

## SAMPLE DOCUMENT PRESERVATION NOTICE<sup>1</sup>

To: *[Distribution list, stated here or attached]*

From: *[GC or other senior in-house lawyer; if company has no in-house counsel, the notice may be issued by a senior executive uninvolved in the matter under investigation, or, as a last resort, by outside counsel]*

Date: *[Date]*

Re: Document Preservation Notice

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### **Confidential Document Preservation Notice**

**This document preservation notice is strictly confidential should not be discussed outside of: (i) internal discussions necessary for document preservation and compliance; or (ii) communications with company counsel.**

*[For a purely internal investigation:]*

An internal inquiry is being conducted by company counsel regarding *[general description of subject matter of investigation]*. The fact that such an inquiry is being conducted is not cause for alarm, but it should of course be treated as confidential within the company.

In order to facilitate the internal inquiry and comply with the company's legal obligations, ***it is vital that all documents and data described below are preserved*** and that all routine or other disposal or deletion of such materials be suspended immediately.

*[In response to a government subpoena:]*

*[Company]* has received a subpoena from *[government office or agency]* that will require the collection and production of certain company documents in connection with an investigation of *[general description of subject matter of investigation]*. *[Company]* intends to cooperate with the *[office/agency]* investigation and will fully comply with the subpoena. The fact that such an inquiry is being conducted is not cause for alarm, but it should of course be treated as confidential within the company.

In order to comply with the subpoena, ***it is vital that all documents described below are preserved***, and that all routine or other destruction or deletion of such materials be suspended until further notice.

**Types of Documents:** Specifically, you must take all necessary steps to ensure that the following types of documents are preserved:

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<sup>1</sup> Please check with either Steve Byers ([sbyers@crowell.com](mailto:sbyers@crowell.com)) or John Davis ([jdavis@crowell.com](mailto:jdavis@crowell.com)) to ensure you have the latest version of this template if this version is dated more than six months ago.

- [specify categories of documents to be preserved; if responding to a subpoena, adhere to the specifications in the subpoena and edit sparingly – use an attachment if necessary]

**Location and Form of Documents:** The documents identified above must be maintained regardless of where they are located or the form in which they are stored, for example:

- Hard-copy documents stored
  - in your office,
  - in common or shared storage areas,
  - at any other company facility,
  - in off-site storage facilities,
  - at your home; and
- Electronic documents stored
  - on company computer servers,
  - in company databases,
  - on company *or* personal desktop or laptop computers,
  - in company *or* personal email accounts,
  - in company *or* personal instant-messaging accounts,
  - in company *or* personal voice mail boxes,
  - on company *or* personal smart phones or tablets *including text messages*,
  - in company *or* personal cloud storage repositories,
  - on portable electronic media such as external hard drives, thumb drives or CDs.

Note. There is no distinction between “official” company files and your “personal” files. All potentially relevant documents that you wrote, compiled or received must be preserved, including any copies you have saved separately from any “official” or “company” file. This is so even if such documents are maintained on your personal platforms, cloud storage, social media accounts, personal communications services and applications, personal devices or other repositories that you control.

**Meaning of “Documents”:** You must interpret the term “documents” broadly to include all types of hard-copy and electronic documents and data, including emails, instant messages, text messages, voice mail recordings, computer input or output, the contents of computer hard drives, and data in any other form in which data may be stored.

**Other Instructions:**

- These document preservation instructions take precedence over all other documents management policies or programs. Please take all necessary steps to suspend routine document destruction activities that might threaten covered documents, including documents that may be stored off-site (e.g., on your phone; in the cloud), and the automatic deletion or overwriting of data.
- **If you are in doubt** as to whether any documents should be preserved, you should **err on the side of preservation**.

- Originals *and* all copies, including drafts, of relevant documents must be preserved.
- If you are aware of anyone who has custody of or access to the categories of documents described above and was not included on the distribution list for this notice, please notify me immediately.
- Do not forward or distribute this notice.

***Your compliance with the instructions in this notice is essential.*** Any alteration, removal or destruction of relevant documents or data may be a violation of law that could result in adverse consequences for the responsible individual(s) and/or the company.

Please promptly confirm by reply email to [issuing attorney name and email address] that you have received, reviewed and will comply with the instructions in this notice.

Please also keep in mind the confidential nature of this preservation notice and the related inquiry.

If you have any questions about these instructions, please call me at [issuing attorney phone number].

Thank you for your cooperation.