**[Nonprofit Name]**

**Record Retention Policy**

**[Date of Adoption]**

**Prepared by Lawyers Alliance for New York**

**in partnership with the New York City Department of Small Business Services**

**Current as of [date]**

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***[Note: While there are a number of New York and federal laws, rules and regulations applicable to the District Management Association that require it to retain specified records and documents for varying periods of time, these is no legal requirement as such that requires it to adopt a Records Retention Policy. Adoption of such a policy is considered to be a “best corporate governance practice” and is highly recommended]***

**1. Purpose and Objectives**

The purpose of this Record Retention Policy (“Policy”) is to provide general guidelines for the identification, retention, storage, protection, and disposal of [Organization Name] (“[Name]” or “Organization”) records consistent with legal and business requirements. Failure to comply with the guidelines contained in this Policy can result in negative consequences for the Organization, including excess storage costs and inability to locate records that are needed, as well as disciplinary action for employees who fail to comply, up to and including termination. In addition, adherence to this Policy will assist the Organization in complying with legal requirements and client obligations, and responding to subpoenas and document demands. All staff (including volunteers, employees, and directors) are responsible for ensuring that accurate and complete records are identified, retained, stored, protected, and destroyed in accordance with this Policy. Volunteers handling or creating any records covered by this Policy must be supervised by at least one employee; employees are held responsible for the failure of volunteers under their supervision to comply with this Policy, for which employees may face discipline up to and including termination of employment. Volunteers who fail to comply with this Policy are also subject to consequences and may be requested to cease volunteering with the Organization.

**2. Definitions**

“Records” discussed herein refers to all business records of the Organization, including organizational, client, employee, and other written, printed, and recorded materials, as  
well as all electronic records. Records can exist in many forms, including, but not limited to (i) writings of any kind, including, for example, correspondence, reports, memoranda, notes, drafts, diaries, and calendars, and (ii) information kept in all media forms including, for example, paper, microfilm, microfiche, tapes, cartridges, diskettes, hard drives, and electronic records, such as e-mail (on both work and personal accounts) and computer files (including those stored on personal computers, handheld electronic devices, and file servers).

As set forth in this policy, the following types of Records are defined terms intended to be interpreted consistent with the definitions below:

* “Organizational Records”: Organizational documents of the Organization, including, but not limited to, the Organization’s articles of incorporation, by-laws, and submitted IRS Form 1023. Organizational records should all be retained permanently;
* “Client Records”: records pertaining to services provided to clients of the Organization in the course of any matter in which a client relationship has been established that are (a) original documents or (b) non-original documents necessary to the protection of client interests, copies of which are not also in the possession of the client;
* "Employee Records": All records pertaining to the recruitment, hiring, employment and termination of Organization’s employees that are (a) original documents or (b) non-original documents, copies of which are not also in the possession of the employee;
* “Electronic records”: records in digital form, whether maintained on file servers, in e-mail storage, as a part of any database, or in any other non-paper format;
* “Documents”: records existing in paper form, whether client, employee, organizational, or other records;
* “Other Records”: all business records of the Organization that are not Organizational Records, Client Records, or Employee Records;
* "Active records": records maintained by Organization that are pertain to ongoing representation of clients are necessary for other ongoing management or program activities of Organization of any nature; and
* "Inactive records": records that pertain to delivery of services that have been concluded or management or program activities of Organization that are not ongoing. The [Position Equivalent to Director of Administration] oversees the process of determining whether client services and management or program activities are no longer active (see Section 6.0 of this Policy).

**3. General Statement of Policy**

It is the Organization’s policy to maintain Records for so long as is necessary to (a) provide services to its clients[, including protecting client interests]; (b) comply with all legal and ethical obligations; and (c) meet the Organization’s business needs. In general, records are to be retained for the period of their active use plus the periods specified in this Policy, unless longer retention is required for historical reference, contractual, legal or regulatory requirements, or for other purposes as set forth herein. Inactive records shall be destroyed in an appropriate manner upon the expiration of the periods of retention set forth in these policies. However, all records that are Client Records, whether active or inactive, may not be destroyed without permission of the client for organizations providing legal services to clients, and[[1]](#footnote-2) any records that may reasonably be used in or may reasonably be relevant to an actual, pending or reasonably anticipated official proceeding, legal proceeding, investigation, lawsuit, inquiry or audit, including any appeal thereof (a “Legal Proceeding”) will be carefully preserved and maintained for the duration of the Legal Proceeding, in addition to any retention period set forth in this Policy. See Section 6.0 of this Policy for information on the allocation of responsibility within the Organization for implementing this Policy and determining the type of each Record.

All documents containing personal identifying information of clients, donors, volunteers, employees, directors, or any other persons, whether electronic or hard copy in any medium whatsoever, shall be created, maintained and destroyed in accordance with the protections mandated by New York State law.

**4. Exception for Documents Relevant to Ongoing or Potential Legal Proceedings**

Organization expects all officers, directors, volunteers, and employees to comply fully with any published record retention or destruction policies and schedules, provided that all officers, directors, and employees should note the following general exception to any stated destruction schedule: If you believe, or the Organization informs you, that any records are relevant to litigation, or potential litigation (i.e., a dispute that could result in litigation), then you MUST PRESERVE those records until it is determined by the [Position Equivalent to Chief Legal Officer or Executive Director] that the records are no longer needed. The [Position Equivalent to Chief Legal Officer or Executive Director] oversees the process of identifying Records relevant to ongoing or potential litigation and informing officers, directors, volunteers, and employees of such Records as appropriate. This exception supersedes any previously or subsequently established destruction schedule for those records.

All information relating to any complaints or charges brought before a federal, state, or local governmental agency, whistleblower or other internal complaint, personnel records pertaining to a complaint, charge, compliance action, or enforcement action, and all litigation documents (*e.g.*, briefs, correspondence, discovery materials, pleadings, notes and research, etc.) shall be retained until final disposition, including any appeals.

1. **Retention Guidelines for Specific Categories**

**a. Organizational Records**

All records necessary for the conduct of the Organization’s business shall be retained permanently, including, but not limited to, records that: (1) are essential to continued operations; (2) are essential to the Organization’s legal and financial status; (3) contain secret processes, formulas, or innovations which are not registered elsewhere or are otherwise related to trade secrets and other confidential matters; (4) are related to the Organization’s ownership of assets that would otherwise would be difficult or impossible to establish; or (5) are retained pursuant to a final determination or legal judgment in a Legal Proceeding. These records include, but are not limited to, the Organization’s certificate(s) of incorporation (and all amendments), the Organization’s bylaws (and all amendments), the Organization’s filings with government agencies, the Organization’s annual financial statements, the Organization’s copyright and trademark registration documents, and final legal judgments, settlement papers and releases pertaining to legal claims or actions in which the Organization was a party, the Organization’s IRS determination letters and all correspondence relating to exempt status of the organization, minutes of meetings of the Organization’s Board of Directors and Committees of the Board, the Organization’s deeds, leases, mortgage and note agreements, and records pertaining to the Organization’s merger with or purchase of any business or entity. The [Position Equivalent to Director of Administration] is responsible for ensuring that the Organization is retaining these documents and providing adequate and appropriate access to these documents to officers, directors, and employees.

**b. Client Records[[2]](#footnote-3)**

At the conclusion of each [legal matter or other] client service, all inactive client records shall be returned to the client, with photocopies of those records retained as Client Records for any period of retention set forth in this Policy. Any Client Record in any form that cannot be returned to the client for any reason shall be retained by the Organization in accordance with Appendix C, notwithstanding the retention periods set forth for other records pursuant to this Policy, and an index of documents to be retained in this manner will be prepared by the employee in possession of those Records and placed by that employee in the paper file reflecting that [legal matter or other] client service. All Client Records in electronic form that are to be preserved pursuant to this section shall be converted to document form and included in the paper file. The [Position Equivalent to Director of Administration] is responsible for implementing and overseeing these retention procedures. [Client Records in connection with legal matters may not be destroyed without written authorization from the client.]

**c. Employee Records**

The Organization should retain certain recruitment, employment, and personnel information, including personnel files reflecting performance reviews and any complaints brought against the Organization or individual employees. The Organization should also keep in the employee’s personnel file all final memoranda and correspondence reflecting performance reviews and actions against that employee, including any employee responses. Employment applications should be retained for three years. Retirement and pension records should be kept permanently. Other employment or personnel records should be retained for at least seven years. Documents pertaining to compensation decisions should be retained indefinitely. Employee Records relevant to ongoing or potential litigation must be retained according to Section 4.0 of this Policy.

**d. Documents[[3]](#footnote-4)**

All Documents and Other Records in paper form shall be retained for a period of seven years after the date upon which they are determined to be inactive under a process overseen by the [Position Equivalent to Director of Administration], unless a longer period of retention is required pursuant to this Policy. After a period of two years following the date on which organization records become inactive records, they may be [converted into electronic format and [destroyed]] [relocated to offsite storage]. Annually, records for which the seven year retention period has expired shall be destroyed in an appropriate manner, preventing the misappropriation of confidential client information or information regarding financial, personnel, or other sensitive information pertaining to the Organization’s programs and activities.

All Documents and Other Records in paper form may be converted into electronic form. All Documents and Other Records in paper form may be destroyed if the organization has converted them into electronic form. The organization must retain the Electronic Record according to Section 5.e. of this Policy.

**e. Electronic Records**

**[NOTE:** tailor to Organization’s technological capability**]**

The retention period of an Electronic Record depends on the type of its subject matter. An Electronic Record shall be retained for the same period of time as would be required if it were in paper form.

The Organization maintains three main categories of Electronic Records: emails, file server records, and database records [**NOTE:** some organizations may wish to include separate categories for records posted on blogs, websites, or messaging communications]:

* **Emails and their attachments** that are stored in employees’ Inboxes, including any Inbox subfolders that employees may create, remain in that location for six months. An automatic archiving routine runs every seven days that sweeps all emails older than six months into users’ Archives folders, where they are stored for an additional six months. [**NOTE:** these time periods can be tailored to a shorter or longer time based on the Organization’s technological capability]The same archiving routine automatically deletes any emails in employees’ Archives folder that are at least twelve months old. Employees who deem particular emails and their attachments as Client, Employee, Organizational, or Other Records which therefore require longer-term storage should save copies of them in a suitable location, such as on the file server or in a paper file in printed form. Such records then become subject to the retention policy as set forth in the appropriate section of this document.

Emails and attachments that are deleted through the automatic archiving routine or that employees elect to delete manually are deleted permanently and cannot in general be retrieved (but see backup section below).

Upon termination of employment, the contents of employees’ Inbox and Archives folders are copied to removable media, where they are retained for a period of at least one year.

* **File server records** include electronic documents that are stored on the main file server, employees’ “My Documents” folders, employees’ “Desktops”, and any other folders of employees located on Organization technological equipment. File server records that are not deleted by employees are stored indefinitely. However, the Organization’s storage capacity requires that file server records not directly related to Organization work, multiple copies of the same file server documents, paper documents scanned solely for the purpose of electronic transmission, and nonessential early drafts of finished work product be purged routinely. Periodically, inactive file server records are shifted to the file server’s Archive volume in order to facilitate file searches and browsing. File server records stored in the Archive volume are subject to the same records retention policies as those that reside on Share.

File server records that are deleted by employees, whether accidentally or on purpose, may be retrieved from the file server’s protection system upon request to administration staff, provided such request is made within thirty days of deletion.

* **[Database records** are records stored in the Organization’s database system. Due to the importance of historical data, it is the Organization’s policy that database records be stored indefinitely. The sole exception to this policy is that if duplicate database records created through user error should be merged, if appropriate, then the duplicate data can be deleted.]

**Backups of Electronic Records** are performed on data tape nightly. Backup tapes are rotated so that at least two complete sets are available on-site and two sets are stored off-site at any given time. The oldest complete backup that exists is not typically more than three months old.

The backup procedure exists primarily to enable recovery from catastrophic data loss, but the tapes are occasionally used for retrieval of accidentally deleted electronic records that have not been adequately captured by the file server’s protection system.

Electronic records that employees store on their workstations’ hard drives are not backed up. In the event of workstation malfunction or obsolescence, such hard drives are routinely reformatted, and therefore erased, without regard to any electronic records that may be stored therein.

**6. Responsibility for Implementation**

The [Position Equivalent to Director of Administration] of the Organization shall have overall responsibility for implementing, monitoring, and administering this Policy. The [Position Equivalent to Director of Administration] is specifically responsible for:

* Providing a copy of this Policy to all employees involved in the implementation and maintenance of this Policy and providing an opportunity to all such employees to ask questions about this policy.
* Developing and maintaining a comprehensive inventory of all records stored in offsite location(s) and ensuring that all Records are properly labeled. An inventory form and storage label are attached as Appendices A and B.
* Ensuring that all records that may reasonably be used in or may reasonably be relevant to an actual, pending or reasonably anticipated Legal Proceeding are carefully preserved and maintained for the duration of the Legal Proceeding.
* Identifying and safeguarding records during the periods of their retention in accordance with Section 5.0 of this Policy and Appendix C. This includes:
* Identifying Organizational Records and ensuring that the Organization retains them permanently and provides adequate and appropriate access to officers, directors, and employees.
* Promulgating and overseeing a process to determine when Records are deemed inactive in accordance with this Policy.
* Restricting access to any Records that are deemed by the Executive Director of the Organization as sensitive or confidential on a need-to-know basis and in accordance with applicable state and federal laws and regulations.

In accordance with Section 4.0 of this Policy, the [Position Equivalent to Chief Legal Officer or Executive Director] shall have overall responsibility for identifying Records relevant to ongoing or potential litigation and informing officers, directors, volunteers, and employees of such Records as appropriate.

The [Position Equivalent to Director of Administration] or [Position Equivalent to Chief Legal Officer or Executive Director]

may designate to one or more employees the responsibilities under these record retention guidelines as necessary, advisable or appropriate. The Organization shall update this Policy from time to time as reasonably required.

The [Position Equivalent to Chief Legal Officer or Executive Director] may from time to time notify the Organization’s staff in writing of changes with respect to retention guidelines. Such written notices shall be deemed to be incorporated into and a part of this Policy and shall supersede any retention guidelines set forth in this Policy to the extent provided in such written notices.

Directors, officers, employees and volunteers are encouraged to ask for advice from the [Position Equivalent to Director of Administration], the [Position Equivalent to Chief Legal Officer or Executive Director], or [other internal or] external legal counsel (with permission of the [Position Equivalent to Chief Legal Officer or Executive Director]) with regards to any difficulty in understanding the Policy or in determining whether to retain a Record.

**7. Records, Storage and Labeling**

The Organization will maintain storage areas for records, including appropriate storage mechanisms for electronic records, for which the retention periods have not expired pursuant to this Policy.

Records storage containers should be labeled in sufficient detail to facilitate prompt and accurate content identification of all Records other than electronic records. A label is included in Appendix B

Confidential records shall be maintained in accordance with the Organization’s Confidentiality Policy or, if no such policy exists, in a manner reasonably designed to protect their confidential nature.

**9. Records Review and Disposal**

The [Position Equivalent to Director of Administration] and [Position Equivalent to Chief Legal Officer or Executive Director] will review the records inventory chart attached as Appendix A annually to determine which records, in their judgment, should be disposed of in accordance with the applicable retention periods. The [Position Equivalent to Director of Administration] and [Position Equivalent to Chief Legal Officer or Executive Director] may rely solely on the records inventory chart in making decisions on disposal of Documents and are not obligated to search through Documents or boxes placed in storage or those that are stored in the Organization’s offices. A recommendation for disposal of records must be approved by the Executive Director in accordance with this Policy.

Prior to disposal of any Records, the [Position Equivalent to Director of Administration] must consult the [Position Equivalent to Chief Legal Officer or Executive Director] to ensure that disposal of such record is not prohibited due to the fact that a Record may reasonably be used in or may reasonably be relevant to an actual, pending or reasonably anticipated Legal Proceeding.

Confidential Documents must be disposed of via shredding technology or a technology that otherwise renders the Document unreadable. Confidential Electronic Records must be disposed of by completely and irreversibly deleting the Record and any backups.

Upon a termination of employment, the [Position Equivalent to Director of Administration] will meet with the departing employee and request the return of all Records in the departing employee’s possession, including hard copy and electronic records. The [Position Equivalent to Director of Administration] and any other supervisors of the employee will review, retain, and dispose of those records as appropriate in accordance with this Policy.

**9. Reporting Violations**

Employees are encouraged to and should report any situation in which they reasonably believe another employee of the Organization may not be adhering to this Policy or any other situation in which they reasonably believe this Policy is not being observed. Such reports should be made to the [Position Equivalent to Director of Administration] unless the report directly or indirectly involves the [Position Equivalent to Director of Administration], in which case the employee may report the situation to the Executive Director of the Organization or in a manner consistent with the Organization’s Whistleblower Policy, if appropriate.

**10.** **Acknowledgement**

I have read and understand the purpose of this Record Retention Policy. I understand that strict adherence to this Policy is a condition of my employment or other relationship with the Organization. If I do not understand something regarding this Policy, I will contact the Organization’s [Position Equivalent to Director of Administration] or [Position Equivalent to Chief Legal Officer or Executive Director] immediately for clarification. I understand that an employee’s failure to comply with this Policy or any amendments to this Policy can result in discipline of that employee, up to and including termination of employment. I understand that an employee will not be indemnified by the Organization against the expenses of defending himself or herself if sued by a government entity as a result of that employee’s failure to comply with this Policy.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_        \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
Signature                    Date

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
Name (print)

APPENDIX A

**RECORDS INVENTORY CHART**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_DepARTMENT**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Box #/File #** | **Contents** | **Location** | **Retention Period** | **Retention Expiration Date** | **Disposal Date** | **Notes** |
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APPENDIX B

**RECORDS STORAGE LABEL**

|  |
| --- |
| **Box #/File #**  **Contents**  **Retention Period**  **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**  **Retention Expiration Date**  **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** |

APPENDIX C

**DOCUMENT RETENTION SCHEDULE**

The following types of documents will be retained for the following periods of time. At least one copy of each document will be retained according to the following schedule.

|  |  |
| --- | --- |
| **Organizational/Corporate Records** |  |
| Articles of Incorporation | Permanent |
| IRS Form 1023 | Permanent |
| Letter of Determination granting tax-exempt status and/or charitable status | Permanent |
| Bylaws | Permanent |
| Board policies | Permanent |
| Resolutions | Permanent |
| Board meeting minutes | Permanent |
| Sales tax exemption documents | Permanent |
| Tax or employee identification number designation | Permanent |
| Annual corporate filings | Permanent |
|  |  |
| **Financial/Accounting Records** |  |
| Chart of Accounts | Permanent |
| Fiscal policies and procedures | Permanent |
| Audits | Permanent |
| Financial statements | Permanent |
| General Ledger | Permanent |
| Check registers/books | 7 years |
| Business expenses documents | 7 years |
| Bank deposit slips | 7 years |
| Cancelled checks | 7 years |
| Invoices | 7 years |
| Investment records (deposits, earnings, withdrawals) | 7 years |
| Property/asset inventories | 7 years |
| Petty cash receipts/documents | 3 years |
| Credit card receipts | 6 years |
|  |  |
| **Tax Records** |  |
| Annual tax filings (IRS Form 990) | Permanent |
| Payroll registers | Permanent |
| Filings of fees paid to professionals (IRS Form 1099) | 7 years |
| Payroll tax withholdings | 7 years |
| Earnings records | 7 years |
| Payroll tax returns | 7 years |
| W-2 statements | 7 years |
|  |  |
| **Employee Records** |  |
| Employee offer letters | Permanent |
| Confirmation of employment letters | Permanent |
| Employee benefits plans | Permanent |
| Pension records | Permanent |
| Employee applications and resumes | Permanent |
| Employee applications (not hired) | 3 years |
| Promotions, demotions, letters of reprimand, termination | Permanent |
| Job descriptions, performance goals, evaluations | Permanent |
| Workers’ Compensation records | 18 years |
| Salary ranges per job description | Permanent |
| I-9 Forms | The LATER of (a) three years after the date of hire and (b) one year after termination |
| Time reports | 6 years after termination |
|  |  |
| **Insurance Records** |  |
| Property Insurance policy | Permanent |
| Directors and Officers Insurance policy | Permanent |
| Workers’ Compensation Insurance policy | Permanent |
| General Liability Insurance policy | Permanent |
| Insurance claims applications | Permanent |
| Insurance disbursements/denials | Permanent |
|  |  |
| **Contracts** |  |
| All insurance contracts | Permanent |
| Employee contracts | Permanent |
| Construction contracts | Permanent |
| Legal correspondence | Permanent |
| Loan/mortgage contracts | Permanent |
| Leases/deeds | Permanent |
| Vendor contracts | 7 years |
| Warranties | 7 years |
|  |  |
| **Donations/Funder Records** |  |
| Grant contracts | Permanent |
| Donor lists | 7 years |
| Grant applications | 7 years |
| Donor acknowledgments | 7 years |
|  |  |
| **Management Plans and Procedures** |  |
| Strategic plans | 7 years |
| Staffing, programs, marketing, finance, fundraising and evaluation plans | 7 years |
| Vendor contracts | 7 years |
| Disaster Recovery Plan | 7 years |

1. This Policy provides general record retention guidelines and should not be used as a substitute for knowing existing legal and professional record retention requirements that may govern certain Organization records. The mission of the Organization will to some extent control the record retention policy the Organization adopts. For example, legal services organizations have particular obligations to clients (e.g. confidentiality), and there may be specific requirements for retaining health care records, academic records, etc. The Organization should consult with counsel and determine whether its mission and operations subject it to legal or professional requirements relating to records retention. [↑](#footnote-ref-2)
2. Where the professional/client relationship is governed by law or a professional code. [↑](#footnote-ref-3)
3. Note that some government records may be required by government entities to be kept in their original form. [↑](#footnote-ref-4)