



DEPARTMENT OF ADMINISTRATION

Enterprise Policy

LEGAL SERVICES- LITIGATION HOLD-2010

DIVISION OF LEGAL SERVICES

Litigation Hold Policy

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1. Objective

- a. Court rules and case law require a party to take steps to preserve potential relevant evidence in whatever form when litigation has been filed or is reasonably anticipated or foreseeable in order to avoid potential court sanctions. The consequences of a failure to preserve will vary depending on the circumstances, but may include: regulatory fines and penalties; civil litigation consequences such as increased litigation costs, fines, adverse inference instructions, default judgment and civil contempt; vicarious liability for responsible senior management; and criminal liability for organizations and individuals.¹

2. General Policy

- a. This document sets forth the authority and process for initiating, implementing, monitoring, and releasing litigation holds. This policy applies to all potential evidence in whatever form owned or under the control of the Department of Administration ("Department") when litigation against the Department, or an employee acting within the scope of employment, has been filed or is reasonably anticipated or foreseeable. This policy also applies to litigation that has been filed, or is reasonably anticipated or foreseeable to be filed, on behalf of the Department.
- b. This policy suspends any records retention policy that would otherwise authorize destruction, deletion or disposal of such potential evidence.

3. Procedures

a. Relation to Records Retention Policy

Upon receipt of a Litigation Hold Notice, or when litigation is otherwise reasonably anticipated or foreseen, Affected Parties shall immediately suspend destruction, deletion, or disposal of Records that are Potential Evidence. This policy supersedes any provision of a records retention policy that would otherwise authorize destruction, deletion or disposal of such Potential Evidence. In accordance with this Policy, the Administrator shall send written notice to the Secretary of State to suspend destruction, deletion or disposal of Records in the Secretary of State's control that are Potential Evidence.

b. Trigger Events and Duty to Preserve

Employees have a duty to preserve Potential Evidence when litigation to which the Department is a party is initiated, or is reasonably anticipated or foreseeable. Employees

¹ The Sedona Guidelines: Best Practice Guidelines & Commentary for Managing Information & Records in the Electronic Age (2nd Ed. November 2007), p.6.

must immediately conserve Potential Evidence in such circumstances and suspend deletion, destruction, purging, overwriting or disposal even if a litigation hold has not been issued.

- (i) **Duty to Preserve Evidence whether or not a Litigation Hold Notice has been issued.** Employees have a duty to preserve Potential Evidence when litigation to which the Department is a party is initiated, or is reasonably anticipated or foreseeable, even if a litigation hold is not issued.
- (ii) **When Litigation is initiated against the Department.** Litigation is initiated against the Department when a complaint or petition is filed or served.
- (iii) **When Litigation is reasonably anticipated or foreseeable against the Department.** The following is a non-exhaustive list of events that may indicate whether litigation is reasonably anticipated or foreseeable against the Department:
 - 1. Receiving a document preservation request or notice letter from an adverse party or legal counsel;
 - 2. Receipt of a communication threatening litigation;
 - 3. Notice of an administrative claim or complaint;
 - 4. A complaint was made to an external or internal investigatory agency or unit;
 - 5. Similar past experience or circumstances resulted in known and significant litigation;
 - 6. Violation of a statutory or regulatory obligation;
 - 7. Receipt of a cease and desist letter;
 - 8. Department notice based on "key player" knowledge;
 - 9. Events occurred that resulted in known and significant injury;
 - 10. Receipt or anticipation of receipt of a subpoena;
 - 11. Government audit or investigation;
 - 12. Press or media reports suggest litigation is likely; or,
 - 13. Receipt of an APRA request similar to those preceding other law suits or otherwise indicative of litigation
- (iv) **When litigation is initiated or reasonably anticipated or foreseeable by the Department against another party.** The following is a non-exhaustive list of events that may indicate whether litigation is reasonably anticipated or foreseeable by the Department against another party:
 - 1. When the litigation is authorized by the Director or other authorized party;
 - 2. When litigation is filed;
 - 3. When a formal demand mentioning litigation is sent;
 - 4. Sending a documentation preservation letter;
 - 5. A time frame and strategy for litigation is discussed or established;

6. Similar past experience or circumstances resulted in known and significant litigation;
7. Events occurred that resulted in known and significant injury;
8. There have been serious internal management discussions regarding potential litigation; or,
9. When an examination of records is made to determine whether a claim or litigation shall be initiated.

c. Duty to Notify the Administrator of Legal Services

Any employee who becomes aware of litigation to which the Department is a party, or is reasonably anticipated or foreseeable, shall immediately notify his/her immediate Division Head. Such Division Head shall immediately notify in writing the Administrator of Legal Services (" Administrator").

d. Decision to Initiate Litigation Hold Notice and Implementation

The Administrator, or the attorney handling the matter in consultation with the Administrator, shall make a good faith and reasonable written evaluation² of the relevant facts and circumstances as they are known at the time to determine whether litigation to which the Department is a party is initiated, or is reasonably anticipated or foreseeable and whether to initiate a Litigation Hold Notice, the scope of the hold³ with a response consistent with this Policy and the identification of Affected Parties. Later facts or

² Making a determination as to whether litigation is reasonably anticipated requires considerations of many different factors. Depending on the nature of the organization making the analysis and the nature of the litigation, factors that might be pertinent to consider could include:

- The nature and specificity of the complaint or threat;
- The party making the claim;
- The position of the party making the claim;
- The business relationship between the accused and accusing parties;
- Whether the threat is direct, implied or inferred;
- Whether the party making the claim is known to be aggressive or litigious;
- Whether a party who could assert a claim is aware of the claim;
- The strength, scope or value of a potential claim;
- The likelihood that data relating to the claim will be lost or destroyed;
- The significance of the data to the known or reasonably anticipated issues;
- Whether the company [Department] has learned of similar claims;
- The experience of the industry;
- Whether the records are being retained for some other reason; and
- Press and industry coverage of the issue either directly pertaining to the client [Department], or of complaints brought against someone similarly situated in the industry.

The preceding list of factors is not exhaustive; they and other considerations must be weighed reasonably and in good faith in the context of what steps are reasonable and practicable as well as the scope and burden of an anticipated litigation hold. The Sedona Conference Commentary on Legal Holds, p. 9 (August 2007).

³ In determining the scope of information that should be preserved, the nature of the issues raised in the matter, experience in similar circumstances and the accessibility of the information are factors that may be considered ... Organizations should be cautious in determining whether to preserve inaccessible data; the Federal Rules Committee has stated that, "[a] party's identification of the sources of ESI as not reasonably accessible does not relieve the party of its common-law or statutory duty to preserve evidence." (quoting Fed. R. Civ. P. 26(b)(2)(B)(2006 Committee Note). Id. at pp.13-14.

information may require the Administrator to reevaluate/amend such determination. The Administrator shall:

- (i.) Advise whether litigation to which the Department may be a party is reasonably anticipated or foreseeable;
- (ii.) Determine a response consistent with this Policy;
- (iii.) Understand where and how ESI is stored within Department, including architecture of the server(s);
- (iv.) Direct that retention schedules be suspended so as to preserve records and other Potential Evidence as provided in this Policy;
- (v.) Coordinate consistent preservation and production advice and practices for the particular matter;
- (vi.) Identify Affected Parties reasonably expected to have Potential Evidence and to whom to send a Litigation Hold Notice;
- (vii.) Issue, confirm, receipt of, and take appropriate follow-up action concerning Litigation Hold Notices;
- (viii.) Identify the need to engage internal IT personnel or external consultants to preserve existing ESI and ESI created after the Litigation Hold Notice is issued;
- (ix.) Develop written preservation plan(s) if and when deemed appropriate;
- (x.) Work with Department information technology personnel to determine the accessibility of various ESI forms, and the cost and feasibility of accessing and/or preserving such data for litigation or potential litigation;
- (xi.) Help individuals comply with the Legal Hold Notice;
- (xii.) Ensure follow-up; and/or
- (xiii.) Such other actions deemed advisable by the Administrator.

The Administrator may delegate any duty under this Policy to his or designee(s), including but not limited to the formation of a Litigation Response Team to coordinate efforts to preserve Potential Evidence. In addition to member(s) of DO A's Legal Division and depending on the circumstances, such team may include, but not be limited to, representatives from IT, HR, etc. The Litigation Response Team may delegate certain of its responsibilities to one or more team members.

The Administrator may determine that a written preservation plan is needed if and when it deems appropriate such as when the litigation or reasonably anticipated or foreseeable litigation will contain a large quantity of records, where control over potential evidence resides in multiple locations throughout the Department or which focuses on the Department's management of records, such as public records litigation. A written preservation plan may include, but not be limited to, the following information: Affected Parties and contact information; when the Litigation Hold Notice(s), any amendments thereto and reasons therefore and any Potential Evidence Checklist/Verification Form (s) was/were sent; the time and response of the Affected Parties; notification to the Secretary of State to suspend destruction of Records; the time and nature of follow-up contacts with

the Affected Parties, including notes from any interviews conducted; and/or any other information as deemed appropriate by the Administrator.

Examples of preservation methods may include, but not be limited to:

- (i.) For ESI - suspension of auto-delete program(s); securing or imaging a hard-drive; securing and preserving a backup tape or backup media; and /or sequestering or archiving information/records.
- (ii.) For paper records - making photocopies, sequestering original paper records to protect from loss, destruction or alteration; and/or storage at the contracted Department's off-site facility approved by the Secretary of State for the storage of Records.
- (iii.) Any instruction contained in the Litigation Hold Notice.

Whenever possible, Potential Evidence shall be maintained in its native format.

a. Issuance of a Litigation Hold Notice

- (i.) Upon determination a Litigation Hold Notice should be issued, the Administrator shall notify the Affected Parties in writing that a litigation hold has been initiated. See Exhibit I for an example of a Litigation Hold Notice - THIS IS ONLY AN EXAMPLE AND THE LITIGATION HOLD NOTICE MUST ALWAYS BE ADAPTED TO THE SPECIFIC FACTS AND UPDATED WITH CURRENT CASE LAW. Litigation Hold Notice shall inform the Affected Parties of their obligation to identify and immediately preserve all Potential Evidence that may be relevant to the Litigation Hold Notice. The Litigation Hold Notice shall ask the recipient to confirm receipt and indicate within ten (10) calendar days (or sooner if the Litigation Hold Notice directs a shorter time period) whether the recipient has: (1) Potential Evidence, the form and location of such Potential Evidence and whether the recipient has taken steps to preserve it; or No Potential Evidence responsive to the Litigation Hold Notice; and (2) .Questions regarding the Litigation Hold Notice and need for clarification. The Litigation Hold Notice may incorporate or be followed by a potential Evidence Checklist. All Affected Parties shall respond to a Litigation Hold Notice within ten (10) calendar days or a shorter time period if directed by the Litigation Hold Notice and immediately preserve the Potential Evidence as instructed.
- (ii.) The Administrator shall meet with the Affected Parties (if it is not possible to meet, alternative communication shall occur), and any other Affected Party identified in a subsequent supplementation to the initial Litigation Hold Notice, to help the Affected Party: (1) understand the litigation hold and his/her/its obligations; (2) locate ascertain and retain all reasonably identifiable Potential Evidence in the Affected Party's possession or control; (3) notify the Secretary of State's Office to suspend destruction of Records, if applicable; (4) remind to preserve the Potential Evidence; (5) take appropriate steps to preserve Potential Evidence until advised it is no longer necessary to do so; and, (6) understand the need to preserve additional new Potential Evidence created or discovered after the litigation: hold is issued and how to handle such Potential Evidence.

f. Responsibility of Division Heads

- (i.) A Litigation Hold Notice addressed to an employee shall also copy the employee's Division Head. Such Division Head shall be responsible for the employee's compliance with the Litigation Hold Notice and the Division Head shall also certify such compliance. A Litigation Hold Notice addressed to a Division Head requires the Division Head to comply with the Litigation Hold Notice, forward such notice to appropriate staff and instruct such staff in order to comply with the Litigation Hold Notice.

g. Periodic Review and Maintenance of Litigation Hold Notices

- (i.) Once a Litigation Hold Notice has been issued, the Administrator shall at least quarterly, or as needed given the nature of the matter as the Administrator deems warranted, review existing Litigation Hold Notices to determine the need to maintain the litigation hold and/or to take additional actions. At least quarterly or more frequently given the nature of the matter as the Administrator deems warranted, the Administrator shall remind the Affected Parties in writing of the litigation hold (including any changes or expansions) and the Affected Parties' continuing obligations under the Litigation Hold Notice, requiring Affected Parties' compliance certifications. The Administrator shall take such additional steps that he/she deems warranted by the circumstances which may include, but not be limited to, the Administrator monitoring compliance with the Litigation Hold Notice.

h. Removal of Litigation Hold

- (i.) The Administrator shall determine and communicate in writing to Affected Parties when a Litigation Hold Notice shall be lifted and Potential Evidence no longer preserved because litigation is no longer pending or reasonably anticipated or foreseen. Before such communication, the Administrator shall make sure the Potential Evidence is not subject to other litigation holds. The lifting of a Litigation Hold Notice shall revive normal document retention policies.

i. Departing Employees

- (i.) All departing employees in receipt of a Litigation Hold Notice are under an obligation to inform the Administrator, the responsible attorney mentioned in the Litigation Hold Notice, and the employee's Division Head, about any impending departure from the Department in order that the Department can arrange for preservation of Potential Evidence. DO NOT send any computer or electronic equipment to IT or any other location without prior authorization from the Administrator. The Division Head of an employee in receipt of a Litigation Hold Notice shall also notify the Administrator and the responsible attorney mentioned in the Litigation Hold Notice in case of any departure of such employee for whatever reason. The Division Head shall take responsibility of any and all Potential Evidence under the control of the separated employee until further notice by the Administrator or the responsible Attorney mentioned in the Litigation Hold Notice.

j. Violations

- (i.) Violations of this policy and procedures may be subject to disciplinary action up to and including dismissal.

3. Definitions

- a. Affected Parties:** All parties including, but not limited to, employees (whether temporary, permanent, full time or part time) and their Division Heads, agents, contractors, vendors, IT or Secretary of State to which a Litigation Hold Notice is addressed.
- b. Correspondence:** includes but is not limited to, letters, telegrams, electronic mail, inter- or intra-office memoranda or communications, text messages and all other written communications whatsoever form, notes and memoranda of meetings or oral communications, sound recordings and transcripts thereof.
- c. Documents:** any paper or other writing and any item of graphic materials, however recorded or reproduced, including all drafts, copies or other preliminary material which are different from the executed or final document, regardless of whether designated "confidential", "privileged", or otherwise restricted, wherever located, whether an original or a copy, including but not limited to agreements, contracts, financial statements, invoices, minutes, worksheets, work papers, summaries and any other written records or recordings of any conferences, meetings, visits, interviews or telephone conversations, financial and statistical data, analyses, surveys, transcripts of testimony, statements, interviews, affidavits, press releases, memoranda, drafts, memo pads, notes, indices, tabulations, graphs, reports, papers, records, inter-office communications, electronic data processing charts, tapes, print-outs, papers or other recordings, tables, compilations, catalogs, telegrams, letters, photographs, diaries, calendars, drawings, data reports, printed matter, correspondence, communications received and/or sent, books, brochures, advertisements, circulars, mailings and publications; and any copy containing thereon or having attached thereto any alterations, notes, comments, or other material shall be deemed a separate document from the original or any other copy not containing such materials within the foregoing definitions.
- d. Electronically Stored Information (ESI):** Computer data or electronic recorded media of any kind that is stored in a digital medium from which it can be retrieved and examined. ESI may include, but is not limited to, information and/or documentation stored via various software programs such as: e-mail, Outlook, Word, Excel, Access, Publisher, PowerPoint, Adobe Acrobat, web pages, metadata, or any other software or electronic communication programs (including telephonic voicemail, voice messaging, text messaging, etc.) or databases. ESI may be loaded on network servers, BlackBerrys, PDAs, flash drives, CDs, DVDs, floppy disks, work computers, cell phones, laptops, electronic notebooks, or any other electronic device used to do or store Department work (including any personal devices used off-site, at home or elsewhere, for work related purposes).
- e. Litigation to which Department is a party:** This policy applies in the event of litigation filed or reasonably anticipated or foreseeable litigation to which the Department, or one or more Department employees acting within the scope of employment, is a party.

Hereafter, references in this policy to "litigation to which Department is a party" shall include when a Department employee is acting within the scope of employment.

- f. Litigation Hold Notice:** Written notification, and any changes or amendments thereto, that litigation has been filed or is reasonably anticipated or foreseeable, that requires the recipients to preserve Potential Evidence in their possession or control.
- g. Potential Evidence:** Any Record that may reasonably be expected to be requested in discovery, used in, or related to litigation to which the Department is or may reasonably anticipated or foreseen to become a party.
- h. Records:** includes Documents, Correspondence and ESL Records also includes work related Documents and Correspondence kept off-site, at home or elsewhere (including any personal devices) for work related purposes.

4. Further Information

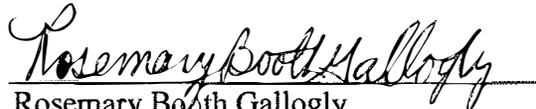
Department of Administration Legal Division: (401) 222-8880

5. Addendums

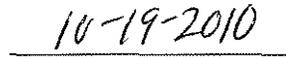
(A) Confidential-Attorney-Client Privileged/Attorney Work Product Letter

(B) Confidential-Attorney-Client Privileged/Attorney Work Product Certification

6. Signatures



Rosemary Booth Gallogly
Director, Department of Administration



Date

NOTE: THIS IS ONLY AN EXAMPLE AND THE LITIGATION HOLD NOTICE MUST ALWAYS BE ADAPTED TO THE SPECIFIC FACTS AND UPDATED WITH CURRENT CASE LAW

**CONFIDENTIAL-ATTORNEY-CLIENT PRIVILEGED/ATTORNEY WORK
PRODUCT**

To:

From:

Date:

Re: Litigation Hold

Please be advised that the Division of Legal Services represents the Department of [] and its employees (“ ”) in connection with a claim or potential lawsuit tentatively captioned as: [] (the “Litigation”).

The Litigation arises from allegations by [] against the Department of [] and certain named and unnamed State employees. The [] is required to take steps to retain and preserve documents and other information relating to []. This Memorandum describes the steps the [] should take to preserve potentially relevant evidence. If you have any questions or concerns about the requirements set forth below, please direct them to [] as soon as practicable.

FORM OF DOCUMENTS TO PRESERVE:

The [], as is true of all litigants, has a duty to preserve evidence. This duty not only includes paper records, but electronic records as well. Employees with control of paper or electronic evidence should be notified of the Litigation and instructed to take extra care in preserving documents relevant to _____ the issues involved in the Litigation.

Electronic information, such as emails and voicemails, are often deleted in the regular course of the operation of information systems. A failure to preserve evidence (both records and, electronic information, including a failure to preserve metadata - data about when files are created, edited, saved, etc.), may be punishable by sanctions imposed by the [] Court. The consequences of a failure to preserve will vary depending on the circumstances, but may include: regulatory fines and penalties; civil litigation consequences such as increased litigation costs, fines, adverse inference instructions, default judgment and civil contempt; vicarious liability for responsible senior management; and criminal liability for organizations and individuals

Because the Litigation relates to events that occurred recently and in years gone by, relevant information may be inadvertently deleted unless precautions are immediately taken to preserve and protect all relevant information.

In addition, if the [] stores paper or electronic information with outside vendors, those vendors should be identified and informed of their preservation obligations as well. These contacts should be made by counsel in order to help preserve privileged materials and to prevent the disclosure of privileged or other sensitive information.

This obligation to preserve records applies to documents of every kind, whether in hard copy or electronic form, including e-mails, voice-mail, instant messaging, letters, memoranda, notes, drawings, designs, calendars, correspondence or communications of any kind, and applies even where retention would otherwise not be required by normal document retention policies and practices.

This litigation hold shall also apply to any records retained off-site that may be subject to an automatic records retention/records destruction policy. Any such records retention/records destruction policy shall be suspended as to the documents/subject matter referenced herein until further notice.

TIME PERIOD OF DOCUMENTS TO PRESERVE:

The documents that should be preserved (described below) are those that were created on or after [] to the date hereof, or that refer to events that occurred from that date to the present [and/or or going forward] relative to:[]

SUBJECTS OF DOCUMENTS TO PRESERVE:

Whenever any lawsuit is filed or reasonably anticipated, the parties are generally required to preserve documents related to the claims and defenses at issue in the lawsuit. At this early stage of the case, it is difficult to foresee exactly which issues may become relevant to the claims and defense of this case. Therefore, until further notice, all documents should be preserved concerning [] regardless of how inconsequential or minor the documents or information may seem.

If you are uncertain as to whether to retain a document or other information, please err on the side of preservation at this time. You should direct specific questions to the [].

HOW TO PRESERVE RECORDS:

Paper Documents:

For all paper documents and files subject to this Litigation Hold that are maintained in filing cabinets or the like, and that will continue to be used from time to time in the ordinary course of business you should affix to the file cabinet or container the following note: "*Contents subject to*

[_____] litigation hold. Make and use copies only. Do not remove this label. Do not remove originals except to copy and return.”

All other paper documents subject to this Litigation Hold that can be segregated from routinely used business files should be segregated and stored in separate boxes or files. The custodian of such records should affix a note with his/her name, the date, and the following: “*Contents subject to [_____] litigation hold. Do not remove this label. Make and use copies only. Do not remove originals except to copy and return.*”

Once you have identified and labeled all filing cabinets, boxes, files or other storage areas that contain documents or information, please provide a list within ten (10) calendar days to [_____] identifying (1) your name; (2) the date on which the documents or information were identified and segregated; and (3) the location of the documents or information; and (4) a general description of the documents or information.

Electronic Documents:

Any electronic documents that may relate to this matter should be preserved. Such documents may be maintained on shared network files (such as local office file and print servers), computer hard-drives, DVDs, CD-ROMs, floppy disks, laptop computers, handheld or pocket PCs (e.g., Palm Pilots), and/or Blackberry devices. In addition, electronic documents located on an assistant’s computer and/or client-related networks should be maintained.

Upon receipt of this notice, you should restore all responsive e-mail that may be in the “Trash” of your electronic mailbox and begin saving all “Sent” e-mail that is responsive, if your practice is not to save “Sent” e-mail. Additionally, when identifying e-mail subject to this notice, please make sure that you review all messages in the “Inbox,” “Drafts,” “Sent,” “Archive,” “Trash,” and other such categorized messages.

If you have any questions about Electronic Documents and/or how to preserve them, please contact IT at [_____].

Once you have identified all the Electronic Documents, please provide a list within ten (10) calendar days to [_____] identifying (1) your name; (2) the date on which the Electronic Documents were identified; and (3) the location of the electronic documents or information; and (4) a general description of the electronic documents or information.

You must respond to this communication upon completing your search by completing the attached certification.

In summary, please take all steps necessary, including instructing other employees under your supervision, to save all documents in the State’s possession, custody or control that relate in any way to the Litigation and the _____ referenced herein. While we know this may impose a burden on the State and its employees, it is important that the State comply with the broad scope of this request until we have a better idea of the exact issues that will be involved in the Litigation. Please take the time to review where you might have any such material (including your

desk, personal computer, laptop computer, PDA, file cabinets, etc., including any such material kept off-site, at home or elsewhere, including on personal electronic devices) so as to ensure that no such material is accidentally deleted, discarded, altered or destroyed. Also, please determine whom under your supervision you should coordinate with to ensure that all appropriate persons within the DOA have been notified of this directive. This list should also be provided within ten (10) days to [_____].

Departing Employees

All departing employees in receipt of this Litigation Hold Notice are under an obligation to inform [_____], and the employee's Division Head, about any impending departure from the Department in order that the Department can arrange for preservation of Potential Evidence. DO NOT send any computer or electronic equipment to IT or any other location without prior authorization from [_____]. The Division Head of an employee in receipt of a Litigation Hold Notice shall also notify [_____] in case of any departure of such employee for whatever reason. The Division Head shall take responsibility of any and all Potential Evidence under the control of the separated employee until further notice by the [_____].

Failure to Comply

Violations of this Litigation Hold notice may be subject to disciplinary action up to and including dismissal.

IMPORTANT NOTICE: To preserve the confidentiality of [_____] information and our ability to defend the [_____], please do not discuss the Litigation with anyone, including persons inside the [_____] (except as necessary to fulfill this document preservation Litigation Hold). Staff who are contacted by persons from outside the agency, including the media, regarding the Litigation should decline the opportunity to speak, then refer the inquiry to [_____]. Likewise staff should not contact anyone from outside the agency regarding the Litigation.

NOTE: Any written communication with [_____] regarding this matter should carry the following disclaimer:

**“CONFIDENTIAL-ATTORNEY-CLIENT PRIVILEGED/ATTORNEY WORK
PRODUCT”**

cc: IT
Division Head

**CONFIDENTIAL-ATTORNEY-CLIENT PRIVILEGED/ATTORNEY WORK
PRODUCT
CERTIFICATION**

I hereby certify as follows:

_____ I have read the Litigation Hold Memo dated _____ and represent I have understood the Litigation Hold Memo, made a diligent search as requested and agree to follow the instructions contained within the Litigation Hold memo. I have no Paper or Electronic Documents (together "Documents") responsive to the request.

OR

_____ I have read the Litigation Hold Memo dated _____ and represent I have understood the Litigation Hold Memo, made a diligent search and I agree to follow the instructions contained within the Litigation Hold memo. I have identified the following Documents responsive to the request:

Date Document Identified Document Location General Description Action to Preserve

I have identified the following additional persons who may have Documents responsive to the Litigation Hold Memo _____. [I am a Division Head and have identified the following additional persons under my supervision who have Records and have supervised and monitored their collection and preservation of Records and informed them of their continuing duty to preserve the same]:

Other Comments or Questions:

Printed name

Date

I hereby certify I am the Division Head of _____ and supervised and monitored his/her collection and preservation of Records and informed him/her of his/her continuing duty to preserve the same.

Printed name

Date

Return this Certification to [_____] by _____.