessary. If disclosure to the Host Organization of such proposed activities in the Work Plan would compromise their reliability and/or effectiveness, then such elements of the Work Plan may be disclosed only to the Reporting Agency.

A Member should maintain, reevaluate, and update the Work Plan on a continuing and regular basis over the course of the Monitorship. When material changes to the Work Plan become necessary due to modifications to the Agreement, the Engagement Letter, or a subsequent Court Order, the Member should discuss any changes with the Reporting Agency and/or the Host Organization, as appropriate.

Managing Costs and Engaging the Host Organization

Due to the specialization and the breadth and depth of experience necessary to being an effective Monitor, Monitorships may command higher fees than a Member ordinarily commands for non-Monitorship work; however, a Member shall not take advantage of his or her role as a Monitor to exorbitantly raise hourly rates/fees. Additionally, the use of "Administrative Fees" or other surcharges should generally be avoided.

Members should strive to be transparent with the Reporting Agency, Host Organization and, as is permissible within the constraints of the requirements and expectations of the parties to the Agreement or Court Order, the public at large. A Member should provide reasonable estimates of costs to the Reporting Agency and Host Organization, and ensure that those estimates are tied to the Member's Work Plan including reasonable estimates of the costs for the entire Monitoring Team. Unless disclosure is required by the Agreement, law, or accounting standards, disclosure of the Member's incurred fees and expenses should be in the discretion of the Host Organization.

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A Member should provide a reasonable estimate of the costs of the Monitorship, based on a Work Plan, to the Host Organization and continuously and actively seek ways to ensure that the Work Plan maximizes the efficiency of the tasks comprising it, while maintaining its effectiveness in accomplishing the Member's obligations. For each task in the Work Plan, the Member should strive to assign the most qualified, available, and cost effective members of the Monitoring Team and utilize only the necessary number of Monitoring Team members suitable to each task.

Members should continuously seek ways to leverage the Host Organization's resources to limit costs, such as by seeking opportunities to leverage work to the Host Organization or identifying existing Host Organization controls, audits, or other actions similar to the Member's planned actions that the Member might utilize and rely upon, in part or whole. Members also should ensure that activities performed by its subcontractors similarly seek to leverage existing resources of the Host Organization.

Members are obligated to keep and maintain accurate records of the Member's and the Monitorship Team's work, fees, and expenses. In the interests of transparency and accountability, Members should prepare and issue sufficiently detailed invoices to the Host Organization that specify the work performed and the expenses incurred, unless the parties agreed otherwise or disclosure of detailed invoices is inappropriate (*e.g.* in the case of ongoing sensitive or "investigative" actions).

If a Member anticipates during performance of the Monitorship that fees or expenses are likely to exceed estimates, the Member should make the Host Organization aware of that likelihood prior to incurring any fees or expenses in excess of estimates and explain the reasons for it.

The Agreement or Court Order and/or the Engagement Letter should establish a process for the Host Organization to be able to query or dispute the Member's actual or proposed fees and expenses. If the Reporting Agency is not the arbitrator of disputes, then the Agreement or Court Order may allow the use of a third party that is mutually acceptable to the Host Organization, the Reporting Agency, and the Member.

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5. Scope

Members shall take all reasonable steps to determine and understand the scope and nature of monitoring services to be provided and be diligent at all times in ensuring that the Member's monitoring services fully meet, but do not exceed, the Monitor's scope.

SOP 5.1 In evaluating and determining the overall scope of a Monitorship, Members should:

- i. Rely upon the Agreement or Court Order as the principal and definitive source of the overall scope of the Monitorship;
- ii. Discuss with the Host Organization and Reporting Agency, prior to completing a Work Plan, their interpretations and understanding of the overall scope of the Monitorship as set forth in the Agreement or Court Order, particularly as it relates to any areas that are complex, vague, open-ended, or otherwise subject to various and material interpretations;
- iii. Discuss with the Host Organization and Reporting Agency a draft Work Plan and appropriately modify the Work Plan in accordance with any agreement(s) by the parties regarding scope; and
- iv. If the Member determines that a possible expansion of scope is required, he or she should immediately notify and discuss with the Host Organization and/or Reporting Agency such possible expansion of scope and seek their direction as to the extent or limitations of such expansion(s).

SOP 5.2 Regarding the scope of the procedures to be used by the Member in affecting a Work Plan, Members should:

- i. Plan and conduct testing procedures designed to provide the Member with that level of information sufficient and necessary to derive and form an opinion and/or provide accurate factual reporting consistent with the Monitor's scope and obligations under the Agreement or Court Order; and
- ii. Oversee such testing to assure that the testing remains within the scope of that determined necessary and sufficient to achieve the objectives of the Monitorship.

Commentary:

It should be an aspiration of a Member that, upon the expiration of a Monitorship, the Host Organization has processes, controls, and systems in place that are robust, effective, and can be self-sustained and perpetuated and that the Reporting Agency has confidence that the Host Organization can successfully avoid recidivism and/or prevent, deter, and detect in a reasonable period of time, and remediate future issues of employee or agent misconduct, fraud, waste, abuse, or unethical actions.

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The Agreement or Court Order is the principle and definitive source of a Monitor's scope and a Member's Engagement Letter with the Host Organization should closely follow the Agreement or Court Order in all material respects. Although the Agreement or Court Order should provide an adequate detailing of the scope of a Monitorship, in practice, there may be significant room for interpretation of that scope, particularly where the parties to the Agreement or Court Order may have differing goals, opinions, expectations, experience, or otherwise be adverse to one another. Varying and unaligned perceptions about scope can create significant disagreement(s) and delay(s) in affecting a Monitorship and ultimately can lead to an ineffective Monitorship.

A Member should be active in ensuring that he or she, along with the parties to the Agreement or Court Order, have aligned expectations as to the scope of the Agreement or Court Order in whole, as well as to its particulars. If a Member believes that the Terms of an Agreement or Court Order will not achieve its spirit, the Member should bring such concerns to the parties' attention, along with recommendations, if welcomed, for how to address such misalignments.

Much discretion often is and should be given to the Monitor regarding the scope of the particular procedures deemed necessary to affect the Monitorship within his or her understanding of the scope of the Agreement or Court Order. A Member's exercise of that discretion should be consistent with this Code.

6. Reporting

Members shall report timely and accurately findings or otherwise make reports to the Reporting Agency and/or Host Organization in accordance with the requirements of the Agreement or Court Order and Engagement Letter.

SOP 6.1 Frequency and Form of Reports. A Member should clarify with the Reporting Agency and Host Organization, at the outset of the Monitorship, the frequency and form of reports required under the Agreement or Court Order. Such reports should be timely, accurate, and in accordance with the Agreement or Court Order's requirements.

SOP 6.2 Modifications to Reports. A Member is responsible for issuing complete, timely, and accurate reports pursuant to the Agreement or Court Order. Unless otherwise restricted or prohibited, a Member should allow the Host Organization and the Reporting Agency to review and make suggestions to the Member's reports, including challenging or further informing the report's findings or recommendations. However, a Member should not permit a Host Organization or Reporting Agency to make direct modifications or changes to his or her reports.

SOP 6.3 Communications with Reporting Agency. Subject to the terms of the Agreement or Court Order, a Member should have authority to communicate freely and candidly with the Reporting Agency on any matter related to the Monitorship.

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- SOP 6.4 Reporting Misconduct.** Subject to the Agreement or Court Order's requirements, a Member should exercise sound judgment and reasonable discretion in reporting any misconduct uncovered during the course of the Monitorship.
- SOP 6.5 Release of Information.** In his or her reports, a Member must be mindful not to include information which, if released publicly, may unnecessarily cause real or reputational harm to the Host Organization, Reporting Agency, individual persons, or others, or which might give unfair advantage to the Host Organization's competitors or other parties of interest.
- SOP 6.6 Factual Basis.** A Member's reported conclusions, findings, and recommendations should be based on relevant and credible evidence and be derived from an objective and fair assessment of all of the facts and information available to the Member as of the time of his or her report. A Member's report should state the factual basis for all findings and conclusions, and his or her records should sufficiently support all conclusions, findings, and recommendations. Where there are any material facts that do not support or contradict the Member's findings and conclusions, such facts should be fully disclosed.
- SOP 6.7 Errors in Reports.** If a Member determines that any submitted report contained errors or omissions that are material, then the Member is obligated to notify all recipients of the report and correct the report in a timely manner.
- SOP 6.8 Recommendations.** A Member's recommendations should be specific, practical, reasonable, attainable, and sustainable. A Member should design the reported recommendations in order to achieve the objectives of the Agreement or Court Order.
- SOP 6.9 Consultation with Host Organization.** A Member and the Host Organization should work together to develop recommendations. A Member should be mindful of the Host Organization's business judgment, established plans, reasonable recommendations, and consider any concerns. If a Host Organization proposes reasonable alternatives to the Member's recommendations, a Member should determine whether they adequately further the objectives of the Agreement. If a Member rejects a Host Organization's alternatives, he or she should explain the reason(s) for doing so.
- SOP 6.10 Resolving Differences of Opinion.** A Member should attempt in good faith to resolve any material differences of opinion between him or her and the Host Organization or Reporting Agency on whether implementation of a Member's recommendations are necessary or optional, keeping as paramount consideration the objectives of the Agreement.

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Commentary:

Reporting Obligations

A Member shall make reports to the Reporting Agency as required by the Agreement. Usually, reports are made in writing, on certain scheduled deadlines, and include detailed findings and conclusions. The Agreement or Court Order should set out the requirements of the frequency and timing of reports; if the Agreement or Court Order does not, then reporting should be specified in the Work Plan. When developing a reporting schedule, the Member, Host Organization, and Reporting Agency should balance the Reporting Agency's need to be informed with the time, expense, and potential impairment of the Member's efficiency. For these reasons, Monitors should only be required to produce written interim reports if required under the Agreement or Court Order, or Engagement Letter. Periodic progress reports in some form are beneficial to the Monitor, Host Organization and Reporting Agency.

At the beginning of a Monitorship, a Member should determine from the Agreement or Court Order to whom and when reports shall be made and whether the Host Organization and/or Reporting Agency may review drafts. In the interest of producing the most accurate and complete reports, it is beneficial to all parties that a Member be permitted to discuss report drafts with the Host Organization and/or Reporting Agency prior to finalization and delivery.

Other Communications with a Reporting Agency and/or Host Organization

Over the course of a Monitorship, a Member should have frequent, informal, and open communications with both the Reporting Agency and Host Organization. These communications help ensure, among other things, transparency in the Member's work and that the Member is acting within his or her scope and on target in prioritizing and addressing the issues relevant to the Agreement or Court Order.

Though a Monitor should, by the very nature of the role, have such meetings with the Host Organization routinely and outside of the presence of the Reporting Agency, a Member may also meet with a Reporting Agency without the knowledge and presence of the Host Organization. Members should strive to ensure that the Agreement or Court Order and the Engagement Letter sets forth in detail the circumstances under which the Monitor or Reporting Agency can or must disclose any or all communications to the Host Organization.

Reporting Misconduct

A Member may observe or discover misconduct during the course of a Monitorship. Such misconduct can range from criminal acts to violations of civil laws and regulations to industry standards to violations of a Host Organization's policies, procedures, internal controls, or code of conduct. Subject to the legal requirements in the relevant jurisdiction, a Member should have authority to determine whether such misconduct is within or outside the scope of the Agreement, and/or related to the Monitorship. The Member should exercise discretion when deciding what misconduct should be reported to the Reporting Agency and/or Host Organization or other appropriate entities or authorities.

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For example, a person may inform a Member during an interview of that person's violation of an internal control of the Host Organization. Although such an action may violate the Host Organization's policies and procedures and not rise to a criminal act, it may also reflect on the effectiveness of the Host Organization's control structure, ethical tone, compliance training, internal auditing/monitoring, or other areas of broader interest and concern to the Member, the honest reporting of which enables the Member to be more effective. In such an instance, a Member may choose to address the greater concern and determine not to report the individual violator, less the candidness of future interviews upon which the Member relies and needs to rely be compromised.

Confidentiality and Disclosure of a Monitor's Report

A Member should be aware of whether the Member's report(s) is confidential or whether it, or any portions of it, may be disclosed to the public. If a written report may be disclosed publicly or provided to third parties, the Member should consult with the Reporting Agency and Host Organization to ensure that confidential, sensitive, classified (if applicable), or competitive business information, is adequately protected from disclosure.

At the outset of a Monitorship, a Member may suggest to the Reporting Agency and Host Organization that all interim Monitor reports be done using a high-level information presentation platform (e.g. Microsoft PowerPoint, Keynote, etc.), where details of the report are presented orally by the Member to the parties. Such reports can serve to inform the Reporting Agency and Host Organization as much as, or more thoroughly than, a traditional narrative report, while helping reduce costs and ensuring against the disclosure of sensitive, confidential, or proprietary information to other parties. Moreover, such reports bring the Monitor, Reporting Agency, and Host Organization together, allowing for a healthy information exchange that can facilitate a more effective and efficient progression towards achieving the desired outcome(s) of the Agreement.

A Member's final report, though subject to the form as set forth by the Agreement or Court Order and sensitive to how information might be viewed or used by outside parties, generally should be a written narrative that conveys within its four corners the findings, opinions, recommendations, and other information required under the Agreement or Court Order.

When developing recommendations, a Member should consider several factors, such as: whether the recommendations are reasonable to accomplish the objectives of the Agreement, whether the Host Organization has resources available to implement the recommendations (time and cost), the Host Organization's established internal controls, and/or compliance and ethics program(s), the Host Organization's culture, the long-term sustainability of the recommendations post-Monitorship, and the operational impact any implemented recommendations may have on the Host Organization.