

Lexbe Sample ESI Production Appendix¹

This sample ESI Production Appendix² regarding production of electronically stored information governs production of electronically stored information (“ESI”) in this case.

1. Paginated Versions of Documents. All documents to be produced will be converted to a paginated version as a PDF and/or TIFF images (“Paginated Document”), as provided in this section:

(a) Produced PDFs will be in the form of one PDF file per document, multi-page as applicable (Produced PDFs). A PDF produced as a Paginated Document will not be encrypted or otherwise include settings to impair searchability, copying or print. Embedded images will not be reduced or below 300 dpi.

(b) TIFF images produced as Paginated Documents will be in the form of single-page Tagged Image File Format images (Produced TIFFs) and shall be saved and produced in the Group 4 compression single-page TIFF format. Each of the Produced TIFF files will be accompanied with a corresponding text file containing extracted or OCR text.

(c) All Produced PDFs and Produced TIFFs generated from hard copy documents shall be scanned as 300 dpi resolution.

(d) All Paginated Documents shall reflect to the extent practicable, without visual degradation, the full and complete information contained on the original document.

(e) A PDF or TIFF placeholder will be generated for any file that cannot be converted as a Paginated Document. In each case, a corresponding native document will be produced, subject to withholding for privilege or work-product.

(f) Documents that contain color in a manner material to the meaning or understanding of the document, shall be produced as a Paginated Document in color. If a party is producing Paginated Documents as Produced PDFs, then the Produced PDF conversion settings will include settings that preserve color to the extent practicable. If a party is producing Paginated Documents as Produced TIFFs, then the producing party shall also produce color PDFs for such Paginated Documents, or substitute color PNG or JPG images for TIFF Images.

(g) A Paginated Document may truncate pagination after a limit of at least 100 pages. In such cases the native version will be made available, subject to redaction limitations.

¹ This sample form is provided as a courtesy by Lexbe for use by experienced attorneys AS IS, and should be customized for the particular jurisdiction, case, court and circumstances. These provisions are a subset of Lexbe’s sample ESI Protocol, which is available on request. For background, see our Webinar: Negotiating a State of the Art eDiscovery protocol, available on demand at the Lexbe website. If you have any questions or comments, or would like specific consultation, please contact us.

² The production protocol can be implemented as an agreement between litigants, or in the form of an appendix to a case scheduling order, or to an ESI Agreement or Protocol, or similar document, with appropriate modifications.
Lexbe Sample eDiscovery Production Appendix (Rev 1-2020)

2. Redactions.

a) Files that must be redacted pursuant to any applicable protective order or applicable law, should be produced as Produced PDFs or Produced TIFFs in redacted form, with applicable TIFF text files or PDF text layers, containing extracted or OCR'd text acquired after redaction.

b) Native documents corresponding with redacted documents may be withheld from production, or a party may employ native redaction techniques so long as the method of redaction employed does not significantly impair the usability or searchability of the redacted item and the fact of alteration is disclosed.

c) Redactions must be logged in the manner of any other responsive material withheld on claims of privilege.

d) If the items redacted and partially withheld from production are PowerPoint-type presentation decks or Excel-type spreadsheets, and the native versions are also withheld, then the entire Paginated Document must be produced as a Produced PDF or Produced TIFF, including all unprivileged pages, hidden fields and other information that does not print when opened as last saved by the custodian or end-user. For PowerPoint-type presentation decks, this shall include, but is not limited to, any speaker notes. For Excel-type spreadsheets, this shall include, but is not limited to, hidden rows and columns, all cell values, annotations and notes.

e) The producing party shall also make reasonable efforts on request to ensure that any spreadsheets produced only as Produced PDFs or Produced TIFFs are formatted so as to be legible. For example, column widths should be formatted so that the numbers in the column will display readable content rather than "#####."

f) If the items redacted and partially withheld from production are audio/visual files, the producing party shall provide the unredacted portions of the content. If the content is a voice recording, the parties shall meet and confer to discuss the appropriate manner for the producing party to produce the unredacted portion of the content.

h) A party may not make any redactions based upon the purported relevancy or non-relevancy of a document.

OPTION 1 - ALL NATIVES EXCEPT PRIVILEGED & REDACTED

3. Native Files. The parties will also produce native files corresponding with all produced documents, with the exception of native files that correspond to produced Paginated Documents that have been redacted, or native files that are containers of files (e.g., .Zip, .RAR, other archive files, or .msg, .pst or other email files) that contain privileged, work-product or redacted information.

OPTION 2 - ONLY SPREADSHEETS AND PRESENTATIONS

3. Native Files. The parties will not be required to produce native files corresponding with produced Paginated Documents, with the exception of spreadsheets (e.g. Excel), presentations (e.g., PowerPoint), databases or other documents that cannot be converted to a Paginated Document without material loss in data or presentation. A receiving party may request other native documents as needed, and supplemental production will not be unreasonably withheld. All documents that have not converted to a Paginated Document (e.g., placeholder files), shall be produced in native format unless they contain privileged, work-product or redacted information.

OPTION 3 - NO NATIVES EXCEPT WITH CAUSE

3. Native Files. The parties will not be required to produce native files corresponding with produced Paginated Documents, without a good cause showing. A receiving party may request native documents as needed, with reasons why the Paginated Document version does not provide adequate information. Any native documents so produced may be redacted as needed for PII or privilege using native redaction tools.

4. Parent-Child Relationships. Parent-child relationships (e.g., the association between emails and attachments) will be preserved. Email attachments will be consecutively produced with the parent email, and families associated using attachment range metadata as specified in Appendix A. If a scanned document is more than one page, the unitization of the document and any attachments shall be maintained as it existed in the original when creating the Paginated Document. For documents that contain affixed notes, the pages will be scanned both with and without the notes, and those pages will be treated as part of the same document. The relationship of documents in a document collection (e.g., cover letter and enclosures, email and attachments, binder containing multiple documents or other documents where a parent-child relationship exists between the documents) shall be maintained through the scanning or conversion process. If more than one level of parent-child relationship exists, documents will be kept in order, but all will be treated as children of the initial parent document.

5. Bates Numbering. All produced Paginated Documents will include a legible, unique page identifier (“Bates Number”) electronically embossed onto each page at a location that is reasonably intended to not obliterate, conceal or interfere with any information from the Paginated Document. No other legend or stamp will be placed on the Paginated Document other than a confidentiality legend (where applicable), redactions (consistent with any other protective orders or applicable law), any applicable protective orders and, if desired by a party, a document control number separate from the Bates Number. With respect to the identification of files produced in their native format, the parties shall identify each file produced using the Bates Number as the name, and link in the applicable loadfile. Bates number must be unique across the entire document production, maintain a constant length (0-padded) across the entire production, contain no special characters or embedded spaces, and (4) be sequential within a given document. The Bates number must not obscure any part of an underlying Paginated Document. If the placement in the lower right-hand corner will result in obscuring the underlying Paginated Document, the Bates number should be placed as near to that position as possible while preserving the underlying Paginated Document.

6. File Naming Conventions. Each Produced PDF Paginated Document file will be named with the beginning Bates Number. Each Produced TIFF image and corresponding text file shall be named with the unique Bates Number of the page of document. In the event the Bates Number contains a symbol and/or

character that cannot be included in a file name, the symbol and/or character will be omitted from the file name.

7. Load Files. The parties shall produce load files that are compatible with commercially acceptable standards, including a ‘Concordance DAT/OPT’ load file and a ‘Summation DII’ load file, to accompany the Paginated Documents. Each load file shall include metadata and other information about the Paginated Documents through a document management or litigation support database system, including the fields in Appendix A. The parties shall meet and confer to the extent reasonably necessary to facilitate the import and use of the produced materials with commercially available document management or litigation support software.

8. Extracted Text/OCRed Text. For produced documents that exist natively in electronic format that have not been redacted and that are produced as Paginated Documents, the parties shall produce extracted text files reflecting the full text that has been electronically extracted from the original, native electronic files. The parties will produce corresponding extracted text (for native files and/or optical character recognition (“OCR”) text for TIFF or other images) files for all hard-copy documents and any electronic documents produced. For Produced TIFFs, the OCR and extracted text files shall be produced in ASCII text format, and shall be included with the load files. These text files will be named with the unique Bates Number of the first page of the corresponding document followed by the extension “.txt.” For Produced PDFs, extracted or OCRed text shall be embedded in the PDF file in an accessible text layer. The OCR and extracted text files shall be produced in a manner suitable for importing the information into commercially available document management or litigation support software.

9. Exception Files. The parties will make reasonable efforts to identify documents that cannot be processed or converted to a Paginated Document due to technical difficulties (such as corruption, password protection, digital rights management or proprietary software associated to the file) as exception files. Identified exception files will be identifiable by placeholder file and/or a log that includes each file’s name, custodian and reason for the exception. The parties will make reasonable efforts to ensure that documents produced in native form are decrypted (or that passwords are supplied).

10. Inadvertent Production of Privileged Materials (“Claw-back”). In the event that a producing party claims that it inadvertently failed to designate any production materials or other information as privileged or work-product materials, it shall promptly notify all parties to whom such privileged material was produced or disclosed of the producing party’s intent to assert a claim of privilege or work-product over such materials. Upon such notice, the receiving party, if it intends to challenge the designation of the document(s), shall immediately sequester all copies of the document(s), pending Court resolution of the challenge, and shall view and use the document(s) at issue only to the extent necessary to challenge the privilege claim. The document(s) that the receiving party intends to challenge shall only be submitted to the Court under seal for an in-camera review. If the receiving party does not intend to challenge the designation of the document(s), the receiving party shall promptly refrain from further copying or distribution of the subject materials and return or destroy all copies of the subject materials. Where the parties agree, or the Court orders, that an inadvertently produced document is protected by the attorney-client, work-product or other privilege, and such document was originally produced in electronic

format on media containing production materials that are not subject to any exemption from production, the producing party shall promptly provide replacement production to the receiving party. The inadvertent production by any producing party, whether in this action or in any other proceedings, of materials subject to a claim of privilege or work-product shall not result in a waiver of any such protection in this action for the produced materials or for any other privileged or immune materials containing the same or similar subject matter. Nor shall the fact of an inadvertent production by any producing party in this action be used as a basis for arguing that a claim of privilege or work-product has been waived in any other proceeding.

11. Receipt of Privileged Information. Nothing in this ESI Production Appendix shall relieve counsel for any receiving party of any existing duty or obligation, whether established by case law, rule of court, regulation or other source, to return, and not to review, any privileged or work-product materials without being requested by the producing party to do so. Rather, in the event a receiving party becomes aware that it is in possession of what appears to be an inadvertently produced privileged document, then counsel for the receiving party shall immediately: (i) cease any further review of that document; and (ii) notify the producing party of the apparent inadvertent production, requesting whether the producing party intended for the document to be produced. In the event the producing party confirms the inadvertent production of the privileged document, the receiving party shall promptly return or destroy all copies of the inadvertently produced privileged document in its possession and take reasonable steps to retrieve all copies of the inadvertently produced privileged documents distributed to other counsel or non-parties.

Appendix A: Metadata Fields to be Included in Load Files

Field Name	Data Example	Field Description
BEGDOC	XYZ 00000178	Bates number of first page.
ENDDOC	XYZ 00000178	Bates number of last page.
BEGATT	XYZ 00000177	Bates number of first page of attachment range. Blank if no attachments.
ENDATT	XYZ 00000179	Bates number of last page of attachment range. Blank if no attachments.
ATTACHMENT	XYZ 00000178; XYZ 00000179	Semicolon separated list of Bates number of first page of each attachment.
PARENTID	XYZ 00000177	It refers to the main email body that the attachments belong to. Bates number of first page of parent. Only populated for attachments.
RECORDTYPE	eEmail	Possible values include Email (Email body), Attachment (Email Attachment), eDoc (Native file).
DATESENT	04/15/2012	Date email was sent in the format MM/DD/YYYY using local time zone provided. If no local time is provided, Universal Time (formerly GMT) is used.
TIMESENT	02:45:22 PM	Time email was sent in the format HH:MM:SS XM using local time zone provided. If no local time is provided, Universal Time (formerly GMT) is used.
DATERECEIVED	04/15/2012	Date email was received in the format MM/DD/YYYY using local time zone provided. If no local time is provided, Universal Time (formerly GMT) is used.
TIMERECEIVED	02:45:22 PM	Time email was received in the format HH:MM:SS XM using local time zone provided. If no local time is provided, Universal Time (formerly GMT) is used.
DATECREATED	04/15/2012	It will show the date that the native file is stored in the properties of the file, when it was first created.
TIMECREATED	02:45:22 PM	Time native file was created in the format HH:MM:SS XM using local time zone provided. If no local time is provided, Universal Time (formerly GMT) is used.
DATEMODIFIED	04/15/2012	Date Last Modified for native files in the format MM/DD/YYYY using local time zone provided. If no local time is provided, Universal Time (formerly GMT) is used.
TIMEMODIFIED	02:45:22 PM	Time native file was modified in the format HH:MM:SS XM using local time zone provided. If no local time is provided, Universal Time (formerly GMT) is used.

LASTMODIFIEDBY	Alex Murphy	The name of the author who was the last person to make changes to the native file(s).
AUTHOR	Jacob Brown	Author for Native files.
FROM	Adam Brooks	Author for Native files. Sender for Emails.
TO	John Doe (jdoe@domain.com);	Semicolon separated list of Recipients for Email. The exact value depends on multiple factors including the email client address book. This includes name, email address, and/or Moniker.
CC	John Junior (jjunior@domain.com);	Semicolon separated list of Carbon Copy Recipients for Email. The exact value depends on multiple factors including the email client address book. This includes name, email address, and/or Moniker.
BCC	Sarah Smith (ssmith@domain.com)	Semicolon separated list of Blank Carbon Copy Recipients for Email. The exact value depends on multiple factors including the email client address book. This includes name, email address, and/or Moniker.
SUBJECT	Meeting time changed	Subject of the email.
FILENAME	Proposed Retainer - clean copy	Filename without extension of the native file.
FILEEXTENSION	.doc	File extension of native file.
VOLUME	PROD_IMG001	Fixed.
ORIGINALSPATH	\ORIGINALS\001\XYZ 00000177.xlsx	Relative file path of Native files.
PAGES	20	Number of pages if file was converted to PDF or TIFF.
SOURCEFILEPATH	ORIGINALS\001\XYZ 00000177.xlsx	Relative file path of Native files. It refers to the Folder Path within Microsoft Outlook and keeping folders and subfolders information.
TEXTPATH	\TEXT\001\XYZ 00000177.TXT	Relative file path of Extracted / OCR text.
PDFPATH	\PDF\0001\TEST 0000001.pdf	Relative file path of PDF files.
CUSTODIAN	Malta	Custodian associated with Original (native) file.
MD5	C8054025235FBRA26E4BC242A EF543B6	Incoming MD5 of Original (native) file.