

Model Code of Conduct

(Public Comment Version)

Preamble

This document is intended to serve as a model for the promulgation of a code of conduct to be adopted or modified as appropriate by providers of legal technology products and services, and then self-published.¹

The Model Code of Conduct is divided into two parts:

Part I provides guidance on ethical decision making by professionals who are providing legal technology products or services independently or through a service or technology provider organization.

Part II provides the terminology that is used throughout the document. These defined terms are bolded in the text of Part I.

A separate document² provides guidance on ethical decision-making by professionals employed within a consumer organization.

Part I includes 8 sections as follows:

Section 1 addresses the general obligations that all professionals owe to a client.

Section 2 addresses issues of professional integrity.

Section 3 addresses the common issues related to the relationship between professionals who provide a combination of technology, advisory, and related administrative and support services (either independently or through a service provider organization) and their clients.³

Section 4 focuses on issues related to the relationship between professionals who develop and provide technology either as a package for installation by a client or through a

¹ For details on the licensing and publication requirements, please see the Model Code of Conduct page on the LTPI website at: www.legaltechpi.org/mcoc/

² As of April 2017, the LTPI guidance for Consumer Organizations is a work-in-progress. It will be posted to the LTPI website when complete.

³ To the extent an **engagement** is solely related to supporting the delivery, implementation, or operation of **technology**, or the provision of **administrative services**, the ethical considerations addressed in Part II, Section 3 are not applicable to that engagement.

software as a service or infrastructure as a service model (through a technology provider organization) and their clients.⁴

Sections 5 and 6 address the special ethical considerations for professionals in providing consultative and advisory services to clients, or providing services as a consulting expert, testifying expert or court-appointed or approved neutral.

Sections 7 and 8 discuss the special considerations in ethical decision making by service provider organizations, technology provider organizations, and law firms serving as a service provider.

PART I

Model Code of Conduct for Providers

1. General Obligations to the Client

1.1. Duty of Competency

A **provider** shall competently deliver advice and services to clients. Professional competence requires a combination of knowledge, skill, thoroughness and preparation reasonably necessary to meet the purpose of the **engagement**.

1.2. Duty of Communication

(a) A **provider** shall:

- (1) promptly inform the **client** of any circumstance with respect to which the **client's informed consent** is required by the law or this Code;
- (2) reasonably consult with the **client** about the means by which the **client's** objectives are to be accomplished;
- (3) keep the **client** reasonably informed about the status of the matter;
- (4) promptly comply with reasonable requests for information; and
- (5) consult with the **client** about any relevant limitation on the **Professional's** conduct when the **Professional** knows that the **client** expects assistance not permitted by law or this Code.

⁴ To the extent an **engagement** includes **services** that go beyond supporting the delivery, implementation or operation of **technology**, or the provision of **administrative services**, that **engagement** is subject to the ethical considerations addressed in Part II, Section 3.

(b) A **provider** shall explain the options related to the use of **technology** and processes to the extent reasonably necessary to permit the **client** to provide its **informed consent** regarding the engagement.

1.3. Duty of Confidentiality

(a) A **provider** shall not reveal information relating to a client **engagement**, unless:

- (1) the **client** gives **informed consent**;
- (2) the disclosure is impliedly authorized in order to carry out the **engagement**; or
- (3) the disclosure is permitted by paragraph (b).

(b) A **provider** may reveal information relating to a client **engagement** to the extent the provider reasonably believes necessary:

- (1) to prevent the **client** from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests, property or freedom of another, and in furtherance of which the **client** has used or is using the **provider's** services;
- (2) to prevent, mitigate or rectify substantial injury to the financial interests, property, or freedom of another that is reasonably certain to result or has resulted from the **client's** commission of a crime or fraud in furtherance of which the **client** has used the **provider's** services;
- (3) to secure legal advice about the **provider's** compliance with the laws;
- (4) to establish a claim or defense on behalf of the **provider** in a controversy between the **provider** and the **client**, to establish a defense to a criminal charge or civil claim against the **provider** based upon conduct in which the **client** was involved, or to respond to allegations in any proceeding concerning the **provider's** representation of the **client**;
- (5) to comply with any law or a court order; or
- (6) to detect and resolve conflicts of interest arising from a **professional's** change of employment or from changes in the composition or ownership of a company or firm, but only if the revealed information would not compromise or otherwise prejudice the **client**.

(c) A **provider** shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to a client **engagement**.

1.4. Duty of Diligence

A **provider** shall act with reasonable diligence and promptness in the course of any **engagement**, and the **provider's** work load must be controlled so that each **engagement** can be handled with the requisite degree of competence in accordance with Section 1.1.

1.5. Duty of Timeliness

A **provider** shall act with due haste in the delivery of advice and services to a **client**, and shall properly communicate with **client** to determine any applicable deadlines or subsequent changes, as well as to promptly and timely advise the **client** of any material changes that may compromise or otherwise prejudice the **client** or the objectives of the **engagement**.

1.6. Duty of Candor to the Client

(a) A **provider** shall not knowingly make a false statement of fact to a **client** or fail to correct a false statement of material fact previously made to a **client** by the **provider**. This duty extends to any false statement of material fact made by any **professional** working for the same **service provider organization** or **technology provider organization** that, if left uncorrected, may compromise or otherwise prejudice the client or the objectives of the engagement.

(b) A **provider** shall not knowingly withhold material information from the **client** that is reasonably necessary for the **client** to provide its **informed consent** to proceed with a proposed course of action.

(c) A **provider** shall promptly disclose any process and technical issues that arise during an **engagement** that may compromise or otherwise prejudice the **client** or the objectives of the **engagement**.

1.7. Truthfulness of Statements to Others

A **provider** shall not knowingly make a false statement of fact to third party on behalf of a **client**, or fail to correct a false statement of material fact previously made to a third party by the **provider**, subject to the Duty of Confidentiality as set forth in Section 1.3.

1.8. Truthfulness in Advertising and Marketing Materials about Services

A **provider** shall not create or knowingly distribute to any **client** or prospective client any false or materially misleading written communication about the **provider** or the provider's **services**. A written communication is false or misleading if it contains any objectively untrue statement of fact, any material misrepresentation of fact, or omits one or more facts necessary to make the communication, considered as a whole, not false or materially misleading.

1.9. Truthfulness in Verbal Communications about Services

A **provider** shall not knowingly make any false or materially misleading verbal communication about the **provider** or the provider's **services**. A verbal communication is false or misleading if it knowingly contains any objectively untrue statement of fact, any material misrepresentation of fact, or omits one or more facts necessary to make the statement, considered as a whole, not false or materially misleading.

1.10. Referring or Sub-Contracting Work to Other Professionals or Service Provider Organizations

(a) A **provider** shall not refer or sub-contract work to any **professional** or non-associated **professional** or **service provider organization** absent a good-faith basis for the referral or sub-contracting.

(b) A **provider** shall disclose to the **client** the nature of the relationship between the **provider** and any referred or sub-contracted **professional** or **service provider organization**, including:

- (1) any prior work experience between the **provider** and the referred or sub-contracted **professional** or **service provider organization**; and
- (2) a truthful, candid, and good-faith assessment of suitability of the referred **professional** or **service provider organization** to meet the known objectives of the **engagement**.

(c) A **provider** may enter into an agreement with another **professional** or **service provider organization** relating to the referral or a sub-contracting of a portion of an **engagement**, provided:

- (1) the referring **provider** shall perform substantive **services** for the **client** in the same **engagement** in supervising or providing services jointly with the referred or sub-contracted **professional** or **service provider organization**; or
- (2) in the event the referring **provider** is not performing substantive **services** for the **client** in the same **engagement**, the referring **provider** shall promptly disclose to the **client** the existence and nature of agreement, including, upon request of the **client**, the key financial terms of the agreement.⁵

⁵ Providers should be aware of and conform to any applicable restrictions related to fee-sharing. See, e.g., Section 9.2, below.

(d) A **provider** must obtain the client's **informed consent** prior to transferring any **client information** or **discovery data** to a sub-contractor.

1.11. Communications Outside Presence of Counsel

(a) Absent the prior express authorization and **informed consent** of the **client**, a **professional** shall not communicate outside the presence of counsel for the **client** with any third party about an **engagement** relating to any current or anticipated litigation.

(b) To properly protect privilege and work product protections, a **professional** providing litigation-related **services** shall be familiar with the core principles of the attorney-client privilege and the work product doctrine, and shall, when appropriate, seek the advice of counsel regarding any questions or concerns relating to communications with third-parties.

1.12. Record Keeping

A **provider** shall create and keep reasonable and appropriate records documenting an **engagement** as necessary to meet its business requirements.

1.13. Terminating Relationships

(a) A **provider** shall carry through to conclusion all matters undertaken for a **client** until such time as an **engagement**, or the **provider's** role in the **engagement**, is terminated either by the natural completion of the **engagement**, or by the **client** providing its **informed consent** to transfer the ongoing matter to another provider.

(b) In the event that a **provider** must terminate an **engagement**, or their role in the **engagement**, prior to the natural completion of the **engagement**, the **provider** shall take reasonable steps to prevent any actions that would compromise or otherwise prejudice the **client** or the objectives of the **engagement**.

(c) A **professional** shall not be considered to be personally responsible for the actions of their employer **service provider organization** or **technology provider organization** who inhibits or otherwise frustrates the duty set forth in paragraph (b), above.

1.14. Retention of Client Information

(a) A **provider** shall take reasonable steps to ensure the safekeeping of all **client information** in its possession and custody, particularly information subject to data privacy and protection obligations.

(b) At the end of an **engagement**, or the end of a **provider's** role in the engagement, the provider shall retain, transfer, or dispose of the **client information** in accordance with the prior instructions provided by the client.

(c) In the absence of prior instructions by the client:

- (1) at the end of an engagement, a provider shall seek instruction from the client on the retention, transfer or disposition of the client's information; or
- (2) at the end of the professional's individual role in an engagement, where the professional's service provider organization is continuing to provide services to the client, a professional shall transfer the client's information to another professional assigned to the engagement, or make the information available for retention by their service provider organization for future disposition as subsequently instructed by the client.

(d) A provider may retain client information relating to an engagement to the extent doing so is reasonably necessary to fulfill legitimate business requirements, and provided any such retention does not compromise or otherwise prejudice the client or is not prohibited by provider's agreement with a client.

(e) In the event a client fails to respond to repeated attempts by the provider to obtain instructions regarding the retention, transfer or disposition of the client's information, the provider may, after reasonable period of time, dispose of the information in a secure manner.

1.15. Retention of Discovery Data

(a) A **provider** shall take reasonable steps to ensure the safekeeping of all **discovery data** in its possession and custody, particularly information subject to data privacy and protection obligations.

(b) A **provider** who receives **discovery data** from a **client** in connection with an **engagement**, particularly litigation or regulatory response, should seek and obtain direction from the **client** on the retention of the **discovery data** upon and following the termination of the engagement.

(c) A **provider** shall not retain **discovery data** provided by a **client** in connection with an **engagement** any longer than reasonably necessary, and shall at the end of an **engagement** or upon demand of the **client** promptly return **discovery data** to the client or ensure that the discovery data is securely destroyed in accordance with the instructions of a client, any applicable written agreement, or by order of the court.

(d) A **provider** shall not withhold the return, or delay the secure destruction, of **discovery data** pending payment from the **client** for **services** rendered.

2. Integrity of the Profession

2.1. Avoiding the Unauthorized Practice of Law

- (a) A **professional** shall scrupulously avoid the unauthorized practice of law, unless:

- (1) the **professional** is an attorney licensed to practice law; and
- (2) the **professional** is providing legal services to a **client** through a law firm in accordance with all applicable federal and state laws, rules and regulations.

(b) A **professional** has the responsibility to understand what acts taken on behalf of, or at the request of, a **client** might constitute the unauthorized practice of law in each jurisdiction in which they are providing **services**, and, if appropriate, to consult with a local licensed attorney to obtain advice or an opinion when requested **services** could potentially constitute the unauthorized practice of law in that jurisdiction.

2.2. Truthfulness About Non-Delegable Attorney Duties

(a) A **provider** shall not knowingly make any false or materially misleading statements to clients or perspective clients regarding permissible and impermissible delegation of duties to **professionals** serving as either subordinates or agents of the attorney.

(b) A **professional** has the responsibility to understand the line between permissible and impermissible delegation of duties so as to avoid the unauthorized practice of law, and, if appropriate, to consult with a licensed attorney to obtain advice or an opinion regarding when a professional may not accept the delegation of certain duties within the jurisdiction in which they are providing services. *See Section 2.1.*

3. Service Provider–Client Relationship

3.1. Application and Scope of Section 3

(a) The duties set forth under Section 3 apply to all **professional services engagements**.⁶

(b) Except as otherwise expressly stated herein, while a **professional** is associated through a **service provider organization** or **technology provider organization**, absent written **informed consent** of a **client**, a prohibition or requirement under this Section that applies to any one **professional** shall apply to all **professionals** associated with the same **service provider organization** or **technology provider organization** in connection with any **professional services engagement**.

⁶ *To the extent that a professional is employed by a service provider organization or technology provider organization, the duties set forth in this section may be properly delegated to other professionals within the organization.*

3.2. Engagement and Declining Matters

(a) A **provider** shall not enter into any **professional services engagement** without the competence, capability and resources required to provide the **services** requested by a prospective client.

(b) A **provider** who lacks the competence, capability and resources required to provide the **services** requested by a prospective client shall either decline the engagement or associate with one or more other providers who can provide the requisite competence, capability or resources, subject to the obligations set forth in Section 1.10, above.

(c) A **provider** shall disclose to a prospective client any known or reasonably anticipated limitations or other material facts affecting their ability to provide the **services** requested within the known or reasonably foreseeable time frame required for the delivery of materials or completion of **services**.

(d) A **provider** shall promptly disclose to a prospective client where their **services**, including deliverable materials, will knowingly differ from the **client's** request.

(e) A **provider** shall make reasonable efforts prior to accepting any engagement to identify any potential current conflict of interest, and either mitigate the conflict prior to engagement or decline the engagement in accordance with Section 3.4, below.

3.3. Fees and Estimates

(a) Upon request, a **provider** shall provide the **client** with a clear written estimate of fees for **services** and anticipated costs based upon the information provided by **the** client, and the underlying assumptions on which the estimates are based.

(b) A **provider** shall promptly notify the **client** of any material change in circumstances affecting the assumptions underlying estimated fees, along with the anticipated effect on the estimate of fees and costs.

(c) In the event of a material change in circumstances affecting the assumptions underlying estimated fees, a **provider** shall promptly seek the client's **informed consent** to proceed, prior to incurring additional, unbudgeted fees or costs.

(d) In the event a **client** initiates a material change in circumstances affecting the assumptions underlying estimated fees, a **provider** shall timely provide the **client** with an update to any prior estimate of fees for services and anticipated costs.

3.4. Conflicts of Interest: Current Matters

(a) Except as otherwise provided here, a **provider** shall not enter into or perform services in connection with any **professional services engagement** where:

- (1) a prospective client's interests are directly adverse to a current **client**; or
- (2) there is significant risk that the **provider's** delivery of **services** will be materially limited by the **provider's** responsibilities to another current **client**.

(b) Notwithstanding the existence of a current or potential conflict of interest under paragraph (a) above, a **provider** may enter into or perform **services** in connection with any **professional services engagement** if:

- (1) the **provider** reasonably believes that it may provide the **services** in accordance with the duties under this Code;
- (2) the **provider's** provision of services is otherwise permitted by law; and
- (3) each affected **client** gives its **informed consent** after consultation with counsel, confirmed in writing.

(c) In the event a **provider** is uncertain as to whether a conflict of interest may arise upon accepting a **professional services engagement**, the **provider** shall:

- (1) disclose the potential conflict to the affected parties and obtain the **informed consent** of the affected parties in accordance with paragraph (b), above; or
- (2) decline the engagement.

(d) If, during the course of a **professional services engagement**, a **provider** determines that a current conflict of interest exists that was not identified prior to the **engagement**, the **provider** shall disclose the conflict to the affected parties and:

- (1) obtain the **informed consent** of the affected parties to continue in accordance with paragraph (b), above; or
- (2) withdraw from the engagement.

(e) A **provider** shall not use any **client information** or **discovery data** relating to a current client to the disadvantage of the **client** unless the **client** gives **informed consent**, except as permitted or required by law.

3.5. Conflicts of Interest: Former Matters

(a) A **professional** who has formerly provided services to a **client** in an **engagement** shall not thereafter provide **services** to another **client** in the same or a substantially related matter in which that prospective client's interests are materially adverse to the interests of the former client unless the former client gives **informed consent**, confirmed in writing.

(b) Notwithstanding paragraph (a) and Section 3.1(b), above, another **professional** working at the same **service provider organization** or **technology provider organization** may provide **services** to a prospective client in a new **engagement**, provided:

- (1) the other **professional** has prior no knowledge of or direct access to any material information relating to the former client gained by a colleague through providing **services** to the former client;
- (2) an ethical wall is established and maintained to prevent **professionals** at the same organization from exchanging any information regarding a former client whose interest are materially averse to a current client; and
- (3) the former client provides **informed consent** in writing.

3.6. Duties to Former Clients

(a) A **provider** shall not use any knowledge gained from providing **services** to a former client to disadvantage the former **client**.

(b) A **provider** shall not disclose or reveal to any third party any information about a former **client** and prior **engagement**, subject to the provisions of Section 1.3.

(c) A **provider** shall exercise due care in protecting the confidences of a former **client**, including protecting any **client information** remaining in the provider's possession, custody or control following the end of an **engagement** in accordance with Section 1.14.

(d) A **provider** shall exercise due care in protecting any **discovery data** remaining in the provider's possession, custody or control following the end of an **engagement** in accordance with Section 1.15.

3.7. Duties to Prospective Clients

A **provider's** duties to a prospective **client** in connection with a potential **professional services engagement** are limited to:

(a) The duties of candor and truthfulness set forth in Sections 1.6, 1.7, 1.8, and 1.9; and

(b) Providing a prospective **client** with the required disclosures and other information as set forth in Sections 3.2 and 3.3, above.

4. Technology Provider–Client Relationship

4.1. The Application and Scope of Section 4

(a) The duties set forth under this section apply to all **engagements** related to the development or delivery of **technology**.

(b) To the extent that a **professional** is employed by a **technology provider organization**, the duties set forth in this section may be properly delegated to other professionals within the organization.

(c) To the extent that an engagement related to the development or delivery of **technology** additionally requires the provision of any **attorney-supervised services**, a **professional** providing services independently or through a **professional services organization** or **technology services organization** shall additionally be subject to the duties and obligations set forth in Section 3, above.

4.2. Engagement

(a) A **provider** shall not enter into any **engagement** without the competence, capability and resources required to provide or develop the **technology** and any associated delivery, implementation and maintenance services as required for the **engagement**.

(b) A **provider** who lacks the competence, capability and resources required to provide or develop the **technology** or associated services shall either decline the engagement, enter into an **engagement** with a limited scope that conforms with the competence, capability and resources of the **provider**, or associate with one or more other providers who can provide the requisite competence, capability or resources, subject to the obligations set forth in Section 1.10, above.

4.3. Conflicts of Interest

(a) A **technology provider organization** may provide **technology, consulting services**, and **administrative services** to two or more **clients** in the same or a substantially related matter, or whose interests are materially adverse to one another, provided:

- (1) no **attorney-supervised services** are to be included in the engagement;
- (2) if any **consulting services** are to be provided, including project management, an ethical wall is established and maintained to prevent **professionals** at the same **technology provider organization** who are providing such **services** from exchanging or having any knowledge of or direct access to any **client information** or **discovery data** from two or more clients whose interest are materially adverse; and
- (3) timely disclosures are made to all affected parties, and their **informed**

consent and guidance obtained in establishing any additional required safeguards to protect the **client information** and **discovery data** of all affected parties.

(b) A **provider** shall not use any knowledge gained from providing **technology** and **administrative services** to its **client** to the disadvantage of that **client**.

(c) A **provider** shall not use any knowledge gained from providing **technology** and **administrative services** to one **client** to the advantage of a second **client** when the interests of the **clients** are materially adverse.

4.4. Merchantability and Fitness

(a) In responding to a request for proposal, request for information, or other inquiry from a prospective client, a **provider** shall promptly disclose all known material facts relating to whether their **technology** conforms to the stated expectations of the prospective **client** and is fit for the specific purpose of the proposed engagement.

(b) A **provider** shall not knowingly enter into any engagement for the sale of **technology** that is not merchantable, unless the **provider** clearly and unequivocally disclaims the implied warranty of merchantability, confirmed in writing by the **client**.

(c) A **provider** shall not knowingly enter into any engagement for the sale of **technology** that is not fit for a particular purpose as specified in writing by a prospective **client**, unless the **provider** clearly and unequivocally disclaims the implied warranty of fitness for a particular purpose, confirmed in writing by the **client**.

4.5. Fees: Quotes and Terms

(a) Any written quote from a **provider** shall include a clear statement of all known or reasonably foreseeable charges for the requested **technology** and any related **services**, along with any material underlying assumptions on which the quote is based.

(b) A **provider** shall promptly notify the client, or prospective **client**, of any material change in any of the stated assumptions contained in a written quote, and provide a revised quote upon request.

5. Consulting Services – Special Considerations

5.1. Unauthorized Practice of Law

(a) As set forth in Section 2.1, above, a **professional** delivering **consulting services** shall:

(1) scrupulously avoid the unauthorized practice of law; and

- (2) be reasonably familiar with the applicable statutes, rules and regulations regarding the unauthorized practice of law.

(b) A **professional** licensed to practice law may provide **consulting services** to a **client**, subject to all applicable statutes, rules and regulations.

(c) A **professional** licensed to practice law and engaged to provide **consulting services** shall clarify their role and the **client's** expectations in writing prior to the commencement of the **engagement**.

6. Testifying or Non-Testifying Expert Services – Special Considerations⁷

6.1. Expertise in Field

A **professional** shall only accept engagements for **expert services** that are within the **professional's** area of competence, training and experience. A **professional** shall not purport to be an expert in matters in which the **professional** lacks sufficient knowledge or experience.

6.2. Duty of Transparency

A **professional** engaged to provide **expert services** shall clearly define the nature of her role in the **engagement** with the **client** and lawyers for the client in the matter.

6.3. Competence in the Role of Expert

(a) A **professional** engaged to provide **expert services** shall make herself familiar with the statutes, rules and regulations relating to non-testifying experts or testifying experts, as applicable to the **engagement**, including seeking guidance and instructions from the **client** or the lawyers representing the client in the specific matter.

(b) A **professional** serving shall understand the legal standards applicable in the jurisdiction to the use and admissibility of her opinion.

6.4. Independence

(a) A **professional** shall cooperate with lawyers representing the **client**, while remaining independent and professional.

(b) A **professional** shall independently investigate or validate information presented by the **client** or lawyers representing the client.

⁷ *Expert services are a subset of professional services, and this section addresses ethical considerations specific to professionals providing expert services, in addition to the duties and obligations set forth in Section 3, above.*

6.5. Full Disclosure to the Client

(a) A **professional** shall present a **client** with true, complete and unbiased presentation of the facts relevant to the matter and to his opinions.

(b) A **professional** providing **expert services** shall be clear about the strength of her conclusions, and shall indicate when an opinion is inconclusive because of insufficient facts or the inability to validate information or test results.

6.6. Ex Parte Communications

(a) A **professional** providing **expert services** shall not communicate with anyone other than her **client**, the lawyers representing her client, or any other expert engaged by her client, except through the process of formal discovery and judicial procedure.

(b) In addition to the foregoing, a **professional** serving as a testifying expert shall not in any manner engage or participate in any ex parte communications with the judge, jurors or other triers of fact in the matter.

6.7. Management of Written Materials

(a) A **professional** serving as a testifying expert shall act under the assumption that all communications, no matter the format or medium, with retaining counsel or the party shall be subject to disclosure through discovery and testimony.

(b) A **professional** serving as a testifying expert shall ensure that any written report shall:

- (1) Be prepared only upon the request of counsel for the client;
- (2) Reflect the expert's independent analysis and opinion; and
- (3) Conform to the expert's findings and conclusions.

(c) A **professional** serving as a testifying expert shall discuss the scope and subjects of any written report with the **client** or the lawyers for the client on the matter.

(d) A **professional** providing **expert services** shall promptly advise the **client** or the lawyers representing the client of any newly available information that materially alters a written opinion if there is continuing reliance on the opinion in the matter.

(e) If a **professional** providing **expert services** changes her opinion on a material matter contained in a written report after the submission of the report, the **professional** shall promptly communicate with the **client** or the lawyers for the client regarding the change.

6.8. Candor towards the Tribunal

A **professional** serving as a testifying expert shall not knowingly:

- (a) Make a false statement of fact to a tribunal; or
- (b) Fail to correct a false statement of material fact made to the tribunal by the **professional**.

6.9. Candor towards Third Parties

A **professional** providing **expert services** shall not knowingly:

- (a) Unlawfully obstruct another party's access to evidence;
- (b) Unlawfully alter, destroy or conceal data, documents or other material having potential evidentiary value;
- (c) Assist or advise another person to do any such act; or
- (d) Falsify evidence, assist, or advise a witness to testify falsely.

7. Neutral Services – Special Considerations

7.1. The Role of the Neutral

(a) A **professional** engaged to provide **neutral services** must maintain strict neutrality in the matter in which she has been appointed, and scrupulously avoid representing or favoring the interests of any particular party or side in the matter.

(b) A **professional** engaged to provide **neutral services** must clearly communicate to all parties, lawyers for a party in the matter, or any person or entity whose interests are reasonably likely to come before the professional in the engagement:

- (1) the specific nature of the **professional's** role in the matter; and
- (2) the fact that the **professional** does not represent any party or side in the matter.

7.2. Conflicts of Interest and Required Disclosures

(a) A **professional** shall not enter into any **engagement** to perform **neutral services** where:

- (1) any party in the matter is directly adverse to a current client; or
- (2) there is significant risk that the **professional's** delivery of services will be

materially limited by the professional's responsibilities to a current **client**.

(b) Prior to entering any **engagement** to provide neutral services, a **professional** must disclose to all affected parties all matters that could cause a person aware of the facts to reasonably entertain a doubt that the **professional** would be able to be impartial, including, but not limited to, any of the following:

- (1) current or past relationships with any party or lawyer for a party in the matter;
- (2) family relationship(s);
- (3) significant personal relationship(s);
- (4) commercial or business relationship(s); and
- (5) attorney-client relationship(s).

7.3. Avoiding Appearance of Impropriety

(a) A **professional** engaged to provide **neutral services** must not, under any circumstances, accept a gift, bequest, favor, or honoraria from a party, a lawyer for a party in a matter, or any other person or entity whose interests are reasonably likely to come before the **professional** in the matter.

(b) From the time of the appointment of a **professional** to provide **neutral services** until the conclusion of the matter, the **professional** shall not entertain or accept any offers of employment or new professional relationships as a lawyer, an expert witness, or a consultant from a party or a lawyer for a party in the pending matter.

8. Service Provider Organizations – Commentary

8.1. Supervision of Employees

A **service provider organization** shall make reasonable efforts to ensure that all **professionals** are provided with appropriate instruction and supervision in order to conform to the ethical obligations of this Code, as adopted by the **service provider organization**.⁸

8.2. Independent Duties of Licensed or Certified Professionals

(a) **Professionals**, such as licensed attorneys and certified public accountants, working for a **service provider organization** may have independent duties, responsibilities, and ethical obligations imposed by licensing or professional certification bodies. A **professional** may be required to exercise independent judgment in providing **services** in accordance with

⁸ See Footnote 1, above.

those duties, responsibilities and obligations independent of any potentially compromising influences and loyalties, including those that may be imposed by a **service provider organization** as their employer.

(b) To the extent a **professional** employed by a **service provider organization** is bound to the independent duties, responsibilities, and ethical obligations imposed by licensing or professional certification bodies in the delivery of **services** to a **client**, the **service provider organization** must recognize, acknowledge and accept that such duties, responsibilities and obligations may supersede any conflicting business interests of the **service provider organization**.⁹

9. Law Firm as Service Provider – Commentary¹⁰

9.1. Application of the Superseding Duties of Lawyers

(a) A **professional** working at a law firm is subject to the legal and ethical duties owed by attorneys at the firm to their clients in accordance with the rules of professional conduct applicable to licensed attorneys at the firm.

(b) The legal and ethical duties of professional responsibility owed by attorneys at the firm supersede those set forth in this Code.

(c) If any issues arise under this Code, it is the responsibility of a non-attorney **professional** working at a law firm to communicate with her supervisory attorney, or other appropriate personnel as designated by the firm, to seek clarification and instruction on how to proceed.

9.2. Referrals and Bar Against Fee-Sharing

While it may be standard practice for some independent **professionals**, **service provider organizations**, or **technology provider organizations** to enter into fee-sharing or referral-fee contractual arrangements, in most jurisdictions the rules of professional conduct expressly prohibit attorneys and law firms from sharing with non-attorneys earned fees for legal services rendered. As such, individual **professionals**, **service provider organizations**, and **technology provider organizations** should not expect, or seek, fee-sharing or referral-fee agreements with law firms.¹¹

⁹ When evaluating the effects of an employee's potential violation of professional ethical obligations, consideration should be given to the long-term impact and not solely to the effects of a short term business opportunity.

¹⁰ Many law firms have taken on the role of service provider, and hire both attorney and non-attorney professionals to provide legal technology related services to clients of the firm. This section applies to professionals employed by law firms.

¹¹ This is an example of a superseding duty of a law firm, and is not to be read to suggest an exclusion of any other superseding duty of a law firm.

9.3. Compliance with the Instructions of Counsel

In most, if not all United States jurisdictions, attorneys have a duty of professional responsibility to supervise and manage non-attorney subordinates and agents, and to ensure that subordinates and delegates comply with the attorney's legal and ethical duties to their clients. As such, a **professional** should make reasonable efforts to be aware of and comply with the instructions of counsel in meeting the legal and ethical duties of professional responsibility owed by attorneys and law firms to their clients.

PART II

Terminology

- (a) **“Administrative Services”** denotes the provision of **neutral services** including but not limited to, the setup and administration of a data repository, managing the collection and processing of information identified by the client or its designated agent, administering the assignment of access credentials to repository users authorized by the client, assigning document review sets to reviewers based on selection criteria defined by the client or its agents, budgeting and reporting on resource utilization and charges, and the production of documents as specified by the **client** or its designated agent. The provision of these **neutral services** is akin to the work performed by a court reporter or stenographer.
- (b) **“Administrative Service Engagement”** denotes an engagement that is strictly limited to the provision of neutral **administrative services**.¹² If a **professional** working independently or for a **service provider organization** provides **attorney-supervised services**, the engagement cannot be considered to be **administrative services engagement**, but rather a **professional services engagement**.¹³
- (c) **“Attorney-Supervised Services”** denotes the delivery of **services** by a **professional** who is not licensed to practice law, and not specifically engaged as legal counsel, in furtherance of tasks delegated to the **professional** by a licensed attorney working for a **client** dealing with the interpretation or formulation of evidence requiring some professional judgment in furtherance of the attorney's representation of her or his

¹² Compare with a **professional services engagement** that may include, but is not limited to, the delivery of **administrative services**.

¹³ An **administrative services engagement** may include situations under which a **professional**, working independently or for a **service provider organization** or **technology provider organization**, has incidental, expressly limited access to privileged or attorney work product information, provided the professional is not otherwise offering or being requested by the **client** or its designated agent to include any **attorney-supervised services**. See **“Professional services engagement.”**

client's interests. Any **engagement** that includes **attorney-supervised services** is considered to be a **professional services engagement**.

- (d) **"Client"** denotes one or more individuals or entities that enter into an **engagement** with a **professional** or **service provider organization** for the provision of **services**. A client may be the individual or entity formally entering into an **engagement**, as well as those who are defined in the engagement as intended direct beneficiaries of the **services** to be provided.
- (e) **"Client Information"** denotes information obtained by a professional during the course of an engagement, or a series of engagements, relating to a client and the provision of services to that client. Distinguish from **discovery data**.
- (f) **"Consulting Services"** denotes advisory or assurance-related **services**, as well as project management services, provided by a **professional**, working independently or through a **service provider organization** or **technology service provider**, engaged by and for the benefit of a **client**, while not serving as legal counsel to the **client**.
- (g) **"Discovery Data"** denotes information provided to a **professional** or **service provider organization**, for purpose of performing of legal technology processes and **services** related to an **engagement**. Distinguish from **client information**.
- (h) **"Engagement"** denotes an arrangement between a **service provider organization**, **technology provider organization**, or independent **professional** to provide the delivery of **services** or **technology** in connection with discovery, disclosure, information governance, or other related business or legal functions.
- (i) **"Expert Services"** denotes **services** provided by a **professional**, working independently or through a **service provider organization**, engaged by and for the benefit of a **client**, as a non-testifying consultant or a testifying subject matter expert in accordance with the Federal Rules of Evidence or state-law equivalent.
- (j) **"Informed Consent"** denotes a process for obtaining permission from a **client** prior to taking action by communicating adequate information and explaining the material risks and reasonably available alternatives. Informed consent to proceed has been obtained only when a **client** demonstrates knowledge of the material facts and risks related to a proposed action, and an understanding and appreciation of the potential implications and consequences of that action.
- (k) **"Neutral Services"** denotes **services** provided by a **professional**, working independently or through a **service provider organization**, engaged by and for the benefit of multiple parties, at the direction or with the authority or approval of a court or administrative body. Neutral services may include serving as a moderator, arbitrator, special master, or other form of court-appointment.

- (l) **“Professional”** denotes an individual who provides legal technology **services** as their vocation either directly or through a **service provider organization**, as well as any management, administrative, marketing, sales, human resources, and other related personnel working for a **service provider organization**.
- (m) **“Professional Services Engagement”** denotes an engagement under which an individual **professional** or **service provider organization** is retained and supervised by a **client** or its designated agent (e.g., outside counsel), to provide **consulting services**, non-neutral services, or **attorney-supervised services**.¹⁴ By way of example, a **professional services engagement** includes, but is not necessarily limited to, any **engagement** under which a **professional**, working independently or through a **service provider organization**, gains knowledge of privileged information, attorney work product, or litigation or information governance strategy, including thoughts and process specific to a case, or its planning and *modus operandi* over multiple cases (e.g., through a managed services arrangement).¹⁵
- (n) **“Provider”** denotes generically a professional working independently, a service provider organization, or a technology provider organization.
- (o) **“Services”** denotes the provision of strategies or legal technology services related to discovery, disclosure, or information governance, including identification, preservation, collection, processing, analysis, review, production, and presentation of information.
- (p) **“Service Provider Organization”** denotes a corporation, partnership, or other legal entity under which **professionals** join together for the business purpose of providing **professional services** to **clients** as a group.
- (q) **“Technology”** denotes the provision of software, as well as associated hardware, related to discovery, disclosure, or information governance, including identification, preservation, collection, processing, analysis, review, production, and presentation of information.
- (r) **“Technology Provider Organization”** denotes a corporation, partnership, or other legal entity under which **professionals** join together for the business purpose of selling **technology**, along with limited services related solely to supporting the delivery and use of that **technology**.

¹⁴ While a **professional services engagement** might include the delivery of **administrative services**, it does not denote an **engagement** limited to the delivery of **administrative services**.

¹⁵ See Footnote **Error! Bookmark not defined.**