

Sample Language for Preservation of Electronic Evidence

Dear _____:

Plaintiff/Defendants consider electronic data to be a valuable and irreplaceable source of discovery and/or evidence in this matter. The laws and rules prohibiting destruction of evidence apply to electronic data with the same force as they apply to other kinds of evidence. Plaintiff/Defendant's recent discovery requests seek Plaintiff/Defendants' electronic data in its native format. An electronic document printed on paper does not preserve the totality of information which is in the electronic file, and therefore does not suffice to fully preserve evidence.

Pending further discovery concerning the layout and configuration of defendants' computer systems and electronic data sets, and pending any further agreement of the parties as to preservation of electronic evidence, the following safeguards against destruction of evidence should be maintained until the final resolution of this issue.

Please provide a copy of this letter to the persons whose job responsibilities cover the matters addressed herein.

1. **Electronic Data to be Preserved:** The following types of electronic data should be preserved, in accordance with the steps set forth in subparagraphs a - i below:

- a. All electronic mail and information about electronic mail (including message contents, header information, and logs of electronic mail system usage) sent or received by

_____;

- b. All other electronic mail and information about electronic mail (including message contents, header information, and logs of electronic mail system usage) containing information about

_____;

- c. All databases (including all records and fields and structural information in such databases), containing any reference to and/or information about

_____;

- d. All logs of activity on computer systems, which may have been used to process or store electronic data containing information about _____;

- e. All word-processing files containing information about _____
_____;
- f. With regard to electronic data created by application programs which process financial, accounting, and billing information, all electronic data files containing information about _____
_____;
- g. All files containing information from electronic calendars and scheduling programs regarding _____
_____;
- h. All electronic data files created or used by electronic spreadsheet programs, where such data files contain information about _____
_____;
- i. All other electronic data containing information about _____
_____.

2. **Replacement of Data Storage Devices:** Do not dispose of any electronic data storage devices and/or media which may be replaced due to failure and/or upgrade and/or other reasons that may contain electronic data meeting the criteria listed in paragraph 1 above.

3. **Fixed Drives on stand alone Personal Computers and Network Workstations:** With regard to electronic data meeting the criteria listed in paragraph 1 above, which existed on fixed drives attached to stand alone desktop computers or laptops and/or network workstations at the time of this letter's delivery: do not alter or erase such electronic data, and do not perform other procedures (such as data compression and disk de-fragmentation or optimization routines) which may impact such data, unless a bit-stream copy has been made of such hard drive. Such copies shall be preserved for the duration of this litigation.

4. **Programs and Utilities:** Preserve copies of all application programs and utilities which may be used to process electronic data covered by this letter.

5. **Log of System Modifications:** Maintain an activity log to document modifications made to any electronic data processing system that may affect the system's capability to process any electronic data meeting the criteria listed in paragraph 1 above, regardless of whether such modifications were made by employees, contractors, vendors and/or any other third-parties.

6. **Personal Computers Used by _____ and/or their Assistants:** The following steps should immediately be taken in regard to all personal computers used by _____ and/or their assistants.

a. As to fixed drivers attached to such computers, a bit-stream copy should be made of all electronic data on such fixed drivers relating to

. This bit-stream copy will include all active files and the unallocated space of the hard drive. Such copies should be preserved until this matter reaches its final resolution.

b. All floppy disks, CDs, DVDs, USB drives, magnetic tapes and cartridges, and other media used in connection with such computers prior to the date of delivery of this letter containing any electronic data relating to _____, should be collected, copied and put into storage for the duration of this lawsuit.

c. All data on any handheld devices (e.g., Palm Pilot, Blackberry) shall be preserved by creating a bit-stream copy of the device, which copy shall be preserved for the duration of this lawsuit.

7. **Evidence Created Subsequent to this Letter:** With regard to electronic data created subsequent to the date of delivery of this letter, relevant evidence should not be destroyed and defendants should take whatever steps are appropriate to avoid destruction of evidence.

Please do not hesitate to contact me if you have any questions.