

Sample Digital Language

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For a Revocable Trust:

(**Note:** usually these provisions may be cross-referenced in broad release language elsewhere in the document as well to provide additional relief to the Trustee).

The Trustee has the authority to access, modify, control, archive, transfer and delete my digital assets. I recognize the rapidly changing nature of technology in all its forms. Digital assets can include, but are not limited to, my sent and received emails, accounts, digital music or recordings, digital photographs, digital videos, digital books and other similar media, gaming accounts, including associated characters, avatars, and virtual assets created therein, software licenses, social-network accounts, file-sharing accounts, financial accounts, domain registrations, Domain Name System (DNS) Service accounts, blogs, vlogs, list-serves, web-hosting accounts, tax preparation or bill payment service accounts, receipts or other record-keeping, or accounting service accounts, online stores and auction sites, online accounts of all forms or topics, storage accounts, apps, including information stored in an app on a digital device, and any similar digital asset that currently exists or may be developed as technology advances. Digital assets includes related information on any accounts, including rewards or point systems, avatars and rankings, as these may change or develop over time.

My digital assets may be stored on the cloud or on my own digital devices. The Trustee may access, use and control my digital devices in order to access, modify, control, archive, transfer, delete or otherwise manage my digital assets. This power is essential for access to my digital assets that are only accessible through my digital device. Digital devices include desktops, laptops tablets, peripherals storage devices, mobile telephones, smart phones, and any similar hardware that currently exists or may be developed as technology advances.

The Trustee may dispose of assets, including without limitation, digital devices and digital assets as described above, in his or her discretion and is not obligated to curate or store such devices or to monetize or transfer these assets.

Note: For some individuals, a list of relevant digital assets, such as content, blogs, websites or similar information might be included in an Exhibit or referenced as a separate document. For example: *“I intend to leave a current and maintained listing of digital assets, with passwords and identification information, as well as recommendations for the transfer or disposition thereof, among my personal*

possessions. I intentionally relieve the Trustee of any obligation to follow these recommendations and do not intend for this listing to be considered a part of this trust”

Other considerations might include employer or company owned digital media, which may be subject to certain restrictions or limitations, such as a non-disclosure agreement. It is important to identify these assets and any relevant NDA in the inventory process.

It is also important to understand limitations on transfers imposed by the specific terms of service contract for an asset (such as limitations on transfers of email addresses, or digital music accounts) and address as possible.

Authorization of a Trustee or other Party

The use of broad authorizations, outside of a revocable trust or Will may be appropriate in limited circumstances. However, given the broad nature of such an authorization, they should be used with **extreme caution** since (a) these tend to be written in sweeping terms and (b) they are not likely to be considered “powers of attorney” under state laws where there may be specific guidance as to the revocation of such an authorization (Florida, for example, requires powers of attorney to be formally revoked, since they can be used independently of other documents and relied upon as authentic). Given the various Terms of Service contracts for websites and digital providers, it is not guaranteed (or even likely in some instances) that a signed consent to release information will even be respected. That said, it might be worth including language below, perhaps in an appendix to the Revocable Trust or as part of a power of attorney, in an effort to evidence intent to allow access to information or digital assets. However, as a simple document, this authorization would be risky if executed as a stand-alone piece of document, causing more problems than it purports to solve. It seems prudent to include the specific authorization in your will, revocable Trust, or durable power of attorney power of attorney and reference it in the authorization.

By this document, I hereby authorize and consent for any person or entity that has possession, custody or control over any electronically stored information or digital assets wherein I have a property right or interest, or that provides an electronic communication service, a remote communication service, a storage service, whether public or private, to release and disclose to my personal representatives (a) any electronically stored information, (b) the contents of any communication that is in electronic storage by that service or that is carried or maintained on that service, (c) any record or other information pertaining to me with respect to that service. It is my intention that this authorization and consent is to be construed as broadly as possible to allow my personal representative under this document to have the access and use of information described above. I intend for my personal representative to include a trustee of my revocable trust, a trustee of a trust appointed under my will, an attorney-

in fact acting under a power of attorney document, a guardian or conservator appointed for me, the personal representative or executor of my estate or other representative created by operation of law.

*This authorization and consent is to be construed to be my lawful consent under the Electronic Communications Privacy Act of 1986, as Amended; the Computer Fraud and Abuse Act of 1986 as amended; and any other applicable federal or state data privacy or criminal law. This authorization is effective immediately. Unless I revoke this authorization in writing while I am competent, this authorization continues to be effective during any period that I am incapacitated and continues to be effective after my death. (**Query** as to how this would work if similar authority was granted to a different person under a will or revocable trust)*

Unless a person or entity has received actual notice that this authorization has been validly revoked by me, that person or entity receiving this authorization may act in reliance on the presumption that it is valid and unrevoked and that person or entity is released and held harmless by me, my heirs, legal representatives, successors, assigns from any loss suffered or liability incurred for acting according to this authorization. A person or entity may accept a copy or facsimile of this original authorization as though it were an original document.

Again, the validity of these authorizations, combined with the broad powers it is trying to create, and the questions about authenticity or revocation (whether it was revoked, proving it remains intact, may be time consuming or impossible) would argue that this type of language could be better included in an Exhibit to a Revocable Trust that could be summarized and sent to a provider under the authorization of a Revocable Trust.

Please note that these are offered for educational and discussion purposes only and are not to be considered as legal or financial advice. Any reader is encouraged to consult their own legal counsel for guidance on how these provisions would apply to their estate or financial planning.

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