

## APPENDIX B

### DISCOVERY AND INSPECTION OF ELECTRONIC DOCUMENTS

#### **Part 1: Agreed electronic discovery protocol**

##### **(1) Scope of electronic discovery**

- (a) General discovery of the following class or classes of electronically stored documents shall be given:

[*eg* Electronic mail, correspondence, letters, *etc.*]

- (b) The party giving discovery shall take reasonable steps to decrypt encrypted files or encrypted storage locations, media or devices in order to identify discoverable electronically stored documents. This may include taking reasonable steps to obtain the decryption code and/or using reasonable technical means to perform decryption of the encrypted files or encrypted storage locations, media or devices.
- (c) For the avoidance of doubt, electronically stored documents residing in folders or directories in storage locations, media or devices, including folders or directories where temporarily deleted files are located (for example the Recycle Bin folder or Trash folder) are within the scope of general discovery; deleted files or file fragments containing information which are recoverable through the use of computer forensic tools or techniques during a forensic inspection of the unallocated file space or file slack are **not** within the scope of general discovery.
- (d) **Reasonable search.** The search terms or phrases specified in the first column will be used in the conduct of a reasonable search for relevant electronically stored

documents. The reasonable search will be limited by the scope described in the second column.

| <i>Search term or phrase</i> | <i>Scope</i>                                                                                                                                                                                                                     |
|------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| [Specify the keyword(s).]    | [Describe the scope of the search by reference to physical or logical storage locations, media or devices, the period during which the requested electronically stored document was created, modified or received, <i>etc.</i> ] |

**(2) Format of list**

The list of documents shall categorise and list electronically stored documents separately from documents in printed or other form. The list of documents enumerating electronically stored documents shall include the following columns:

[*eg* description of the electronically stored document, the name of the corresponding soft copy file, the file format (and its version) of the electronic document, the hash value of the file, *etc*]

An index of documents enumerated in the list of documents shall be provided in an electronic spreadsheet in the [*eg* Excel 2007 Binary (.xls), Comma Separated Value (.csv), *etc*] file format.

**(3) Review for privileged material**

Nothing in this protocol shall prevent the party giving discovery from reviewing the documents in any list provided hereunder for the purpose of claiming privilege. If the party giving discovery claims privilege over any document or record, he shall list the electronic documents or class of electronic documents over which privilege is claimed in the list of documents.

**(4) Inspection and copies**

- (a) **Arrangements for inspection.** The place for inspection of discoverable electronic documents should be stated separately if it is different from the place for inspection of other discoverable documents. If the party entitled to inspect intends to inspect through or with the assistance of its appointed computer expert, such computer

expert shall provide an undertaking of confidentiality to the party giving inspection before he commences his inspection.

- (b) **Supply of copies.** During inspection, copies shall not be taken. If copies are required, a request should be made. Electronic copies of discoverable documents will be supplied in their native format and in read-only optical discs upon request. Electronic copies of discoverable documents where privilege is claimed only with respect to their internally stored metadata information will be supplied in the Tagged Image File Format (or TIFF) with privileged metadata information removed. For each of the read-only optical discs supplied, a further list stating the storage format (and its version) of the optical disc and enumerating the list of electronic documents stored therein shall be provided.

**(5) Inspection of computer databases and electronic media or recording devices**

Parties agree that the protocol for inspection of computer databases and electronic media or recording devices (Appendix M Part 2) shall apply for the inspection of the following:

[List the computer databases, electronic media or recording devices]

**(6) Inadvertent disclosure of privileged documents**

Notwithstanding compliance with the procedures in this protocol, nothing in this protocol is intended to be or shall be taken to amount to a waiver of privilege.

**(7) Discovery and production only if necessary**

For the avoidance of doubt, nothing in this protocol shall compel any party to give discovery of any document or produce any document for inspection which is not otherwise discoverable under Order 24, Rules 7 or 13 of the Rules of Court.

## **Part 2**

### **Protocol for Inspection of Computer Databases and Electronic Media or Recording Devices**

**(1) Appointment of computer experts**

**(a) Joint appointment.**

The party producing the computer database, electronic medium or recording device for inspection (“**the Producing Party**”) and the party entitled to inspection of the computer database, electronic medium or recording device (“**the Inspecting Party**”), may jointly appoint a computer expert (“**the Joint Expert**”) for the purpose of making a forensic copy of such computer database, electronic medium or recording device (“**the Original Acquired Image**”). The Joint Expert’s role shall be restricted to the acquisition of the Original Acquired Image and the performance of a reasonable search on a copy of the Original Acquired Image in accordance with the terms of this protocol. Before the Joint Expert commences his appointment, he shall provide an undertaking of confidentiality to the Court and to all parties concerned in the inspection. He shall also procure a similar undertaking from each of his employees, representatives, agents or sub-contractors involved in the engagement.

**(b) Costs and expenses of Joint Expert.**

All costs and expenses relating to the appointment of the Joint Expert under this protocol shall initially be borne equally between the Producing Party and the Inspecting Party. Nothing in this protocol is intended to or shall be taken to prevent any party to the cause or matter from seeking the recovery of such costs and expenses in accordance with the Rules of Court.

**(c) Individual appointments.**

Nothing in this protocol shall prevent the Producing Party, the Inspecting Party and any other party concerned in the inspection from appointing his own computer expert.

**(2) Acquisition of the Original Acquired Image**

**(a) Where Joint Expert appointed.**

The Joint Expert shall acquire the Original Acquired Image under the supervision of all parties concerned in the inspection, their representatives or computer experts. Sufficient copies of the Original Acquired Image shall be made as necessary in order that the Producing Party and each Inspecting Party may be supplied with an electronic copy of the Original Acquired Image. The Joint Expert shall provide sufficient information with the copy of the Original Acquired Image to enable the party's computer expert to access the copy supplied. The Original Acquired Image shall be sealed and delivered to the custody of the Producing Party, who shall enumerate it in a list of documents to be filed under Order 24 of the Rules of Court.

**(b) Where Joint Expert not appointed.**

The Producing Party's computer expert shall be responsible for acquiring the Original Acquired Image under the supervision of all parties concerned in the inspection, their representatives or computer experts. Sufficient copies of the Original Acquired Image shall be made as necessary for the purposes of inspection and reasonable search to be provided under this protocol. The Original Acquired Image shall be sealed and delivered to the custody of the Producing Party, who shall enumerate it in a list of documents to be filed under Order 24 of the Rules of Court.

**(c) Original Acquired Image to be produced when ordered by Court.**

The party to whose custody the sealed Original Acquired Image has been delivered shall not tamper with or break the seal, and shall produce the Original Acquired Image to the Court or such other person(s) as the Court may direct.

**(3) Safeguards for reasonable search**

This paragraph applies in situations where a reasonable search is conducted on the contents of a copy of the Original Acquired Image.

***Where Joint Expert appointed***

**(a) Conduct of reasonable search.**

The Inspecting Party shall specify or describe the search terms or phrases to be used in a reasonable search to be conducted on the contents of a copy of the Original Acquired Image to the Producing Party and the Joint Expert.

If the Producing Party does not object to the search terms or phrases so specified or described, he shall communicate his consent to the Joint Expert and the Inspecting Party. The Joint Expert shall make arrangements for the conduct of the reasonable search on a copy of the Original Acquired Image under the supervision of all parties concerned in the inspection, their representatives or computer experts.

If the Producing Party objects to any or all of the search terms or phrases so specified or described, he shall forthwith inform the Joint Expert. The parties shall resolve such objections before any further steps are taken for the conduct of the reasonable search. The Joint Expert shall not take any further steps for the conduct of the reasonable search until:

- (i) he is informed by the Producing Party of his consent to the original search terms or phrases; or
- (ii) the Inspecting Party specifies or describes a new set of search terms or phrases and to which the Producing Party provides his consent in accordance with this sub-paragraph.

A copy of the documents or records that are the results of the reasonable search (“**the Search Results**”) shall be made and released to the Producing Party.

**(b) Review for privileged material.**

The Producing Party shall be at liberty to review the Search Results for the purpose of claiming privilege. If the Producing Party claims privilege over any document

or record from the Search Results, he shall list the electronic documents or records over which privilege is claimed.

(c) **Release for inspection.**

Thereafter, the Joint Expert shall remove copies of any documents or records over which privilege is claimed from the Search Results (“**the Redacted Search Results**”). The Joint Expert may maintain a separate privilege log which records the documents or records which are thus removed and the reasons given for doing so. For the avoidance of doubt, the privilege log shall not be included in the Joint Expert’s report but the Joint Expert shall produce the privilege log to the Court if so directed by the Court. The Redacted Search Results shall be released to the Inspecting Party for inspection together with the list of electronic documents or records over which privilege is claimed.

***Where Joint Expert not appointed***

(d) **Conduct of reasonable search.**

The Inspecting Party shall specify or describe the search terms or phrases to be used in a reasonable search to be conducted on the contents of a copy of the Original Acquired Image to the Producing Party. If the Producing Party objects to any or all of the search terms or phrases so specified or described, parties shall resolve such objections before any further steps are taken for the conduct of the reasonable search. Upon resolution of any objections or if the Producing Party consents to the specified or described search terms or phrases, he shall make arrangements for his computer expert to conduct the requested reasonable search on a copy of the Original Acquired Image under the supervision of all parties concerned in the inspection, their representatives or computer experts.

(e) **Review for privileged material.**

The Producing Party shall be at liberty to review the Search Results for the purpose of claiming privilege. If the Producing Party claims privilege over any document

or record from the Search Results, he shall list the electronic documents or records over which privilege is claimed.

(f) **Release for inspection.**

Thereafter, the Producing Party shall remove copies of any documents or records over which privilege is claimed from the Search Results. The Redacted Search Results shall be released to the Inspecting Party for inspection together with the list of electronic documents or records over which privilege is claimed.

(4) **Safeguards for forensic examination**

This paragraph applies to the forensic examination of a copy of the Original Acquired Image for the purpose of identifying electronically stored documents thereon or for the recovery of deleted files or file fragments from the unallocated file space or file slack using computer forensic tools or techniques. A Joint Expert shall be appointed for the purpose of such forensic examination.

- (a) **Conduct of forensic examination.** The Inspecting Party shall specify or describe the search terms or phrases to be used in the forensic examination to be conducted on the contents of a copy of the Original Acquired Image to the Joint Expert. The Joint Expert shall not at any time disclose to the Producing Party the search terms or phrases specified or described by the Inspecting Party and shall not include the search terms or phrases in his report. For the avoidance of doubt, the Joint Expert shall disclose the search terms or phrases to the Court if so directed by the Court. The Joint Expert shall make arrangements for the conduct of the forensic examination on a copy of the Original Acquired Image. Neither the Inspecting Party nor the Producing Party, or any of their solicitors, computer experts, employees, representatives or agents shall be present during the conduct of the forensic examination. A copy of the documents or records that are the results of the reasonable search (“the Search Results”) shall be made and released to the Producing Party. The Producing Party is not entitled to a copy, and shall not request the Joint Expert for a copy, of the search terms or phrases specified or described by the Inspecting Party.

(b) **Review for privileged material.**

The Joint Expert and the Producing Party shall jointly review the Search Results for the purpose of permitting the Producing Party to identify electronically stored



documents, deleted files or file fragments over which he claims privilege. If the Producing Party claims privilege over any electronically stored documents, deleted files or file fragments from the Search Results, he shall identify them to the Joint Expert. The Producing Party shall list the electronic documents, deleted files or file fragments over which privilege is claimed.

**(c) Release for inspection.**

Thereafter, the Joint Expert shall remove copies of any electronic documents, deleted files or file fragments over which privilege is claimed from the Search Results (“the Redacted Search Results”). The Joint Expert may maintain a separate privilege log which records the electronic documents, deleted files or file fragments which are thus removed and the reasons provided for the removal. For the avoidance of doubt, the privilege log shall not be included in the Joint Expert’s report but the Joint Expert shall produce the privilege log to the Court if so directed by the Court. The Redacted Search Results shall be released to the Inspecting Party for inspection together with the Producing Party’s list of electronic documents, deleted files or file fragments over which privilege is claimed.

**(5) Inadvertent disclosure of privileged documents**

Notwithstanding compliance with the procedures in this protocol, nothing in this protocol is intended to be or shall be taken to amount to a waiver of privilege.

**(6) Discovery and production only if necessary**

For the avoidance of doubt, nothing in this protocol shall compel any party to give discovery of any document or produce any document for inspection which is not otherwise discoverable under Order 24, Rules 7 or 13 of the Rules of Court.

## Part 3

### Reasonably Usable Formats

| File Format                                 | Version                                                                                                                                                                                                                                                                                          |
|---------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                             |                                                                                                                                                                                                                                                                                                  |
| <i>Office Documents</i>                     |                                                                                                                                                                                                                                                                                                  |
| Hypertext Markup Language                   | HTML 4.01 or ISO/IEC 15445:2000                                                                                                                                                                                                                                                                  |
| Extensible Hypertext Markup Language        | XHTML 2.0                                                                                                                                                                                                                                                                                        |
| Rich Text Format (RTF)                      | RTF 1.9.1                                                                                                                                                                                                                                                                                        |
| Plaintext Format                            |                                                                                                                                                                                                                                                                                                  |
| Portable Document Format (PDF)              |                                                                                                                                                                                                                                                                                                  |
| Microsoft Office file formats               | Word 97 - 2007 Binary File Format (.doc) Specification<br>PowerPoint 97 - 2007 Binary File Format (.ppt) Specification<br>Excel 97 - 2007 Binary File Format (.xls) Specification<br>Excel 2007 Binary File Format (.xlsb) Specification<br>Office Drawing 97 - 2007 Binary Format Specification |
|                                             |                                                                                                                                                                                                                                                                                                  |
| <i>Electronic Mail</i>                      |                                                                                                                                                                                                                                                                                                  |
| Multipurpose Internet Mail Extension (MIME) | RFC 5322                                                                                                                                                                                                                                                                                         |
| .eml                                        | Mozilla Thunderbird, Windows Mail and Microsoft Outlook Express e-mail messages                                                                                                                                                                                                                  |
| .msg                                        | Microsoft Office Outlook e-mail messages                                                                                                                                                                                                                                                         |
|                                             |                                                                                                                                                                                                                                                                                                  |
| <i>Images</i>                               |                                                                                                                                                                                                                                                                                                  |
| Joint Photographic Experts Group (JPEG)     | ISO/IEC 10918-1                                                                                                                                                                                                                                                                                  |
| JPEG 2000                                   | ISO/IEC 15444-1:2000                                                                                                                                                                                                                                                                             |
| Portable Network Graphics (PNG)             | ISO/IEC 15948:2004                                                                                                                                                                                                                                                                               |
| Tagged Image File Format                    | TIFF or ISO 12639:1998                                                                                                                                                                                                                                                                           |
| Portable Document Format                    | PDF 1.7 or ISO 32000-1:2008                                                                                                                                                                                                                                                                      |
|                                             |                                                                                                                                                                                                                                                                                                  |
| <i>Audio</i>                                |                                                                                                                                                                                                                                                                                                  |
| MPEG-1 Audio Layer 3 (MP3)                  | ISO/IEC 11172-3                                                                                                                                                                                                                                                                                  |
| Advanced Audio Coding (AAC)                 | ISO/IEC 14496-3:2001                                                                                                                                                                                                                                                                             |
|                                             |                                                                                                                                                                                                                                                                                                  |
| <i>Video</i>                                |                                                                                                                                                                                                                                                                                                  |

|                                                         |                       |
|---------------------------------------------------------|-----------------------|
| Moving Picture Experts Group<br>(MPEG-1)                | ISO/IEC-11172         |
| H.264                                                   | ITU-T H.264           |
| MPEG-4 Part 10 or MPEG-4<br>AVC (Advanced Video Coding) | ISO/IEC 14496-10:2003 |
|                                                         |                       |
| <i>Multimedia container formats</i>                     |                       |
| Audio Video Interleave                                  |                       |
| QuickTime File Format                                   |                       |
| MPEG-4 Part 14                                          | ISO/IEC 14496-14:2003 |