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 Fraud and Related Activity in Connection with Access Device. The offense of Fraud and Related Activity in Connection with an Access Device occurs when a person who knowingly, willfully and with intent to defraud possesses a counterfeit or unauthorized access device or who knowingly, willfully and with intent to defraud, uses, produces or traffics in any counterfeit or unauthorized access device.

The Court instructs you that:

 An “Access device” means any card, plate, code, account number, or other means of account access that can be used, alone or in conjunction with another access device, to obtain money, goods, services, or any other thing of value, or that can be used to initiate a transfer of funds (other than a transfer originated solely by paper instrument);

 A “Counterfeit access device” means any access device that is counterfeit, fictitious, altered, or forged, or an identifiable component of an access device or a counterfeit access device;

 An “Unauthorized access device” means any access device that is lost, stolen, expired, revoked, canceled, or obtained without authority;

 “Produce” includes design, alter, authenticate, duplicate, or assemble;

 “Traffic” means transfer, or otherwise dispose of, to another, or obtain control of with intent to transfer or dispose of.

 To find the defendant guilty of unauthorized possession of computer data or programs, 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, willfully and with intent to defraud possessed a counterfeit or unauthorized access device] [knowingly, willfully and with intent to defraud, used, produced or trafficked in a counterfeit or unauthorized access device].

 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