

# WHAT IS INTEGRATED DOCUMENT REVIEW?

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Given the potential shortcomings of all-in-one offerings, a smarter approach is needed to eliminate bottlenecks and inefficiencies caused by piecemealing. What is required is not just the bundling of e-discovery services, but their integration. Integrated Document Review, or IDR, is a relatively new concept within the e-discovery and document review industries. IDR is designed to align incentives correctly, to maximize the value of outside counsel's work, and to create systemic efficiencies that overcome the limitations of piecemeal approaches, where costs are shifted but not reduced.

Integrated Document Review offerings are based on these fundamental principles:

## ONE-STOP SHOP

IDR includes the core steps needed in any basic document review, from processing through production. In addition, the IDR provider should offer all the additional steps that may or may not be required for a particular case such as data identification, global data collection, structured data analysis, and data reuse, all backed by defensibility testimony. The breadth of such an offering means that inefficiencies from hand-offs and "too many cooks" are wrung out of the e-discovery and document review process.

## PREDICTABLE PER-UNIT PRICE

IDR offerings should be priced to enable clients to predict not only the total cost of document discovery near the beginning of the process, but as importantly, assure that the provider's incentives are aligned with the company's. Time-intensive and unpredictable tasks, such as redactions, will typically not be included in the per-unit price. Ancillary options, such as collections or structured data analysis, may be included or charged separately.

Two models have evolved. Under either model, the price is based upon assumptions about the scope and complexity of the review.

- Through a per-gigabyte model, corporations pay a flat rate determined by the number of gigabytes relevant in a matter for everything from collection or processing through to production. The per-

gigabyte price is often based on "inbound" data, or the collected volumes. A tension exists here between the client's desire to pre-cull the data at the time of collection (a strategy that saves cost but may entail legal risks of underproduction and spoliation), and the safer approach of culling only after data has been processed in order to preserve all collected documents. To understand and compare per-gigabyte models, the underlying assumptions for survival after processing, de-duplication, and culling should be exposed.

- With a per-document pricing model, clients pay a flat fee for each document reviewed after data is collected and processed. This "outbound" model means that with a previous agreement on processing and culling strategies, the client is not charged for the volume of data processed or hosted. Before the data is collected and processed, however, the number of documents to be reviewed can only be estimated. Per-document prices are therefore most predictable once documents count is known.

As a result of the predictable, all-in price, the IDR provider takes responsibility for making the whole complicated process efficient, rather than externalizing cost to other parts of the process.

IDR is an all-in-one offering, and clients should not face surprise fees or need to contract with other providers or firms to clean up what the original review missed. The premise of IDR offerings is that one price will cover all essential steps in the e-discovery and review process. The risk of longer review times is to some extent shifted from client to the IDR provider, who over a series of cases will gain the experience necessary to predict review effort and duration. The provider will also have an incentive to process and review as efficiently as possible, since (unlike the piecemealing model), the cost of inefficiency is not shifted to the client. It is important to note that efficiency is not simply equivalent to speed—speed can be increased by degrading quality; efficiency means that review is performed as fast as possible at the desired, demonstrable quality level. Apart from potential internal efficiencies, in-house counsel or the law firm will have to manage

fewer vendors, and will have a single point of accountability.

An additional source of efficiency lies in the institutional knowledge an IDR provider will gain when employed for several matters. The provider will have understanding of the client's IT systems, collection issues or retention policies, as well as knowing the custodians, documents, and factors affecting privilege calls, such as who the inside and outside counsel are or what types of privileged documents exist.

### **THREE DIMENSIONS OF EFFECTIVE INTEGRATION**

The essential difference between flawed all-in-one offerings and those that work is the level of integration. Under the ideal IDR approach, the integration of review services and technology should have three dimensions: (1) two or more vendors are integrated into one accountable provider; (2) counsel's role and substantive guidance is integrated with the entire review process; and (3) review technology and the review processes/methodologies are integrated.

#### **INTEGRATE TWO OR MORE PROVIDERS INTO ONE ACCOUNTABLE PROVIDER**

To overcome the risks and costs of piecemealing, IDR provides organizational integration. Clients only have to manage one contract and one integrated provider, and the accountability is with one provider rather than many. There is no finger-pointing. Less time is spent on contract negotiations and vendor management, and the legal team is freed up to focus on their core concerns. Project management for e-discovery and document review is the core competency of the IDR provider. This integration eliminates the competition between various service providers, technology companies and law firms. The shell game of hiding costs or shifting them to another EDRM step is eliminated.

#### **INTEGRATE AND COLLABORATE WITH OUTSIDE COUNSEL THROUGHOUT THE ENTIRE PROCESS**

In IDR offerings, from the very beginning, the relationship with the law firms should be treated as a partnership. The challenge lies in bringing counsel's substantive guidance and strategic direction directly into the review. This cannot happen by lip service alone; it requires integrating workflows that go beyond simple training of review attorneys and a technological solution. To be effective, the IDR offering must achieve technological integration

of outside counsel and collaborative workflows to embed substantive guidance from the law firm throughout the review. This collaboration must work in two directions: counsel must provide substantive guidance and must receive effective feedback of the review findings to permit fact-based strategic decision-making.

Traditionally, counsel provide substantive guidance through memoranda summarizing the case and the request underlying the review (whether it is a complaint, discovery request, or investigative demand), and perhaps a short orientation for review attorneys at the beginning of a review. But this is not all that can or should be done. One innovative approach is to have counsel participate in the creation of a "reference set" of documents at the beginning of the review which demonstrates and incorporates counsel's coding expectations for responsive, hot, or privileged documents. The reference set can be leveraged through integration in the review assignments or through predictive coding technology. The reference set guides reviewers as they work through the documents, improving accuracy and speed of review. It should be refined and expanded throughout the review.

Integration with outside counsel also requires meaningful and ongoing feedback. Throughout the process, as "hot" and other relevant documents surface, the law firm should receive immediate access to the information in order to develop and refine case strategies, rather than having to wait until the end of a "first pass" review. As the review progresses, the integration with the law firm allows the provider to modify the reference set and review instructions, minimizing and potentially eliminating the need for re-review and additional costs.

#### **INTEGRATE REVIEW TECHNOLOGY AND THE REVIEW PROCESS**

Though it may seem counter-intuitive, an IDR provider should not be "tool agnostic." Advanced legal review tools, such as those with visualization, can dramatically reduce the overall cost of legal review. Also, technology should leverage counsel's substantive guidance more than a binder with review instructions can. Reference-set documents embedded within the review tool will guide the reviewers better than notes scribbled in the margins of a training memo. Speed and consistency will improve. As the sophistication of the review tools used by an IDR provider increases, the cost benefits and quality advantages of the integrated solution also increase. And when an IDR provider uses their own legal

review technology, some additional, and perhaps less apparent, benefits to corporate clients become available, such as:

- IDR providers that invest heavily in research and development for their review software ensure that clients will continue to benefit from innovation and advanced features.
- With hosted offerings, law firms and corporate clients can access the data from their desks with a simple login. This provides transparency to the process and enables the full legal team to review relevant materials as they are tagged, and without delay.
- As data volumes grow, predictive coding—the propagation of coding decisions to uncoded documents—is increasingly viewed as a probable and necessary option for cost-effective review of large data sets. The efficiency and defensibility of predictive coding has yet to be proven, however. New software features available help bridge a gap between the current human review process and tomorrow’s predictive coding. These features preserve human review decisions by guiding decisions through concept-clustering of documents and the integration of reference documents into the review. Review decisions become more consistent and faster, without relinquishing control over the substantive decisions for each document.

In addition to these key strengths of a correctly integrated offering, additional benefits to the corporation are attainable.

### SAFE AND DEFENSIBLE PROCESS

A proven track record is important. IDR providers should have considerable experience in managing legal review for thousands of matters, from large, multi-year and multi-district litigation to smaller, internal investigations and regulatory requests handled in a matter of days. With this experience, the provider develops best practices in a process that includes quality control, transparent integration of substantive guidance from counsel, and the ability to testify to the integrity of the process.

### STATISTICAL SAMPLING

The quality of document review provided should be ratified not only through training, technological integration of substantive guidance and careful quality-assurance, but also through statistical validation of the document review. Statistical sampling has recently been

endorsed by the Sedona Conferences’ Commentary on Achieving Quality in the E-Discovery Process:

Statistical sampling can ... be used to measure the probable error rate for a project, a key custodian’s documents, or even for a specific document reviewer. An acceptable error rate can be defined and document groups with error rates above this threshold can be re-reviewed and re-tested until the results meet or exceed the quality standard.

The IDR model makes statistical sampling more practically achievable, since review technology and review processes—including quality control—are integrated. IDR providers should have both the ability to put in place an effective sampling methodology and the experts to monitor the processes and testify to their integrity. The larger point here is the importance of review quality: the provider should have the incentive to work efficiently while maintaining quality, and statistical sampling is one means of demonstrating review quality to counsel, the client, the opponent, and the court.

### GLOBAL REACH

European data privacy laws can sometimes require in-country data collection and review. A large and increasing number of matters involve international companies or subsidiaries, and data that resides around the world. A true all-in-one provider will not require clients to contract with multiple firms for data collection and review, but instead will have the people and resources to deploy anywhere in the world and meet any data privacy requirements. This broad reach is also an important consideration when the corporate control of sensitive data is a priority for the client.

#### FOR MORE INFORMATION ABOUT FTI

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