A Checklist for Getting the Most Out of Your E-Discovery Vendor Relationship

Vendor Selection

- Methods of Selection
  - RFPS
  - SOWs
  - Engagement Letters
- Resources to Identify Vendors
  - Previous RFPs
  - Request for Information (RFI)
  - Peer Recommendations
    - ILTA site
  - Industry Groups

Vendor Security/Confidentiality

- Security
  - Can vendor provide formal documentation on physical security parameters of their data processing facility?
  - Does the vendor have formal policies for data security and management?
  - What certifications does the vendor have around data security?
  - Has the vendor hired a third party to evaluate their data security and/or compliance with applicable regulations, including HIPAA and HITECH?
  - Is the vendor processing center ISO27001 certified? SAS70 certified?
  - How often are the security policies reviewed and updated?
  - Has the vendor had any security breaches or incidents involving potential exposure of PII or PHI in the last three years?
    - If so, please list them.
  - Does the vendor have a data security team or data security officer on site at your facility?
  - How many people within the organization are specifically tasked with managing and maintaining the security and integrity of client data?
  - What levels of security are enacted for physical access to the data processing facility?
    - Key Card?
    - Man Trap?
    - Biometric Access?
    - Video Surveillance?
  - Is the vendor Safe Harbor certified to allow international data transfer?
  - Will work be completed entirely onsite, will data be transmitted physically or electronically to a processing/hosting facility, or will all collections be performed remotely?
  - Is data going to be hosted in a specific physical environment or on a cloud-based server?
What components related to data privacy and specifically, PII, PCI, and PHI data are included in contracts, especially those related to indemnification, liability limitations, and insurance requirements?

- **Confidentiality**
  - What experience do you have working with and representing financial organizations, healthcare organizations or other organizations dealing with highly confidential data, PII, PCI, PHI?
  - HIPAA/HITECH related data
  - Have you undertaken any specific efforts to comply with the new regulations around HIPAA & HITECH?
  - PCI Data
  - Have you undertaken efforts to achieve PCI Compliance?
  - PII Data
  - What special efforts are utilized to manage communication of PII?
  - Data encryption in transit?
  - Data encryption at rest?
  - Secured email systems that password encrypt data files/attachments?
  - Limitations on sending key PII data (social security numbers, bank account numbers) via regular email?
  - Confidentiality agreements
  - Conflict check/management
Kick-off Meeting

After outside vendor has been identified and contract, SOW, engagement letter executed

- Schedule a call for all parties to meet
- Introduce each member of the team
  o Name
  o Role on Team
- Establish the SPOC (Single Point of Contact) for Vendor and Client
  o Explain SPOC roles and communicate procedures for client and vendor teams
- Establish communication schedules and forms
  o Calls
  o Email
  o Dashboard
  o Reports (which fields included)
  o Frequency of project plan/deadline updates
    o Expected information in weekly/monthly updates
    o Will all calls be followed up with written recap by vendor to ensure accurate communication?
- Change management process
  o Change logs
  o Establish who can make changes
- Review report formats and delivery schedule. Review any necessary report format modifications or custom reports and their estimated costs, if any.
- Expectation Setting
  o Initial cost estimates and what services/deliverables are included in this scope
  o Expected time for completion of various project deliverables as well as overall project time
  o External project deadlines
- Is formal Early Case Assessment necessary/useful in this matter
- Form of Production discussion
  o Metadata fields required in database
  o Native production vs hybrid
  o Tiff, OCR, Redactions and Log formats
  o Specific coding needs for production export may require vendor to create specialized routines, get this ironed out before production deadline
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Helpful Hints:

- Consider establishing level of technical expertise of key members of project team, so appropriate/accessible language is used
- Encourage client to communicate all deadlines proactively – no surprises that could possibly be avoided.
- Encourage vendor to proactively communicate at all times and outline expectations of delivery turn-around such as data loading, creating productions, processing for analytics.
# Points of Contact

<table>
<thead>
<tr>
<th>Name</th>
<th>Client/Firm /Vendor</th>
<th>Role</th>
<th>Email</th>
<th>Phone Number</th>
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## Meeting Notes

### In Attendance

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### Points of Discussion

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### Action Items

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### Matter Name

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Technology

- What systems will be utilized?
  - Collection
  - Culling/Processing
  - Review Platform/Host Data

- Collection
  - Identify potential sources of data, ESI (Electronically Sourced Information) and priorities
    - Initial custodians
    - International data?
    - Identify systems at client location(s) for collection
      - Email
      - Network
      - Data Management System (DMS)
      - Cloud based systems
      - Specialized Databases
  - Which method of collection needs to be utilized?
    - Forensic collection
      - Does vendor have forensic collection methods or will third party need to be hired?
    - Client Collection
      - Targeted Collection
      - Collection Tool
    - Collection Vendor
  - Chain of Custody Forms
  - Outline priorities for collection, processing, review and production
  - Outline custodian priorities that may affect deduplication methods
• **Culling**
  - Will the data be culled in culling only software or in Review Platform?
    - How will the data be culled?
      - Search terms
      - Date range
  - Initial reporting of search term hits to validate search term list
  - If data is in culling software
    - Confirm full family pulled for search terms, date search
  - If data is culled in Review Platform
    - Will the data be coded or near-lined?
  - How will this process be documented for future use and to share with opposing counsel?

• **Processing**
  - Consider what will be needed per production order
  - Specifications to consider:
    - time zone selection
    - compound document information
    - email settings
    - use of NIST
    - track changes information
    - hidden information within files
    - text extraction
    - OCR when needed
    - deduplication
      - MD5 or SHA?
      - Global or custodian based?
      - Are Email attachments deduped for review only?
  - Reporting
    - Exception Report after data is processed?
    - Deduplication reporting (when necessary)
  - Export for Review Platform
    - Data
      - Which metadata fields are required for database and production order
      - Additional fields needed for tracking
        - Custodian
        - Collection Source
        - Collection Date
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- **Images**
  - Tiffs or Export Natives for Review (Tiff on the Fly in Review Platform)
- **Extracted Text/OCR**
- **Natives**

- **Review Platform**
  - What platforms are available from vendor and which are best suited for the matter?
    - Identify legal team members that will need access
    - What are the costs associated with this access, monthly user fees?
    - Separate permissions for different types of reviewers?
  - Automated workflow within review platform
    - What are the steps?
  - Are there additional tools/analytics available that would assist in culling data pool?
    - Initial reporting of search term hits to validate search term list
  - Is predictive coding available for review?
    - Is it appropriate for the matter?
    - If so, who will be responsible for ‘training’ initial document population (seed set)?
  - Review Protocol needed from client/outside counsel
    - Coding layout – what will the reviewers look for
      - (Is there a separate charge for creating coding layout?)
    - Privilege fields coded
    - Redaction of metadata fields needed?
    - What updates/reports will be generated?
    - How often will updates/reports on review be provided?
    - What fields/metrics will be included?
    - Is there a separate Review project manager?
    - What does Review QC process look like?
    - Can the review software auto translate foreign language documents?
  - Redactions
    - Can the user Tiff on the Fly for redactions?
    - black box or white box?
  - Who handles production?
    - Client, vendor, or law firm?
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- **Production Format**
  - Footer Information
    - Bates Labeling
    - Confidential footer
  - Image Format
    - Single-page Tiffs
    - Multi-page PDFS
    - Note: Once produced, will production documents be hosted by vendor (for use by legal team)?
  - Additional cost for this?
  - Load Files
    - Format specified in production order
    - Metadata fields included
  - Extracted Text/OCR (for Redacted Only)
  - Natives
    - Naming format?
  - Production Media
    - Encryption software to be used for production?
    - Standardized password format?
    - Once produced, will production documents be hosted by vendor (for use by legal team)? Additional cost for this?
  - Final Production QC
    - Have vendor mail production copy and file copy to producing party and not directly to opposing counsel

- **Production Issues**
  - How to handle issues with production?
  - Identify source of issue

- **Privilege log creation**
  - Can fields be exported from review software by end user?
  - Can client user do this or will vendor project manager have to do this?
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**Database Management**
- Who is managing the database – vendor/client?
- Is vendor available 24/7?
- Is database available 24/7?
- Disaster recovery plan?
- Consider a test run of data through all phases, ASAP, to confirm load/export formats and viability of database workflow

**Training**
- Who is training users – vendor/client?
- User support coverage 24/7?
- Are training materials sufficient and have they been distributed?

**Codify Reporting**
- Schedule
  - Who creates the reports and who receives them?
  - Formats
- Available Customization
- Online / Real time reporting available via client dashboard?
- Understand extent of workflow automation at vendor and its impact on through-put, staffing and reporting
- Will additional QC steps need to be put in place?
- Confirm any and all data transfer methods between vendor and client(s) and any necessary infrastructure modifications, passwords, etc.

**Codify Billing**
- Invoices to
  - Firm(s)
  - Law Dept
- Who is authorized to request additional work/changes?
- How will scope change, change requests be addressed from billing perspective? (change order vs amendment to SOW)
- Who will/will not be checking invoices?
- What is invoice schedule/format?
  - Client matter number(s)
  - Task codes
- Request and “okay” Vendor sample invoice
- Confirm cost, time and procedures associated with removing data from vendor, if necessary.
**Project Post-Mortem**

- Data Remediation Options
- Vendor storage of data results (onsite, near-line, off-line)
- Vendor destruction of data
- Vendor returns data to client
- Every case should include a follow up call/report identifying key milestones in a case, what worked well, what problems were encountered and how were they resolved?