***DIGITAL ASSETS LANGUAGE***

***Notes:***

***Language contained in this document should immediately precede the General Bequests (Residuary Estate) Article. References to Article letters in the below language are for guidance only.***

***Regarding content of accounts (vs. tangible digital assets), the Testator should refer to the Terms of Service, Online Tool, or other governing instrument with respect to such accounts, as these may override any contradictory instructions in a Will.***

***The below Articles dealing with executors’ powers may be modified if the Testator has more than one executor and wants them to have different levels of power, or if the executors’ powers should be changed based on whether a named beneficiary predeceases the Testator.***

IF THE EXECUTOR IS TO BE ALLOWED TO ACCESS ALL CONTENT, TO MODIFY AND/OR DELETE CONTENT, AND/OR TO CLOSE ACCOUNTS

 **ARTICLE A: *Digital Assets; Definitions***. Under these, **Articles [B], [C] and [D]** of this, my Last Will and Testament, the terms “Account(s)”, “Custodian(s)”, “Digital Asset(s)”, “Electronic Communication(s)”, “Information”, “Online Tool(s)”, “Record(s)”, and “Terms of Service Agreement” shall be defined as provided by N.Y. EPTL § 13-A-1.

***[Note: If the Testator is making multiple bequests under Article D, the above paragraph should be a stand-alone Article. If the Testator is giving everything to one beneficiary (who is also the executor), the above paragraph can be combined with Article B.]***

**ARTICLE B:** ***Digital Assets; executor’s Powers***. Unless I have otherwise provided through an Online Tool, my executor shall have the power and authorization to inventory, access, take control of, conduct, continue, modify or change, delete or terminate, modify passwords, back up data on external media, consolidate, distribute or destroy content, and value the assets of my Accounts (hereinafter, in **Article [B]** of this, my Last Will and Testament, referred to as my “Accounts”) and Digital Assets on any website or any other online service which currently exist or may exist as technology develops, including, but not limited to, any social media site, social networking site, audio sharing site, image sharing site, photo sharing site, video sharing site, micro blogging or short message service website, email service website, any website that contains my contact information or calendars, file sharing or storage accounts, document storage or sharing accounts, digital asset storing accounts, financial accounts, banking accounts, domain registrations, web hosting accounts, software licenses, tax preparation service accounts, online stores, gaming accounts, affiliate programs or rewards programs.

Notwithstanding any state or Federal law to the contrary, I direct the Custodians of all such websites or other online service to release my log-on credentials, including username and password, as well as the content of my Accounts, Digital Assets, Electronic Communications, Information and Records, to my executor, and the Custodians shall be indemnified and held harmless by my estate for any damages, causes of action, or claims that may result from this disclosure.

In addition, my executor may take any action (including without limitation, changing a Terms of Service Agreement or other governing instrument) with respect to my Accounts, Digital Assets, Electronic Communications, Information and Records as [HE/SHE/THEY] shall deem appropriate, and as shall be permitted under applicable state and Federal law.

My executor may engage experts or consultants or any other third party as necessary or appropriate to effectuate any actions with respect to my Accounts, Digital Assets, Electronic Communications, Information and Records, including but not limited to such actions as may be necessary or appropriate to decrypt electronically stored information.

In accordance with this, **Article [B]** of this, my Last Will and Testament, if my executor shall determine that it is necessary or appropriate to engage and delegate authority to an individual pursuant to this, **Article [B]** of this, my Last Will and Testament, it is my “wish and desire” that my [RELATIONSHIP TO TESTATOR], [NAME], of [ADDRESS], be engaged for this purpose. My “wish and desire” shall in no way be construed as a requirement on the part of my executor as I mean only to state my preference.

***[Note: The above paragraph is optional.]***

The authority granted under this, **Article [B]** of this, my Last Will and Testament, is intended to constitute my “lawful consent”, in accordance with 18 U.S.C. §§ 2702(b)(3) and 2702(c)(2), for a Custodian to divulge the content of any Account, Digital Asset, Electronic Communication, Information or Record under the Electronic Communications Privacy Act of 1986, as amended, the Stored Communications Act, as amended, the Computer Fraud and Abuse Act of 1986, as amended, and any other applicable Federal or state law, to the extent such lawful consent is required. My executor acting hereunder shall do so with my “express authorization”, in accordance with 18 U.S.C. § 2701(c)(2), for purposes of applicable computer-fraud and unauthorized-computer-access laws.

The authority granted under this, **Article [B]** of this, my Last Will and Testament, is intended to provide my executor with full authority to access and manage my Accounts, Digital Assets, Electronic Communications, Information and Records to the extent permitted under applicable state and Federal law and shall not limit any authority granted to my executor under such laws.

To the extent permitted by law, it is my intent to give my executor the same authority over my Accounts, Digital Assets, Electronic Communications, Information and Records as I had during my lifetime.

***[Note: The following is optional sample language to include in this Article. Note that different websites have vastly different Terms of Service Agreements and should be checked regarding possibilities for memorializing and/or closing accounts. If the Testator used an Online Tool with respect to the below instructions, the Online Tool will supersede the executor’s powers:]***

I direct my executor to contact Facebook and take the appropriate steps to have my account “memorialized”.

I direct my executor to contact Instagram and take the appropriate steps to have my account “memorialized”.

I direct my executor to contact LinkedIn and take the appropriate steps to have my account closed.

IF BENEFICIARIES ARE TO BE DESIGNATED FOR CERTAIN TANGIBLE DIGITAL DEVICES

 **ARTICLE C:** ***Digital Assets; Tangible Digital Devices***. I give my digital devices, including but not limited to desktops, laptops, tablets, storage devices, mobile telephones, smartphones, and any similar digital device which currently exists or may exist as technology develops, with the exception of those items specifically bequeathed under this, my Last Will and Testament, to [BENEFICIARY]. My executor may take any action, including without limitation, the deletion of Information with respect to my digital devices.

***[Note: The above Article is optional. If omitted, any tangible digital devices owned by the Testator at their death will become a part of the Residuary Estate.]***

IF BENEFICIARIES ARE TO BE DESIGNATED FOR CERTAIN NON-TANGIBLE DIGITAL ASSETS

 **ARTICLE D:** ***Digital Assets; Non-Tangible Digital Assets***. Unless prohibited by a user agreement, Terms of Service Agreement, Online Tool, or other governing instrument with respect to my Accounts, Digital Assets, Electronic Communications, Information and Records, I give my Accounts, Digital Assets, Electronic Communications, Information and Records as follows:

***[Note: Examples of some Digital Assets that may be provided for include check through fees, Domain Names, Virtual Property, Bitcoins, and all accrued rewards program interests (airline, hotel, or otherwise).]***

 ***[Note: Article D is optional. It should be used if the Testator has Digital Assets with some underlying value (i.e., more than just information) or if the Testator wants to give a record of the Digital Assets (i.e., contents of email accounts) to a beneficiary or beneficiaries.]***

IF BENEFICIARIES ARE ***NOT*** TO BE DESIGNATED FOR ANY TANGIBLE DIGITAL DEVICES

***Note: Tangible Digital Devices not provided for will become part of the Residuary Estate.***

IF BENEFICIARIES ARE TO ***NOT*** BE DESIGNATED FOR ANY NON-TANGIBLE DIGITAL ASSETS

***Note: Non-Tangible Digital Assets not provided for will become part of the Residuary Estate. If the Testator does not want anyone to have access to their Non-Tangible Digital Assets, those wishes should be clearly stated. See the below two sections.***

IF THE EXECUTOR IS TO HAVE ***LIMITED*** POWERS TO ACCESS CONTENT, TO MODIFY AND/OR DELETE CONTENT, AND/OR TO CLOSE ACCOUNTS

 **ARTICLE A: *Digital Assets; Definitions***. Under these, **Articles [B], [C], and [D]** of this, my Last Will and Testament, the terms “Account(s)”, “Custodian(s)”, “Digital Asset(s)”, “Electronic Communication(s)”, “Information”, “Online Tool(s)”, “Record(s)”, and “Terms of Service Agreement” shall be defined as provided by N.Y. EPTL § 13-A-1.

**ARTICLE B:** ***Digital Assets; Executor’s Powers***. I direct that no one, including my executor, shall receive a Catalogue of Electronic Communications, Records or any other Information relating to my Accounts (hereinafter, in **Article [B]** of this, my Last Will and Testament, referred to as my “Accounts”), and I direct that no one is to have access to my Accounts and Digital Assets on any website or any other online service which currently exist or may exist as technology develops, including, but not limited to, any social media site, social networking site, audio sharing site, image sharing site, photo sharing site, video sharing site, micro blogging or short message service website, email service website, any website that contains my contact information or calendars, file sharing or storage accounts, document storage or sharing accounts, digital asset storing accounts, financial accounts, banking accounts, domain registrations, web hosting accounts, software licenses, tax preparation service accounts, online stores, gaming accounts, affiliate programs or rewards programs (hereinafter my “Online Content”).

Unless I have otherwise provided through an Online Tool, my executor shall have the power and authorization to inventory, access, take control of, conduct, continue, modify or change, delete or terminate, modify passwords, back up data on external media, consolidate, distribute or destroy content, and value the assets of my Accounts and Digital Assets on any website or any other online service which currently exist or may exist as technology develops, including but not limited to my Online Content.

Notwithstanding any state or Federal law to the contrary, I direct the Custodians of all such websites or other online service to release my log-on credentials, including username and password, as well as the content of my Accounts, Digital Assets, Electronic Communications, Information and Records, to my executor, and the Custodians shall be indemnified and held harmless by my estate for any damages, causes of action, or claims that may result from this disclosure.

In addition, my executor may engage experts or consultants or any other third party as necessary or appropriate to effectuate any actions with respect to my Accounts, Digital Assets, Electronic Communications, Information and Records, including but not limited to such actions as may be necessary or appropriate to help decrypt electronically stored Information.

In accordance with this, **Article [B]** of this, my Last Will and Testament, if my executor shall determine that it is necessary or appropriate to engage and delegate authority to an individual pursuant to this, **Article [B]** of this, my Last Will and Testament, it is my “wish and desire” that my [RELATIONSHIP TO TESTATOR], [NAME], of [ADDRESS], be engaged for this purpose. My “wish and desire” shall in no way be construed as a requirement on the part of my executor as I mean only to state my preference.

***[Note: The above paragraph is optional.]***

The authority granted under this, **Article [B]** of this, my Last Will and Testament, is intended to constitute my “lawful consent”, in accordance with 18 U.S.C. §§ 2702(b)(3) and 2702(c)(2) , for a Custodian to divulge the content of any Account, Digital Asset, Electronic Communication, Information or Record under the Electronic Communications Privacy Act of 1986, as amended, and any other applicable state or Federal law, to the extent such lawful consent is required. My executor acting hereunder shall do so with my “express authorization”, in accordance with 18 U.S.C. § 2701(c)(2), for purposes of applicable computer-fraud and unauthorized-computer-access laws.

The authority granted under this, **Article [B]** of this, my Last Will and Testament, is intended to provide my executor with full authority to access and manage my Accounts, Digital Assets, Electronic Communications, Information and Records to the extent permitted under applicable state and federal law and shall not limit any authority granted to my executor under such laws.

To the extent permitted by law, it is my intent to give my executor the same authority over my Accounts, Digital Assets, Electronic Communications, Information and Records as I had during my lifetime.

 **ARTICLE C:** ***Digital Assets; Non-Tangible Digital Assets***. Unless prohibited by a user agreement, Terms of Service Agreement, Online Tool, or other governing instrument with respect to my Accounts, Digital Assets, Electronic Communications, Information and Records, I give the contents of my email messages to [BENEFICIARY]. If [BENEFICIARY] should predecease me, I direct that no one shall receive the contents of my email messages.

***[Note: The above provides only an example of email message content. Modify accordingly.]***

***[Note: At the end of the bequest of Digital Assets, include language that prohibits anyone but the designated beneficiary or beneficiaries from receiving those assets. Else, the assets will fall into the Residuary Estate (or, in the case of bequests to the Testator’s children and/or siblings, to the children of such child-beneficiaries and sibling-beneficiaries.]***

IF THE EXECUTOR IS ***NOT*** TO BE ALLOWED TO ACCESS CONTENT, TO MODIFY AND/OR DELETE CONTENT, AND/OR TO CLOSE ACCOUNTS

**ARTICLE A: *Digital Assets; Definitions***. Under these, **Articles [B], [C] and [D]** of this, my Last Will and Testament, the terms “Account(s)”, “Custodian(s)”, “Digital Asset(s)”, “Electronic Communication(s)”, “Information”, “Online Tool(s)”, “Record(s)”, and “Terms of Service Agreement” shall be defined as provided by N.Y. EPTL § 13-A-1.

**ARTICLE B:** ***Digital Assets; Executor’s Powers***. I direct that no one, including my executor, shall receive a Catalogue of Electronic Communications, Records or any other Information relating to my Accounts. I direct that no one, including my executor, is to have access to my Accounts and Digital Assets on any website or any other online service which currently exist or may exist as technology develops, including, but not limited to, any social media site, social networking site, audio sharing site, image sharing site, photo sharing site, video sharing site, micro blogging or short message service website, email service website, any website that contains my contact information or calendars, file sharing or storage accounts, document storage or sharing accounts, digital asset storing accounts, financial accounts, banking accounts, domain registrations, web hosting accounts, software licenses, tax preparation service accounts, online stores, gaming accounts, affiliate programs or rewards programs.

***[Note: If the above Articles are incorporated into the Will, it will therefore be impossible to provide for the distribution of non-tangible digital assets, as the executor is the only person (aside from the person designated in the Terms of Service Agreement or an Online Tool) allowed access to non-tangible digital assets).]***