

Sample Language for 30(b)6 Deposition of Custodian of Electronic Records

(Redacted from full version)

System Profile

1. Describe the types of computer system(s) used by your company in the course of business.
2. Describe/identify the type of software used on your computer system(s).
3. Identify the person(s) responsible for the ongoing operation, maintenance, expansion, backup, and upkeep of the computer system.
4. Does the staff [or inquire after key witnesses] have home computers used for business purposes? (If yes, repeat questions 1-2).
5. Are passwords or encrypted files used on any of the computer systems? If yes:
 - 5.1 Describe how files are protected.
 - 5.2 Who could provide access codes if required?
6. Have you modified your use of computers to comply with recent discovery requests?

Backup and Retention

7. List all computer systems in the organization that are backed up.
 - 7.1 Describe the backup program(s) used. (Ex: ARCserve, StorageExpress, Maynard, Tecmar, etc.)
 - 7.2 Give details of your backup procedures.
8. Have you modified your backup procedures to comply with recent discovery requests?
9. Are files ever deleted from the computer system(s)?
10. Are archival backups ever created? If yes:
 - 10.1 What files have been archived?
 - 10.2 Where are the archival backups maintained?

11. Describe any disaster recovery plans in place now and for the relevant time period.

Maintenance and Access

12. Are utility programs used on computer(s) in the office? (Ex: Norton Utilities, MacTools, network maintenance programs) If yes:

12.1 Which program(s)?

12.2 Has the program been used to permanently “wipe” files? (When?)

12.3 Has the program been used to de-fragment, optimize, or compress drives? (When?)

13. How do those outside of the company access the computers?

14. How are office computers secured?

15. Has any computer hardware been upgraded in the past 12 months?

16. Has any computer software been upgraded or replaced on office computers in the past 12 months?

Chain of Custody/Authentication

17. Are individual directories purged when an employee leaves the company?

18. Are passwords and access codes revoked when an employee leaves the company?

19. Are workstations reassigned to incoming employees? If yes:

19.1 Are hard drives wiped or re-formatted for the new user?

19.2 Are hard drives backed up before the new user takes system?

20. Describe how used or replaced equipment is disposed of or sold.

21. Describe how used disks or drives are treated before destruction or sale. (Degussed? Shredded?)

22. Have you used outside contractors to upgrade either hardware or software? (If so, please identify.)

23. Are changes or modifications made to software recorded? (Electronically? Are hard copy logs kept?)