IN THE CIRCUIT COURT OF [*county*] COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,

v. [*case number*]

Hon. [*name*]

[*name-all caps*],

Defendant.

DEFENDANT’S INSTRUCTION NO. \_\_\_\_

Count \_\_ of the indictment charges the defendant with Computer Fraud. Computer fraud occurs when a person knowingly and willfully, directly or indirectly, accesses or causes to be accessed any computer, computer services or computer network for the purpose of (1) executing any scheme or artifice to defraud or (2) obtaining money, property or services by means of fraudulent pretenses, representations or promises.

The Court instructs you that:

“Access” means to instruct, communicate with, store data in, retrieve data from, intercept data from or otherwise make use of any computer, computer network, computer program, computer software, computer data or other computer resources.

“Computer” means an electronic, magnetic, optical, electrochemical or other high-speed data processing device performing logical, arithmetic or storage functions and includes any data storage facility or communication facility directly related to or operating in conjunction with such device. The term “computer” includes any connected or directly related device, equipment or facility which enables the computer to store, retrieve or communicate computer programs, computer data or the results of computer operations to or from a person, another computer or another device, file servers, mainframe systems, desktop personal computers, laptop personal computers, tablet personal computers, cellular telephones, game consoles and any other electronic data storage device or equipment, but such term does not include an automated typewriter or typesetter, a portable hand-held calculator or other similar device.

“Computer services” means computer access time, computer data processing or computer data storage and the computer data processed or stored in connection therewith.

“Computer network” means a set of connected devices and communication facilities, including more than one computer, with the capability to transmit computer data among them through such communication facilities.

To find the defendant guilty of computer fraud, the State must overcome the defendant’s presumption of innocence and prove beyond a reasonable doubt that:

1. the defendant,

2. on or about the \_\_ day of [insert month], [insert year],

3. in [insert county] County, West Virginia,

4. knowingly and willfully,

5. directly or indirectly accessed or caused to be accessed a computer, computer services or computer network for the purpose of

i. executing a scheme or artifice to defraud or

ii. obtaining money, property or services,

6. by means of fraudulent pretenses, representations or promises.

If, after impartially considering, weighing and comparing all the evidence (that of both the State and the defendant), you are convinced beyond a reasonable doubt of the truth of the charge as to each of these elements, you may find the defendant guilty as charged in Count \_\_ of the indictment. If you have a reasonable doubt of the truth of the charge as to any one or more of these elements, you shall find the defendant not guilty.

GIVEN:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

REFUSED:\_\_\_\_\_\_\_\_\_\_\_\_\_

MODIFIED:\_\_\_\_\_\_\_\_\_\_\_\_

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JUDGE