

HOUSE BILL 19

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2000 Regular Session
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(PRE-FILED)

By: Delegates Taylor, and Barve and Delegates Hurson, Arnick, Busch, Dewberry, Guns, Hixson, Howard, Montague, Owings, Rawlings, Vallario, and Wood Wood, W. Baker, Brown, Conway, D'Amato, DeCarlo, Doory, Finifter, Franchot, Frush, Giannetti, Goldwater, Griffith, Hecht, Hubers, James, V. Jones, Klausmeier, Love, Mandel, V. Mitchell, Moe, Pendergrass, Petzold, Rosso, Sophocleus, Stern, Stocksdale, Turner, Valderrama, and Weir Weir, Donoghue, Eckardt, Harrison, Hill, and Minnick(Commission on Uniform State Laws)

Requested: November 15, 1999
Introduced and read first time: January 12, 2000
Assigned to: Economic Matters

Committee Report: Favorable with amendments
House action: Adopted with floor amendments
Read second time: March 26, 2000

CHAPTER _____

1 AN ACT concerning

2 **Maryland Uniform Computer Information Transactions Act**

3 FOR the purpose of adopting the Maryland Uniform Computer Information
4 Transactions Act; establishing certain provisions of law applicable to
5 agreements to create, modify, transfer, or distribute computer software,
6 computer data and databases, Internet and online information, and certain
7 other computer information and products under certain circumstances;
8 establishing certain provisions of law applicable to licensing of computer
9 information under certain circumstances; establishing certain provisions of law
10 applicable to electronic commerce and commercial transactions carried out
11 electronically or over the Internet under certain circumstances; authorizing
12 parties to an agreement within the scope of this Act to expressly agree that
13 certain provisions of this Act do not apply to the agreement; prohibiting parties
14 to an agreement within the scope of this Act from agreeing that certain
15 provisions of this Act do not apply to the agreement; providing that certain
16 federal and State laws override the provisions of this Act; providing that this Act
17 overrides certain provisions of State law; establishing certain choice of law and
18 choice of forum provisions for legal disputes within the scope of this Act under
19 certain circumstances; establishing certain provisions of law recognizing the
20 legal existence of and the actions of computers programmed by individuals to act

1 as electronic agents; establishing certain provisions of law governing the
 2 formation of an agreement within the scope of this Act; establishing certain
 3 provisions of law that a court is required to use in interpreting an agreement or
 4 a term contained in an agreement; establishing certain provisions of law that a
 5 court is required to use in interpreting whether a valid agreement or valid term
 6 contained in an agreement exists within the scope of this Act; creating certain
 7 warranties that are applicable to agreements to create, modify, transfer,
 8 distribute, or license computer software, computer data and databases, Internet
 9 and online information, and certain other computer information and products
 10 under certain circumstances; making the warranties created under this Act
 11 available to an individual who is a party to an agreement within the scope of
 12 this Act and to certain other individuals; establishing provisions for the
 13 disclaimer or modification of certain warranties created by this Act under
 14 certain circumstances; establishing provisions of law applicable to the
 15 ownership and transfer rights of parties to an agreement to sell or license
 16 computer information within the scope of this Act; establishing provisions of law
 17 applicable to financing the sale or license of computer information within the
 18 scope of this Act; establishing provisions of law applicable to the parties'
 19 performance of obligations under an agreement within the scope of this Act;
 20 specifying certain circumstances excusing or terminating the parties'
 21 performance of obligations under an agreement within the scope of this Act;
 22 establishing provisions of law applicable to actions by a party sufficient to
 23 constitute a breach or material breach of an agreement within the scope of this
 24 Act; specifying the remedies available to an aggrieved party as the result of the
 25 breach or material breach of an agreement within the scope of this Act; defining
 26 certain terms; providing that this Act does not affect certain requirements of the
 27 digital signature pilot program; making provisions of this Act severable;
 28 providing that this Act does not impair any existing obligation or contract right;
 29 providing for the prospective application of this Act; and generally relating to
 30 agreements created electronically or through the Internet, agreements to create,
 31 modify, transfer, distribute, and license computer information, and certain other
 32 matters within the scope of the Maryland Uniform Computer Information
 33 Transactions Act.

34 BY repealing and reenacting, with amendments,
 35 Article - Commercial Law
 36 Section 13-101(c)
 37 Annotated Code of Maryland
 38 (1990 Replacement Volume and 1999 Supplement)

39 BY adding to
 40 Article - Commercial Law
 41 Section ~~13-310.1~~ 13-101.1; 21-101 through 21-114, inclusive, to be under the
 42 new subtitle "Subtitle 1. General Provisions; Short Title and Definitions;
 43 General Scope and Terms"; 21-201 through ~~21-215~~ 21-216, inclusive, to be
 44 under the new subtitle "Subtitle 2. Formation and Terms; Formation of a
 45 Contract; Terms of Records; Electronic Contracts: Generally"; 21-301

1 through 21-309, inclusive, to be under the new subtitle "Subtitle 3.
 2 Construction; General; Interpretation"; 21-401 through 21-409, inclusive,
 3 to be under the new subtitle "Subtitle 4. Warranties"; 21-501 through
 4 21-511, inclusive, to be under the new subtitle "Subtitle 5. Transfer of
 5 Interests and Rights; Ownership and Transfers; Financing Arrangements";
 6 21-601 through 21-618, inclusive, to be under the new subtitle "Subtitle 6.
 7 Performance; General; Performance in Delivery of Copies; Special Types of
 8 Contracts; Loss and Impossibility; Termination"; 21-701 through 21-710,
 9 inclusive, to be under the new subtitle "Subtitle 7. Breach of Contract;
 10 General; Defective Copies; Repudiation and Assurances"; 21-801 through
 11 21-816, inclusive, to be under the new subtitle "Subtitle 8. Remedies;
 12 General; Damages; Remedies Related to Performance" and the new title
 13 "Title 21. Maryland Uniform Computer Information Transactions Act"
 14 Annotated Code of Maryland
 15 (1990 Replacement Volume and 1999 Supplement)

16 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 17 MARYLAND, That the Laws of Maryland read as follows:

18 **Article - Commercial Law**

19 13-101.

20 (c) (1) "Consumer" means an actual or prospective purchaser, lessee, or
 21 recipient of consumer goods, consumer services, consumer realty, or consumer credit.

22 (2) "Consumer" includes:

23 (I) ⌘ A co-obligor or surety for a consumer[.]; OR

24 (II) A LICENSEE OR RECIPIENT OF COMPUTER INFORMATION OR
 25 COMPUTER PROGRAMS UNDER A CONSUMER CONTRACT AS DEFINED IN § 21-102 OF
 26 THIS ARTICLE.

27 13-101.1.

28 THE PROVISIONS OF THIS TITLE APPLY TO THE SUBJECT MATTER OF A
 29 CONSUMER CONTRACT AS DEFINED IN § 21-102 OF THIS ARTICLE IN THE SAME
 30 MANNER THEY APPLY TO CONSUMER GOODS AND CONSUMER SERVICES.

31 TITLE 21. MARYLAND UNIFORM COMPUTER INFORMATION TRANSACTIONS ACT.

32 SUBTITLE 1. GENERAL PROVISIONS; SHORT TITLE AND DEFINITIONS; GENERAL
 33 SCOPE AND TERMS.

34 SHORT TITLE AND DEFINITIONS.

1 21-101. SHORT TITLE.

2 THIS TITLE MAY BE CITED AS THE MARYLAND UNIFORM COMPUTER
3 INFORMATION TRANSACTIONS ACT.

4 21-102. DEFINITIONS.

5 (A) IN THIS TITLE:

6 (1) "ACCESS CONTRACT" MEANS A CONTRACT TO OBTAIN BY
7 ELECTRONIC MEANS ACCESS TO, OR INFORMATION FROM, AN INFORMATION
8 PROCESSING SYSTEM OF ANOTHER PERSON, OR THE EQUIVALENT OF SUCH ACCESS.

9 (2) "ACCESS MATERIAL" MEANS ANY INFORMATION OR MATERIAL, SUCH
10 AS A DOCUMENT, ADDRESS, OR ACCESS CODE, THAT IS NECESSARY TO OBTAIN
11 AUTHORIZED ACCESS TO INFORMATION OR CONTROL OR POSSESSION OF A COPY.

12 (3) "AGGRIEVED PARTY" MEANS A PARTY ENTITLED TO A REMEDY FOR
13 BREACH OF CONTRACT.

14 (4) "AGREEMENT" MEANS THE BARGAIN OF THE PARTIES IN FACT AS
15 FOUND IN THEIR LANGUAGE OR BY IMPLICATION FROM OTHER CIRCUMSTANCES,
16 INCLUDING COURSE OF PERFORMANCE, COURSE OF DEALING, AND USAGE OF TRADE
17 AS PROVIDED IN THIS TITLE.

18 (5) "ATTRIBUTION PROCEDURE" MEANS A PROCEDURE TO VERIFY THAT
19 AN ELECTRONIC AUTHENTICATION, DISPLAY, MESSAGE, RECORD, OR PERFORMANCE
20 IS THAT OF A PARTICULAR PERSON OR TO DETECT CHANGES OR ERRORS IN
21 INFORMATION. THE TERM INCLUDES A PROCEDURE THAT REQUIRES THE USE OF
22 ALGORITHMS OR OTHER CODES, IDENTIFYING WORDS OR NUMBERS, ENCRYPTION,
23 OR CALLBACK OR OTHER ACKNOWLEDGMENT.

24 (6) "AUTHENTICATE" MEANS:

25 (A) TO SIGN; OR

26 (B) WITH THE INTENT TO SIGN A RECORD, OTHERWISE TO
27 EXECUTE OR ADOPT AN ELECTRONIC SYMBOL, SOUND, MESSAGE, OR PROCESS
28 REFERRING TO, ATTACHED TO, INCLUDED IN, OR LOGICALLY ASSOCIATED OR
29 LINKED WITH THAT RECORD.

30 (7) "AUTOMATED TRANSACTION" MEANS A TRANSACTION IN WHICH A
31 CONTRACT IS FORMED IN WHOLE OR PART BY ELECTRONIC ACTIONS OF ONE OR
32 BOTH PARTIES WHICH ARE NOT PREVIOUSLY REVIEWED BY AN INDIVIDUAL IN THE
33 ORDINARY COURSE.

34 (8) "CANCELLATION" MEANS THE ENDING OF A CONTRACT BY A PARTY
35 BECAUSE OF BREACH OF CONTRACT BY ANOTHER PARTY.

1 (9) "COMPUTER" MEANS AN ELECTRONIC DEVICE THAT ACCEPTS
2 INFORMATION IN DIGITAL OR SIMILAR FORM AND MANIPULATES IT FOR A RESULT
3 BASED ON A SEQUENCE OF INSTRUCTIONS.

4 (10) "COMPUTER INFORMATION" MEANS INFORMATION IN ELECTRONIC
5 FORM WHICH IS OBTAINED FROM OR THROUGH THE USE OF A COMPUTER OR WHICH
6 IS IN A FORM CAPABLE OF BEING PROCESSED BY A COMPUTER. THE TERM INCLUDES
7 A COPY OF THE INFORMATION AND ANY DOCUMENTATION OR PACKAGING
8 ASSOCIATED WITH THE COPY.

9 (11) "COMPUTER INFORMATION TRANSACTION" MEANS AN AGREEMENT
10 OR THE PERFORMANCE OF IT TO CREATE, MODIFY, TRANSFER, OR LICENSE
11 COMPUTER INFORMATION OR INFORMATIONAL RIGHTS IN COMPUTER
12 INFORMATION. THE TERM INCLUDES A SUPPORT CONTRACT UNDER § 21-612 OF THIS
13 TITLE. THE TERM DOES NOT INCLUDE A TRANSACTION MERELY BECAUSE THE
14 PARTIES' AGREEMENT PROVIDES THAT THEIR COMMUNICATIONS ABOUT THE
15 TRANSACTION WILL BE IN THE FORM OF COMPUTER INFORMATION.

16 (12) "COMPUTER PROGRAM" MEANS A SET OF STATEMENTS OR
17 INSTRUCTIONS TO BE USED DIRECTLY OR INDIRECTLY IN A COMPUTER TO BRING
18 ABOUT A CERTAIN RESULT. THE TERM DOES NOT INCLUDE SEPARATELY
19 IDENTIFIABLE INFORMATIONAL CONTENT.

20 (13) "CONSEQUENTIAL DAMAGES":

21 (A) RESULTING FROM BREACH OF CONTRACT INCLUDES (I) ANY
22 LOSS RESULTING FROM GENERAL OR PARTICULAR REQUIREMENTS AND NEEDS OF
23 WHICH THE BREACHING PARTY AT THE TIME OF CONTRACTING HAD REASON TO
24 KNOW AND WHICH COULD NOT REASONABLY BE PREVENTED AND (II) ANY INJURY TO
25 AN INDIVIDUAL OR DAMAGE TO PROPERTY OTHER THAN THE SUBJECT MATTER OF
26 THE TRANSACTION PROXIMATELY RESULTING FROM BREACH OF WARRANTY;

27 (B) RESULTING FROM WRONGFUL USE OF ELECTRONIC
28 SELF-HELP AS DEFINED IN § 21-816 OF THIS TITLE INCLUDES ANY LOSS RESULTING
29 FROM GENERAL OR PARTICULAR REQUIREMENTS AND NEEDS OF WHICH THE PARTY
30 EXERCISING ELECTRONIC SELF-HELP AT THE TIME OF THE EXERCISE HAD REASON
31 TO KNOW AND WHICH COULD NOT REASONABLY BE PREVENTED; AND

32 (C) ~~THE TERM~~ DOES NOT INCLUDE DIRECT DAMAGES OR
33 INCIDENTAL DAMAGES.

34 (14) "CONSPICUOUS", WITH REFERENCE TO A TERM, MEANS SO WRITTEN,
35 DISPLAYED, OR PRESENTED THAT A REASONABLE PERSON AGAINST WHICH IT IS TO
36 OPERATE OUGHT TO HAVE NOTICED IT. A TERM IN AN ELECTRONIC RECORD
37 INTENDED TO EVOKE A RESPONSE BY AN ELECTRONIC AGENT IS CONSPICUOUS IF IT
38 IS PRESENTED IN A FORM THAT WOULD ENABLE A REASONABLY CONFIGURED
39 ELECTRONIC AGENT TO TAKE IT INTO ACCOUNT OR REACT TO IT WITHOUT REVIEW
40 OF THE RECORD BY AN INDIVIDUAL. CONSPICUOUS TERMS INCLUDE THE
41 FOLLOWING:

1 (A) WITH RESPECT TO A PERSON:

2 (I) A HEADING IN CAPITALS IN A SIZE ~~EQUAL TO OR~~ GREATER
3 THAN, OR IN CONTRASTING TYPE, FONT, OR COLOR TO, THE SURROUNDING TEXT;

4 (II) LANGUAGE IN THE BODY OF A RECORD OR DISPLAY IN
5 LARGER OR OTHER CONTRASTING TYPE, FONT, OR COLOR OR SET OFF FROM THE
6 SURROUNDING TEXT BY SYMBOLS OR OTHER MARKS THAT DRAW ATTENTION TO THE
7 LANGUAGE; AND

8 (III) A TERM PROMINENTLY REFERENCED IN AN ELECTRONIC
9 RECORD OR DISPLAY WHICH IS READILY ACCESSIBLE OR REVIEWABLE FROM THE
10 RECORD OR DISPLAY; AND

11 (B) WITH RESPECT TO A PERSON OR AN ELECTRONIC AGENT, A
12 TERM OR REFERENCE TO A TERM THAT IS SO PLACED IN A RECORD OR DISPLAY THAT
13 THE PERSON OR ELECTRONIC AGENT CANNOT PROCEED WITHOUT TAKING ACTION
14 WITH RESPECT TO THE PARTICULAR TERM OR REFERENCE.

15 (15) "CONSUMER" MEANS AN INDIVIDUAL WHO IS A LICENSEE OF
16 INFORMATION OR INFORMATIONAL RIGHTS THAT THE INDIVIDUAL AT THE TIME OF
17 CONTRACTING INTENDED TO BE USED PRIMARILY FOR PERSONAL, FAMILY, OR
18 HOUSEHOLD PURPOSES. THE TERM DOES NOT INCLUDE AN INDIVIDUAL WHO IS A
19 LICENSEE PRIMARILY FOR PROFESSIONAL OR COMMERCIAL PURPOSES, INCLUDING
20 AGRICULTURE, BUSINESS MANAGEMENT, AND INVESTMENT MANAGEMENT OTHER
21 THAN MANAGEMENT OF THE INDIVIDUAL'S PERSONAL OR FAMILY INVESTMENTS.

22 (16) "CONSUMER CONTRACT" MEANS A CONTRACT BETWEEN A
23 MERCHANT LICENSOR AND A CONSUMER.

24 (17) "CONTRACT" MEANS THE TOTAL LEGAL OBLIGATION RESULTING
25 FROM THE PARTIES' AGREEMENT AS AFFECTED BY THIS TITLE AND OTHER
26 APPLICABLE LAW.

27 (18) "CONTRACT FEE" MEANS THE PRICE, FEE, RENT, OR ROYALTY
28 PAYABLE IN A CONTRACT UNDER THIS TITLE OR ANY PART OF THE AMOUNT
29 PAYABLE.

30 (19) "CONTRACTUAL USE TERM" MEANS AN ENFORCEABLE TERM THAT
31 DEFINES OR LIMITS THE USE, DISCLOSURE OF, OR ACCESS TO LICENSED
32 INFORMATION OR INFORMATIONAL RIGHTS, INCLUDING A TERM THAT DEFINES THE
33 SCOPE OF A LICENSE.

34 (20) "COPY" MEANS THE MEDIUM ON WHICH INFORMATION IS FIXED ON
35 A TEMPORARY OR PERMANENT BASIS AND FROM WHICH IT CAN BE PERCEIVED,
36 REPRODUCED, USED, OR COMMUNICATED, EITHER DIRECTLY OR WITH THE AID OF A
37 MACHINE OR DEVICE.

38 (21) "COURSE OF DEALING" MEANS A SEQUENCE OF PREVIOUS CONDUCT
39 BETWEEN THE PARTIES TO A PARTICULAR TRANSACTION WHICH ESTABLISHES A

1 COMMON BASIS OF UNDERSTANDING FOR INTERPRETING THEIR EXPRESSIONS AND
2 OTHER CONDUCT.

3 (22) "COURSE OF PERFORMANCE" MEANS REPEATED PERFORMANCES,
4 UNDER A CONTRACT THAT INVOLVES REPEATED OCCASIONS FOR PERFORMANCE,
5 WHICH ARE ACCEPTED OR ACQUIESCED IN WITHOUT OBJECTION BY A PARTY
6 HAVING KNOWLEDGE OF THE NATURE OF THE PERFORMANCE AND AN
7 OPPORTUNITY TO OBJECT TO IT.

8 (23) "COURT" INCLUDES AN ARBITRATION OR OTHER
9 DISPUTE-RESOLUTION FORUM IF THE PARTIES HAVE AGREED TO USE OF THAT
10 FORUM OR ITS USE IS REQUIRED BY LAW.

11 (24) "DELIVERY", WITH RESPECT TO A COPY, MEANS THE VOLUNTARY
12 PHYSICAL OR ELECTRONIC TRANSFER OF POSSESSION OR CONTROL.

13 (25) "DIRECT DAMAGES" MEANS COMPENSATION FOR LOSSES MEASURED
14 BY § 21-808(B)(1) OR § 21-809(A)(1) OF THIS TITLE. THE TERM DOES NOT INCLUDE
15 CONSEQUENTIAL DAMAGES OR INCIDENTAL DAMAGES.

16 (26) "ELECTRONIC" MEANS RELATING TO TECHNOLOGY HAVING
17 ELECTRICAL, DIGITAL, MAGNETIC, WIRELESS, OPTICAL, ELECTROMAGNETIC, OR
18 SIMILAR CAPABILITIES.

19 (27) "ELECTRONIC AGENT" MEANS A COMPUTER PROGRAM, OR
20 ELECTRONIC OR OTHER AUTOMATED MEANS, USED BY A PERSON TO INITIATE AN
21 ACTION, OR TO RESPOND TO ELECTRONIC MESSAGES OR PERFORMANCES, ON THE
22 PERSON'S BEHALF WITHOUT REVIEW OR ACTION BY AN INDIVIDUAL AT THE TIME OF
23 THE ACTION OR RESPONSE TO THE MESSAGE OR PERFORMANCE.

24 (28) "ELECTRONIC MESSAGE" MEANS A RECORD OR DISPLAY THAT IS
25 STORED, GENERATED, OR TRANSMITTED BY ELECTRONIC MEANS FOR THE PURPOSE
26 OF COMMUNICATION TO ANOTHER PERSON OR ELECTRONIC AGENT.

27 (29) "FINANCIAL ACCOMMODATION CONTRACT" MEANS AN AGREEMENT
28 UNDER WHICH A PERSON EXTENDS A FINANCIAL ACCOMMODATION TO A LICENSEE
29 AND WHICH DOES NOT CREATE A SECURITY INTEREST GOVERNED BY TITLE 9 OF
30 THIS ARTICLE. THE AGREEMENT MAY BE IN ANY FORM, INCLUDING A LICENSE OR
31 LEASE.

32 (30) "FINANCIAL SERVICES TRANSACTION" MEANS AN AGREEMENT THAT
33 PROVIDES FOR, OR A TRANSACTION THAT IS, OR ENTAILS ACCESS TO, USE,
34 TRANSFER, CLEARANCE, SETTLEMENT, OR PROCESSING OF:

35 (A) A DEPOSIT, LOAN, FUNDS, OR MONETARY VALUE REPRESENTED
36 IN ELECTRONIC FORM AND STORED OR CAPABLE OF STORAGE BY ELECTRONIC
37 MEANS AND RETRIEVABLE AND TRANSFERABLE BY ELECTRONIC MEANS, OR OTHER
38 RIGHT TO PAYMENT TO OR FROM A PERSON;

39 (B) AN INSTRUMENT OR OTHER ITEM;

1 (C) A PAYMENT ORDER, CREDIT CARD TRANSACTION, DEBIT CARD
2 TRANSACTION, FUNDS TRANSFER, AUTOMATED CLEARINGHOUSE TRANSFER, OR
3 SIMILAR WHOLESALE OR RETAIL TRANSFER OF FUNDS;

4 (D) A LETTER OF CREDIT, DOCUMENT OF TITLE, FINANCIAL ASSET,
5 INVESTMENT PROPERTY, OR SIMILAR ASSET HELD IN A FIDUCIARY OR AGENCY
6 CAPACITY; OR

7 (E) RELATED IDENTIFYING, VERIFYING, ACCESS-ENABLING,
8 AUTHORIZING, OR MONITORING INFORMATION.

9 (31) "FINANCIER" MEANS A PERSON THAT PROVIDES A FINANCIAL
10 ACCOMMODATION TO A LICENSEE UNDER A FINANCIAL ACCOMMODATION
11 CONTRACT AND EITHER (I) BECOMES A LICENSEE FOR THE PURPOSE OF
12 TRANSFERRING OR SUBLICENSING THE LICENSE TO THE PARTY TO WHICH THE
13 FINANCIAL ACCOMMODATION IS PROVIDED OR (II) OBTAINS A CONTRACTUAL RIGHT
14 UNDER THE FINANCIAL ACCOMMODATION CONTRACT TO PRECLUDE THE
15 LICENSEE'S USE OF THE INFORMATION OR INFORMATIONAL RIGHTS UNDER A
16 LICENSE IN THE EVENT OF BREACH OF THE FINANCIAL ACCOMMODATION
17 CONTRACT. THE TERM DOES NOT INCLUDE A PERSON THAT SELECTS, CREATES, OR
18 SUPPLIES THE INFORMATION THAT IS THE SUBJECT OF THE LICENSE, OWNS THE
19 INFORMATIONAL RIGHTS IN THE INFORMATION, OR PROVIDES SUPPORT FOR,
20 MODIFICATIONS TO, OR MAINTENANCE OF THE INFORMATION.

21 (32) "GOOD FAITH" MEANS HONESTY IN FACT AND THE OBSERVANCE OF
22 REASONABLE COMMERCIAL STANDARDS OF FAIR DEALING.

23 (33) "GOODS" MEANS ALL THINGS THAT ARE MOVABLE AT THE TIME
24 RELEVANT TO THE COMPUTER INFORMATION TRANSACTION. THE TERM INCLUDES
25 THE UNBORN YOUNG OF ANIMALS, GROWING CROPS, AND OTHER IDENTIFIED
26 THINGS TO BE SEVERED FROM REALTY WHICH ARE COVERED BY § 2-107 OF THIS
27 ARTICLE. THE TERM DOES NOT INCLUDE COMPUTER INFORMATION, MONEY, THE
28 SUBJECT MATTER OF FOREIGN EXCHANGE TRANSACTIONS, DOCUMENTS, LETTERS
29 OF CREDIT, LETTER-OF-CREDIT RIGHTS, INSTRUMENTS, INVESTMENT PROPERTY,
30 ACCOUNTS, CHATTEL PAPER, DEPOSIT ACCOUNTS, OR GENERAL INTANGIBLES.

31 (34) "INCIDENTAL DAMAGES" RESULTING FROM BREACH OF CONTRACT:

32 (A) MEANS COMPENSATION FOR ANY COMMERCIALY
33 REASONABLE CHARGES, EXPENSES, OR COMMISSIONS REASONABLY INCURRED BY
34 AN AGGRIEVED PARTY WITH RESPECT TO:

35 (I) INSPECTION, RECEIPT, TRANSMISSION,
36 TRANSPORTATION, CARE, OR CUSTODY OF IDENTIFIED COPIES OR INFORMATION
37 THAT IS THE SUBJECT OF THE BREACH;

38 (II) STOPPING DELIVERY, SHIPMENT, OR TRANSMISSION;

39 (III) EFFECTING COVER OR RETRANSFER OF COPIES OR
40 INFORMATION AFTER THE BREACH;

1 (IV) OTHER EFFORTS AFTER THE BREACH TO MINIMIZE OR
2 AVOID LOSS RESULTING FROM THE BREACH; AND

3 (V) MATTERS OTHERWISE INCIDENT TO THE BREACH; AND

4 (B) DOES NOT INCLUDE CONSEQUENTIAL DAMAGES OR DIRECT
5 DAMAGES.

6 (35) "INFORMATION" MEANS DATA, TEXT, IMAGES, SOUNDS, MASK
7 WORKS, OR COMPUTER PROGRAMS, INCLUDING COLLECTIONS AND COMPILATIONS
8 OF THEM.

9 (36) "INFORMATION PROCESSING SYSTEM" MEANS AN ELECTRONIC
10 SYSTEM FOR CREATING, GENERATING, SENDING, RECEIVING, STORING, DISPLAYING,
11 OR PROCESSING INFORMATION.

12 (37) "INFORMATIONAL CONTENT" MEANS INFORMATION THAT IS
13 INTENDED TO BE COMMUNICATED TO OR PERCEIVED BY AN INDIVIDUAL IN THE
14 ORDINARY USE OF THE INFORMATION, OR THE EQUIVALENT OF THAT INFORMATION.

15 (38) "INFORMATIONAL RIGHTS" INCLUDE ALL RIGHTS IN INFORMATION
16 CREATED UNDER LAWS GOVERNING PATENTS, COPYRIGHTS, MASK WORKS, TRADE
17 SECRETS, TRADEMARKS, PUBLICITY RIGHTS, OR ANY OTHER LAW THAT GIVES A
18 PERSON, INDEPENDENTLY OF CONTRACT, A RIGHT TO CONTROL OR PRECLUDE
19 ANOTHER PERSON'S USE OF OR ACCESS TO THE INFORMATION ON THE BASIS OF THE
20 RIGHTS HOLDER'S INTEREST IN THE INFORMATION.

21 (39) "INSURANCE SERVICES TRANSACTION" MEANS AN AGREEMENT
22 THAT PROVIDES FOR, OR A TRANSACTION THAT IS, OR ENTAILS ACCESS TO, USE,
23 TRANSFER, CLEARANCE, SETTLEMENT, OR PROCESSING OF:

24 (A) AN INSURANCE POLICY, CONTRACT, OR CERTIFICATE; OR

25 (B) A RIGHT TO PAYMENT UNDER AN INSURANCE POLICY,
26 CONTRACT, OR CERTIFICATE.

27 ~~(39)~~ (40) "KNOWLEDGE", WITH RESPECT TO A FACT, MEANS ACTUAL
28 KNOWLEDGE OF THE FACT.

29 ~~(40)~~ (41) "LICENSE" MEANS A CONTRACT THAT AUTHORIZES ACCESS TO,
30 OR USE, DISTRIBUTION, PERFORMANCE, MODIFICATION, OR REPRODUCTION OF,
31 INFORMATION OR INFORMATIONAL RIGHTS, BUT EXPRESSLY LIMITS THE ACCESS OR
32 USES AUTHORIZED OR EXPRESSLY GRANTS FEWER THAN ALL RIGHTS IN THE
33 INFORMATION, WHETHER OR NOT THE TRANSFEREE HAS TITLE TO A LICENSED
34 COPY. THE TERM INCLUDES AN ACCESS CONTRACT, A LEASE OF A COMPUTER
35 PROGRAM, AND A CONSIGNMENT OF A COPY. THE TERM DOES NOT INCLUDE A
36 RESERVATION OR CREATION OF A SECURITY INTEREST TO THE EXTENT THE
37 INTEREST IS GOVERNED BY TITLE 9 OF THIS ARTICLE.

1 ~~(41)~~ (42) "LICENSEE" MEANS A PERSON ENTITLED BY AGREEMENT TO
2 ACQUIRE OR EXERCISE RIGHTS IN, OR TO HAVE ACCESS TO OR USE OF, COMPUTER
3 INFORMATION UNDER AN AGREEMENT TO WHICH THIS TITLE APPLIES. A LICENSOR
4 IS NOT A LICENSEE WITH RESPECT TO RIGHTS RESERVED TO IT UNDER THE
5 AGREEMENT.

6 ~~(42)~~ (43) "LICENSOR" MEANS A PERSON OBLIGATED BY AGREEMENT TO
7 TRANSFER OR CREATE RIGHTS IN, OR TO GIVE ACCESS TO OR USE OF, COMPUTER
8 INFORMATION OR INFORMATIONAL RIGHTS IN IT UNDER AN AGREEMENT TO WHICH
9 THIS TITLE APPLIES. BETWEEN THE PROVIDER OF ACCESS AND A PROVIDER OF THE
10 INFORMATIONAL CONTENT TO BE ACCESSED, THE PROVIDER OF CONTENT IS THE
11 LICENSOR. IN AN EXCHANGE OF INFORMATION OR INFORMATIONAL RIGHTS, EACH
12 PARTY IS A LICENSOR WITH RESPECT TO THE INFORMATION, INFORMATIONAL
13 RIGHTS, OR ACCESS IT GIVES.

14 ~~(43)~~ (44) "MASS-MARKET LICENSE" MEANS A STANDARD FORM USED IN
15 A MASS-MARKET TRANSACTION.

16 ~~(44)~~ (45) "MASS-MARKET TRANSACTION" MEANS A TRANSACTION THAT
17 IS:

18 (A) A CONSUMER CONTRACT; OR

19 (B) ANY OTHER TRANSACTION WITH AN END-USER LICENSEE IF:

20 (I) THE TRANSACTION IS FOR INFORMATION OR
21 INFORMATIONAL RIGHTS DIRECTED TO THE GENERAL PUBLIC AS A WHOLE,
22 INCLUDING CONSUMERS, UNDER SUBSTANTIALLY THE SAME TERMS FOR THE SAME
23 INFORMATION;

24 (II) THE LICENSEE ACQUIRES THE INFORMATION OR
25 INFORMATIONAL RIGHTS IN A RETAIL TRANSACTION UNDER TERMS ~~AND IN A~~
26 ~~QUANTITY~~ CONSISTENT WITH AN ORDINARY TRANSACTION IN A RETAIL MARKET;
27 AND

28 (III) THE TRANSACTION IS NOT:

29 1. A CONTRACT FOR REDISTRIBUTION OR FOR PUBLIC
30 PERFORMANCE OR PUBLIC DISPLAY OF A COPYRIGHTED WORK;

31 2. A TRANSACTION IN WHICH THE INFORMATION IS
32 CUSTOMIZED OR OTHERWISE SPECIALLY PREPARED BY THE LICENSOR FOR THE
33 LICENSEE, OTHER THAN MINOR CUSTOMIZATION USING A CAPABILITY OF THE
34 INFORMATION INTENDED FOR THAT PURPOSE;

35 3. A SITE LICENSE; OR

36 4. AN ACCESS CONTRACT.

37 ~~(45)~~ (46) "MERCHANT" MEANS A PERSON:

1 (A) THAT DEALS IN INFORMATION OR INFORMATIONAL RIGHTS OF
2 THE KIND INVOLVED IN THE TRANSACTION;

3 (B) THAT BY THE PERSON'S OCCUPATION HOLDS ITSELF OUT AS
4 HAVING KNOWLEDGE OR SKILL PECULIAR TO THE RELEVANT ASPECT OF THE
5 BUSINESS PRACTICES OR INFORMATION INVOLVED IN THE TRANSACTION; OR

6 (C) TO WHICH THE KNOWLEDGE OR SKILL PECULIAR TO THE
7 PRACTICES OR INFORMATION INVOLVED IN THE TRANSACTION MAY BE ATTRIBUTED
8 BY THE PERSON'S EMPLOYMENT OF AN AGENT OR BROKER OR OTHER
9 INTERMEDIARY THAT BY ITS OCCUPATION HOLDS ITSELF OUT AS HAVING THE
10 KNOWLEDGE OR SKILL.

11 ~~(46)~~ (47) "NONEXCLUSIVE LICENSE" MEANS A LICENSE THAT DOES NOT
12 PRECLUDE THE LICENSOR FROM TRANSFERRING TO OTHER LICENSEES THE SAME
13 INFORMATION, INFORMATIONAL RIGHTS, OR CONTRACTUAL RIGHTS WITHIN THE
14 SAME SCOPE. THE TERM INCLUDES A CONSIGNMENT OF A COPY.

15 ~~(47)~~ (48) "NOTICE" OF A FACT MEANS KNOWLEDGE OF THE FACT,
16 RECEIPT OF NOTIFICATION OF THE FACT, OR REASON TO KNOW THE FACT EXISTS.

17 ~~(48)~~ (49) "NOTIFY", OR "GIVE NOTICE", MEANS TO TAKE SUCH STEPS AS
18 MAY BE REASONABLY REQUIRED TO INFORM THE OTHER PERSON IN THE ORDINARY
19 COURSE, WHETHER OR NOT THE OTHER PERSON ACTUALLY COMES TO KNOW OF IT.

20 ~~(49)~~ (50) "PARTY" MEANS A PERSON THAT ENGAGES IN A TRANSACTION
21 OR MAKES AN AGREEMENT UNDER THIS TITLE.

22 ~~(50)~~ (51) "PERSON" MEANS AN INDIVIDUAL, CORPORATION, BUSINESS
23 TRUST, ESTATE, TRUST, PARTNERSHIP, LIMITED LIABILITY COMPANY, ASSOCIATION,
24 JOINT VENTURE, GOVERNMENTAL SUBDIVISION, INSTRUMENTALITY, OR AGENCY,
25 PUBLIC CORPORATION, OR ANY OTHER LEGAL OR COMMERCIAL ENTITY.

26 ~~(51)~~ (52) "PUBLISHED INFORMATIONAL CONTENT" MEANS
27 INFORMATIONAL CONTENT PREPARED FOR OR MADE AVAILABLE TO RECIPIENTS
28 GENERALLY, OR TO A CLASS OF RECIPIENTS, IN SUBSTANTIALLY THE SAME FORM.
29 THE TERM DOES NOT INCLUDE INFORMATIONAL CONTENT THAT IS:

30 (A) CUSTOMIZED FOR A PARTICULAR RECIPIENT BY ONE OR MORE
31 INDIVIDUALS ACTING AS OR ON BEHALF OF THE LICENSOR, USING JUDGMENT OR
32 EXPERTISE; OR

33 (B) PROVIDED IN A SPECIAL RELATIONSHIP OF RELIANCE
34 BETWEEN THE PROVIDER AND THE RECIPIENT.

35 ~~(52)~~ (53) "RECEIPT" MEANS:

36 (A) WITH RESPECT TO A COPY, TAKING DELIVERY; OR

37 (B) WITH RESPECT TO A NOTICE:

1 (I) COMING TO A PERSON'S ATTENTION; OR

2 (II) BEING DELIVERED TO AND AVAILABLE AT A LOCATION OR
3 SYSTEM DESIGNATED BY AGREEMENT FOR THAT PURPOSE OR, IN THE ABSENCE OF
4 AN AGREED LOCATION OR SYSTEM:

5 1. BEING DELIVERED AT THE PERSON'S RESIDENCE, OR THE
6 PERSON'S PLACE OF BUSINESS THROUGH WHICH THE CONTRACT WAS MADE, OR AT
7 ANY OTHER PLACE HELD OUT BY THE PERSON AS A PLACE FOR RECEIPT OF
8 COMMUNICATIONS OF THE KIND; OR

9 2. IN THE CASE OF AN ELECTRONIC NOTICE, COMING INTO
10 EXISTENCE IN AN INFORMATION PROCESSING SYSTEM OR AT AN ADDRESS IN THAT
11 SYSTEM IN A FORM CAPABLE OF BEING PROCESSED BY OR PERCEIVED FROM A
12 SYSTEM OF THAT TYPE BY A RECIPIENT, IF THE RECIPIENT USES, OR OTHERWISE
13 HAS DESIGNATED OR HOLDS OUT, THAT PLACE OR SYSTEM FOR RECEIPT OF NOTICES
14 OF THE KIND TO BE GIVEN AND THE SENDER DOES NOT KNOW THAT THE NOTICE
15 CANNOT BE ACCESSED FROM THAT PLACE.

16 ~~(53)~~ (54) "RECEIVE" MEANS TO TAKE RECEIPT.

17 ~~(54)~~ (55) "RECORD" MEANS INFORMATION THAT IS INSCRIBED ON A
18 TANGIBLE MEDIUM OR THAT IS STORED IN AN ELECTRONIC OR OTHER MEDIUM AND
19 IS RETRIEVABLE IN PERCEIVABLE FORM.

20 ~~(55)~~ (56) "RELEASE" MEANS AN AGREEMENT BY A PARTY NOT TO OBJECT
21 TO, OR EXERCISE ANY RIGHTS OR PURSUE ANY REMEDIES TO LIMIT, THE USE OF
22 INFORMATION OR INFORMATIONAL RIGHTS WHICH AGREEMENT DOES NOT REQUIRE
23 AN AFFIRMATIVE ACT BY THE PARTY TO ENABLE OR SUPPORT THE OTHER PARTY'S
24 USE OF THE INFORMATION OR INFORMATIONAL RIGHTS. THE TERM INCLUDES A
25 WAIVER OF INFORMATIONAL RIGHTS.

26 ~~(56)~~ (57) "RETURN", WITH RESPECT TO A RECORD CONTAINING
27 CONTRACTUAL TERMS THAT WERE REJECTED, REFERS ONLY TO THE COMPUTER
28 INFORMATION AND MEANS:

29 (A) IN THE CASE OF A LICENSEE THAT REJECTS A RECORD
30 REGARDING A SINGLE INFORMATION PRODUCT TRANSFERRED FOR A SINGLE
31 CONTRACT FEE, A RIGHT TO REIMBURSEMENT OF THE CONTRACT FEE PAID FROM
32 THE PERSON TO WHICH IT WAS PAID OR FROM ANOTHER PERSON THAT OFFERS TO
33 REIMBURSE THAT FEE, ON:

34 (I) SUBMISSION OF PROOF OF PURCHASE; AND

35 (II) PROPER REDELIVERY OF THE COMPUTER INFORMATION
36 AND ALL COPIES WITHIN A REASONABLE TIME AFTER INITIAL DELIVERY OF THE
37 INFORMATION TO THE LICENSEE;

38 (B) IN THE CASE OF A LICENSEE THAT REJECTS A RECORD
39 REGARDING AN INFORMATION PRODUCT PROVIDED AS PART OF MULTIPLE

1 INFORMATION PRODUCTS INTEGRATED INTO AND TRANSFERRED AS A BUNDLED
 2 WHOLE BUT RETAINING THEIR SEPARATE IDENTITY:

3 (I) A RIGHT TO REIMBURSEMENT OF ANY PORTION OF THE
 4 AGGREGATE CONTRACT FEE IDENTIFIED BY THE LICENSOR IN THE INITIAL
 5 TRANSACTION AS CHARGED TO THE LICENSEE FOR ALL BUNDLED INFORMATION
 6 PRODUCTS WHICH WAS ACTUALLY PAID, ON:

7 1. REJECTION OF THE RECORD BEFORE OR DURING THE
 8 INITIAL USE OF THE BUNDLED PRODUCT;

9 2. PROPER REDELIVERY OF ALL COMPUTER INFORMATION
 10 PRODUCTS IN THE BUNDLED WHOLE AND ALL COPIES OF THEM WITHIN A
 11 REASONABLE TIME AFTER INITIAL DELIVERY OF THE INFORMATION TO THE
 12 LICENSEE; AND

13 3. SUBMISSION OF PROOF OF PURCHASE; OR

14 (II) A RIGHT TO REIMBURSEMENT OF ANY SEPARATE
 15 CONTRACT FEE IDENTIFIED BY THE LICENSOR IN THE INITIAL TRANSACTION AS
 16 CHARGED TO THE LICENSEE FOR THE SEPARATE INFORMATION PRODUCT TO WHICH
 17 THE REJECTED RECORD APPLIES, ON:

18 1. SUBMISSION OF PROOF OF PURCHASE; AND

19 2. PROPER REDELIVERY OF THAT COMPUTER INFORMATION
 20 PRODUCT AND ALL COPIES WITHIN A REASONABLE TIME AFTER INITIAL DELIVERY
 21 OF THE INFORMATION TO THE LICENSEE; OR

22 (C) IN THE CASE OF A LICENSOR THAT REJECTS A RECORD
 23 PROPOSED BY THE LICENSEE, A RIGHT TO PROPER REDELIVERY OF THE COMPUTER
 24 INFORMATION AND ALL COPIES FROM THE LICENSEE, TO STOP DELIVERY OR ACCESS
 25 TO THE INFORMATION BY THE LICENSEE, AND TO REIMBURSEMENT FROM THE
 26 LICENSEE OF AMOUNTS PAID BY THE LICENSOR WITH RESPECT TO THE REJECTED
 27 RECORD, ON REIMBURSEMENT TO THE LICENSEE OF CONTRACT FEES THAT IT PAID
 28 WITH RESPECT TO THE REJECTED RECORD, SUBJECT TO RECOUPMENT AND SETOFF.

29 ~~(57)~~ (58) "SCOPE", WITH RESPECT TO TERMS OF A LICENSE, MEANS:

30 (A) THE LICENSED COPIES, INFORMATION, OR INFORMATIONAL
 31 RIGHTS INVOLVED;

32 (B) THE USE OR ACCESS AUTHORIZED, PROHIBITED, OR
 33 CONTROLLED;

34 (C) THE GEOGRAPHIC AREA, MARKET, OR LOCATION; OR

35 (D) THE DURATION OF THE LICENSE.

1 ~~(58)~~ (59) "SEASONABLE", WITH RESPECT TO AN ACT, MEANS TAKEN
2 WITHIN THE TIME AGREED OR, IF NO TIME IS AGREED, WITHIN A REASONABLE TIME.

3 ~~(59)~~ (60) "SEND" MEANS, WITH ANY COSTS PROVIDED FOR AND
4 PROPERLY ADDRESSED OR DIRECTED AS REASONABLE UNDER THE CIRCUMSTANCES
5 OR AS OTHERWISE AGREED, TO DEPOSIT A RECORD IN THE MAIL OR WITH A
6 COMMERCIALY REASONABLE CARRIER, TO DELIVER A RECORD FOR TRANSMISSION
7 TO OR RE-CREATION IN ANOTHER LOCATION OR INFORMATION PROCESSING
8 SYSTEM, OR TO TAKE THE STEPS NECESSARY TO INITIATE TRANSMISSION TO OR
9 RE-CREATION OF A RECORD IN ANOTHER LOCATION OR INFORMATION PROCESSING
10 SYSTEM. IN ADDITION, WITH RESPECT TO AN ELECTRONIC MESSAGE, THE MESSAGE
11 MUST BE IN A FORM CAPABLE OF BEING PROCESSED BY OR PERCEIVED FROM A
12 SYSTEM OF THE TYPE THE RECIPIENT USES OR OTHERWISE HAS DESIGNATED OR
13 HELD OUT AS A PLACE FOR THE RECEIPT OF COMMUNICATIONS OF THE KIND SENT.
14 RECEIPT WITHIN THE TIME IN WHICH IT WOULD HAVE ARRIVED IF PROPERLY SENT,
15 HAS THE EFFECT OF A PROPER SENDING.

16 ~~(60)~~ (61) "STANDARD FORM" MEANS A RECORD OR A GROUP OF RELATED
17 RECORDS CONTAINING TERMS PREPARED FOR REPEATED USE IN TRANSACTIONS
18 AND SO USED IN A TRANSACTION IN WHICH THERE WAS NO NEGOTIATED CHANGE
19 OF TERMS BY INDIVIDUALS EXCEPT TO SET THE PRICE, QUANTITY, METHOD OF
20 PAYMENT, SELECTION AMONG STANDARD OPTIONS, OR TIME OR METHOD OF
21 DELIVERY.

22 ~~(61)~~ (62) "STATE" MEANS A STATE OF THE UNITED STATES, THE
23 DISTRICT OF COLUMBIA, PUERTO RICO, THE ~~UNITES~~ UNITED STATES VIRGIN
24 ISLANDS, OR ANY TERRITORY OR INSULAR POSSESSION SUBJECT TO THE
25 JURISDICTION OF THE UNITED STATES.

26 ~~(62)~~ (63) "TERM", WITH RESPECT TO AN AGREEMENT, MEANS THAT
27 PORTION OF THE AGREEMENT WHICH RELATES TO A PARTICULAR MATTER.

28 ~~(63)~~ (64) "TERMINATION" MEANS THE ENDING OF A CONTRACT BY A
29 PARTY PURSUANT TO A POWER CREATED BY AGREEMENT OR LAW OTHERWISE THAN
30 BECAUSE OF BREACH OF CONTRACT.

31 ~~(64)~~ (65) "TRANSFER":

32 (A) WITH RESPECT TO A CONTRACTUAL INTEREST, INCLUDES AN
33 ASSIGNMENT OF THE CONTRACT, BUT DOES NOT INCLUDE AN AGREEMENT MERELY
34 TO PERFORM A CONTRACTUAL OBLIGATION OR TO EXERCISE CONTRACTUAL RIGHTS
35 THROUGH A DELEGATE OR SUBLICENSEE; AND

36 (B) WITH RESPECT TO COMPUTER INFORMATION, INCLUDES A
37 SALE, LICENSE, OR LEASE OF A COPY OF THE COMPUTER INFORMATION AND A
38 LICENSE OR ASSIGNMENT OF INFORMATIONAL RIGHTS IN COMPUTER
39 INFORMATION.

40 ~~(65)~~ (66) "USAGE OF TRADE" MEANS ANY PRACTICE OR METHOD OF
41 DEALING THAT HAS SUCH REGULARITY OF OBSERVANCE IN A PLACE, VOCATION, OR

1 TRADE AS TO JUSTIFY AN EXPECTATION THAT IT WILL BE OBSERVED WITH RESPECT
2 TO THE TRANSACTION IN QUESTION.

3 (B) THE FOLLOWING DEFINITIONS IN THIS ARTICLE APPLY TO THIS TITLE:

- 4 (1) "BURDEN OF ESTABLISHING" § 1-201.
5 (2) "DOCUMENT OF TITLE" § 1-201.
6 (3) "FINANCIAL ASSET" § 8-102(A)(9).
7 (4) "FUNDS TRANSFER" § 4A-104.
8 (5) "IDENTIFICATION" TO THE CONTRACT § 2-501.
9 (6) "INSTRUMENT" § 9-102(A)(47).
10 (7) "INVESTMENT PROPERTY" § 9-102(A)(49).
11 (8) "ITEM" § 4-104.
12 (9) "LETTER OF CREDIT" § 5-102.
13 (10) "PAYMENT ORDER" § 4A-103.
14 (11) "SALE" § 2-106.

15 GENERAL SCOPE AND TERMS.

16 21-103. SCOPE; EXCLUSIONS.

17 (A) THIS TITLE APPLIES TO COMPUTER INFORMATION TRANSACTIONS.

18 (B) EXCEPT AS OTHERWISE PROVIDED IN ~~SUBSECTION (D) OF THIS SECTION~~
19 ~~AND~~ § 21-104 OF THIS SUBTITLE, IF A COMPUTER INFORMATION TRANSACTION
20 INCLUDES SUBJECT MATTER OTHER THAN COMPUTER INFORMATION OR SUBJECT
21 MATTER EXCLUDED UNDER SUBSECTION (D) OF THIS SECTION, THE FOLLOWING
22 RULES APPLY:

23 (1) IF A TRANSACTION INCLUDES COMPUTER INFORMATION AND
24 GOODS, THIS TITLE APPLIES TO THE PART OF THE TRANSACTION INVOLVING
25 COMPUTER INFORMATION, INFORMATIONAL RIGHTS IN IT, AND CREATION OR
26 MODIFICATION OF IT. HOWEVER, IF A COPY OF A COMPUTER PROGRAM IS
27 CONTAINED IN AND SOLD OR LEASED AS PART OF GOODS, THIS TITLE APPLIES TO
28 THE COPY AND THE COMPUTER PROGRAM ONLY IF:

29 (A) THE GOODS ARE A COMPUTER OR COMPUTER PERIPHERAL; OR

30 (B) GIVING THE BUYER OR LESSEE OF THE GOODS ACCESS TO OR
31 USE OF THE PROGRAM IS ORDINARILY A MATERIAL PURPOSE OF TRANSACTIONS IN
32 GOODS OF THE TYPE SOLD OR LEASED.

1 (2) SUBJECT TO SUBSECTION (D)(2)(A) OF THIS SECTION, IF A
 2 TRANSACTION INCLUDES AN AGREEMENT FOR CREATING OR FOR OBTAINING
 3 RIGHTS TO CREATE COMPUTER INFORMATION AND A MOTION PICTURE, THIS TITLE
 4 DOES NOT APPLY TO THE AGREEMENT IF THE DOMINANT CHARACTER OF THE
 5 AGREEMENT IS FOR CREATING OR OBTAINING RIGHTS TO CREATE A MOTION
 6 PICTURE. IN ALL OTHER SUCH AGREEMENTS, THIS TITLE DOES NOT APPLY TO THE
 7 PART OF THE AGREEMENT THAT INVOLVES A MOTION PICTURE EXCLUDED UNDER
 8 SUBSECTION (D)(2) OF THIS SECTION, BUT DOES APPLY TO THE COMPUTER
 9 INFORMATION.

10 ~~(2)~~ (3) IN ALL OTHER CASES NOT INVOLVING GOODS, THIS TITLE
 11 APPLIES TO THE ENTIRE TRANSACTION IF THE COMPUTER INFORMATION AND
 12 INFORMATIONAL RIGHTS, OR ACCESS TO THEM, IS THE PRIMARY SUBJECT MATTER,
 13 BUT OTHERWISE APPLIES ONLY TO THE PART OF THE TRANSACTION INVOLVING
 14 COMPUTER INFORMATION, INFORMATIONAL RIGHTS IN IT, AND CREATION OR
 15 MODIFICATION OF IT, ~~UNLESS THE COMPUTER INFORMATION AND INFORMATIONAL~~
 16 ~~RIGHTS, OR ACCESS TO THEM, IS THE PRIMARY SUBJECT MATTER, IN WHICH CASE~~
 17 ~~THIS TITLE APPLIES TO THE ENTIRE TRANSACTION.~~

18 (C) TO THE EXTENT OF A CONFLICT BETWEEN THIS TITLE AND TITLE 9 OF
 19 THIS ARTICLE, TITLE 9 GOVERNS.

20 (D) THIS TITLE DOES NOT APPLY TO:

21 (1) A FINANCIAL SERVICES TRANSACTION;

22 (2) AN INSURANCE SERVICES TRANSACTION;

23 ~~(2)~~ (3) ~~A CONTRACT AN AGREEMENT TO CREATE, PERFORM OR~~
 24 ~~PERFORM IN, INCLUDE INFORMATION IN, ACQUIRE, USE, DISTRIBUTE, MODIFY,~~
 25 ~~REPRODUCE, HAVE ACCESS TO, ADAPT, MAKE AVAILABLE, TRANSMIT, LICENSE, OR~~
 26 ~~DISPLAY:~~

27 ~~(A) AUDIO OR VISUAL PROGRAMMING THAT IS PROVIDED BY~~
 28 ~~BROADCAST, SATELLITE, OR CABLE AS DEFINED OR USED IN THE FEDERAL~~
 29 ~~COMMUNICATIONS ACT AND RELATED REGULATIONS AS THEY EXISTED ON JULY 1,~~
 30 ~~1999, OR BY SIMILAR METHODS OF DELIVERING THAT PROGRAMMING; OR~~

31 (A) A MOTION PICTURE OR AUDIO OR VISUAL PROGRAMMING,
 32 OTHER THAN IN (I) A MASS-MARKET TRANSACTION OR (II) A SUBMISSION OF AN IDEA
 33 OR INFORMATION OR RELEASE OF INFORMATIONAL RIGHTS THAT MAY RESULT IN
 34 MAKING A MOTION PICTURE OR A SIMILAR INFORMATION PRODUCT; OR

35 (B) ~~A MOTION PICTURE,~~ SOUND RECORDING, MUSICAL WORK, OR
 36 PHONORECORD AS DEFINED OR USED IN TITLE 17 OF THE UNITED STATES CODE AS
 37 OF JULY 1, 1999, OR AN ENHANCED SOUND RECORDING;

38 ~~(3)~~ (4) A COMPULSORY LICENSE;

1 ~~(4)~~ (5) A CONTRACT OF EMPLOYMENT OF AN INDIVIDUAL, OTHER
 2 THAN AN INDIVIDUAL HIRED AS AN INDEPENDENT CONTRACTOR TO CREATE OR
 3 MODIFY COMPUTER INFORMATION, UNLESS SUCH INDEPENDENT CONTRACTOR IS A
 4 FREELANCER IN THE NEWS REPORTING INDUSTRY AS THAT TERM IS COMMONLY
 5 UNDERSTOOD IN THAT INDUSTRY;

6 ~~(5)~~ (6) A CONTRACT THAT DOES NOT REQUIRE THAT INFORMATION BE
 7 FURNISHED AS COMPUTER INFORMATION OR IN WHICH UNDER THE AGREEMENT
 8 THE FORM OF THE INFORMATION AS COMPUTER INFORMATION IS OTHERWISE
 9 INSIGNIFICANT WITH RESPECT TO THE PRIMARY SUBJECT MATTER OF THE PART OF
 10 THE TRANSACTION PERTAINING TO THE INFORMATION; OR

11 ~~(6)~~ (7) SUBJECT MATTER WITHIN THE SCOPE OF TITLE 3, 4, 4A, 5, 6, 7,
 12 OR 8 OF THIS ARTICLE.

13 (E) AS USED IN SUBSECTION ~~(D)(2)(B)~~ (D)(3)(B) OF THIS SECTION, "ENHANCED
 14 SOUND RECORDING" MEANS A SEPARATELY IDENTIFIABLE PRODUCT OR SERVICE
 15 THE DOMINANT CHARACTER OF WHICH CONSISTS OF RECORDED SOUNDS BUT
 16 WHICH INCLUDES (I) STATEMENTS OR INSTRUCTIONS WHOSE PURPOSE IS TO ALLOW
 17 OR CONTROL THE PERCEPTION, REPRODUCTION, OR COMMUNICATION OF THOSE
 18 SOUNDS OR (II) OTHER INFORMATION SO LONG AS RECORDED SOUNDS CONSTITUTE
 19 THE DOMINANT CHARACTER OF THE PRODUCT OR SERVICE DESPITE THE INCLUSION
 20 OF THE OTHER INFORMATION.

21 (F) AS USED IN THIS SECTION, "MOTION PICTURE" MEANS "MOTION PICTURE"
 22 AS DEFINED IN TITLE 17 OF THE UNITED STATES CODE AS OF JULY 1, 1999, OR A
 23 SEPARATELY IDENTIFIABLE PRODUCT OR SERVICE THE DOMINANT CHARACTER OF
 24 WHICH CONSISTS OF A LINEAR MOTION PICTURE, BUT WHICH INCLUDES (I)
 25 STATEMENTS OR INSTRUCTIONS WHOSE PURPOSE IS TO ALLOW OR CONTROL THE
 26 PERCEPTION, REPRODUCTION, OR COMMUNICATION OF THE MOTION PICTURE OR (II)
 27 OTHER INFORMATION SO LONG AS THE MOTION PICTURE CONSTITUTES THE
 28 DOMINANT CHARACTER OF THE PRODUCT OR SERVICE DESPITE THE INCLUSION OF
 29 THE OTHER INFORMATION.

30 (G) AS USED IN THIS SECTION, "AUDIO OR VISUAL PROGRAMMING" MEANS
 31 AUDIO OR VISUAL PROGRAMMING THAT IS PROVIDED BY BROADCAST, SATELLITE, OR
 32 CABLE AS DEFINED IN THE FEDERAL COMMUNICATIONS ACT OF 1934 AND RELATED
 33 REGULATIONS AS THEY EXISTED ON JULY 1, 1999, OR BY SIMILAR METHODS OF
 34 DELIVERY.

35 21-104. MIXED TRANSACTIONS: AGREEMENT TO OPT-IN OR OPT-OUT.

36 THE PARTIES MAY AGREE THAT THIS TITLE, INCLUDING
 37 CONTRACT-FORMATION RULES, GOVERNS THE TRANSACTION, IN WHOLE OR PART,
 38 OR THAT OTHER LAW GOVERNS THE TRANSACTION AND THIS TITLE DOES NOT
 39 APPLY, IF A MATERIAL PART OF THE SUBJECT MATTER TO WHICH THE AGREEMENT
 40 APPLIES IS COMPUTER INFORMATION OR INFORMATIONAL RIGHTS IN IT THAT ARE
 41 WITHIN THE SCOPE OF THIS TITLE, OR IS SUBJECT MATTER WITHIN THIS TITLE
 42 UNDER § 21-103(B) OF THIS SUBTITLE, OR IS SUBJECT MATTER EXCLUDED BY §

1 21-103(D)~~(1) OR (2)~~ (2) OR (3) OF THIS SUBTITLE. HOWEVER, ANY AGREEMENT TO DO SO
2 IS SUBJECT TO THE FOLLOWING RULES:

3 (1) AN AGREEMENT THAT THIS TITLE GOVERNS A TRANSACTION DOES
4 NOT ALTER THE APPLICABILITY OF ANY STATUTE, RULE, REGULATION, OR
5 PROCEDURE THAT MAY NOT BE VARIED BY AGREEMENT OF THE PARTIES OR THAT
6 MAY BE VARIED ONLY IN A MANNER SPECIFIED BY THE STATUTE, RULE,
7 REGULATION, OR PROCEDURE, INCLUDING A CONSUMER PROTECTION STATUTE OR
8 REGULATION. IN ADDITION, IN A MASS-MARKET TRANSACTION, THE AGREEMENT
9 DOES NOT ALTER THE APPLICABILITY OF A LAW APPLICABLE TO A COPY OF
10 INFORMATION IN PRINTED FORM.

11 (2) AN AGREEMENT THAT THIS TITLE DOES NOT GOVERN A
12 TRANSACTION:

13 (A) DOES NOT ALTER THE APPLICABILITY OF § 21-214 OF THIS
14 TITLE OR THE LIMITATIONS OF § 21-816 OF THIS TITLE IF THE PARTIES HAVE AGREED
15 TO PERMIT THE USE OF ELECTRONIC SELF-HELP; AND

16 (B) IN A MASS-MARKET TRANSACTION, DOES NOT ALTER THE
17 APPLICABILITY UNDER THIS TITLE OF THE DOCTRINE OF UNCONSCIONABILITY OR
18 FUNDAMENTAL PUBLIC POLICY OR THE OBLIGATION OF GOOD FAITH.

19 (3) IN A MASS-MARKET TRANSACTION, ANY TERM UNDER THIS SECTION
20 WHICH CHANGES THE EXTENT TO WHICH THIS TITLE GOVERNS THE TRANSACTION
21 MUST BE CONSPICUOUS.

22 (4) A COPY OF A COMPUTER PROGRAM CONTAINED IN AND SOLD OR
23 LEASED AS PART OF GOODS AND WHICH IS EXCLUDED FROM THIS TITLE BY §
24 21-103(B)(1) OF THIS SUBTITLE CANNOT PROVIDE THE BASIS FOR AN AGREEMENT
25 UNDER THIS SECTION THAT THIS TITLE GOVERNS THE TRANSACTION.

26 21-105. RELATION TO FEDERAL LAW; FUNDAMENTAL PUBLIC POLICY;
27 TRANSACTIONS SUBJECT TO OTHER STATE LAW.

28 (A) (1) A PROVISION OF THIS TITLE WHICH IS PREEMPTED BY FEDERAL LAW
29 IS UNENFORCEABLE TO THE EXTENT OF THE PREEMPTION.

30 (2) A CONTRACT TERM IS UNENFORCEABLE TO THE EXTENT THAT IT
31 WOULD VARY A STATUTE, RULE, REGULATION, OR PROCEDURE THAT MAY NOT BE
32 VARIED BY AGREEMENT UNDER THE FEDERAL COPYRIGHT LAW.

33 (B) IF A TERM OF A CONTRACT VIOLATES A FUNDAMENTAL PUBLIC POLICY,
34 THE COURT MAY REFUSE TO ENFORCE THE CONTRACT, ENFORCE THE REMAINDER
35 OF THE CONTRACT WITHOUT THE IMPERMISSIBLE TERM, OR LIMIT THE
36 APPLICATION OF THE IMPERMISSIBLE TERM SO AS TO AVOID A RESULT CONTRARY
37 TO PUBLIC POLICY, IN EACH CASE TO THE EXTENT THAT THE INTEREST IN
38 ENFORCEMENT IS CLEARLY OUTWEIGHED BY A PUBLIC POLICY AGAINST
39 ENFORCEMENT OF THE TERM.

1 (C) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (D) OF THIS SECTION,
2 IF THIS TITLE OR A TERM OF A CONTRACT UNDER THIS TITLE CONFLICTS WITH A
3 CONSUMER PROTECTION STATUTE OR REGULATION, INCLUDING TITLE 13 OF THIS
4 ARTICLE, THE CONSUMER PROTECTION STATUTE OR REGULATION GOVERNS.

5 (D) IF A LAW OF THIS STATE IN EFFECT ON THE EFFECTIVE DATE OF THIS
6 TITLE APPLIES TO A TRANSACTION GOVERNED BY THIS TITLE, THE FOLLOWING
7 RULES APPLY:

8 (1) A REQUIREMENT THAT A TERM, WAIVER, NOTICE, OR DISCLAIMER BE
9 IN A WRITING IS SATISFIED BY A RECORD.

10 (2) A REQUIREMENT THAT A RECORD, WRITING, OR TERM BE SIGNED IS
11 SATISFIED BY AN AUTHENTICATION.

12 (3) A REQUIREMENT THAT A TERM BE CONSPICUOUS, OR THE LIKE, IS
13 SATISFIED BY A TERM THAT IS CONSPICUOUS UNDER THIS TITLE.

14 (4) A REQUIREMENT OF CONSENT OR AGREEMENT TO A TERM IS
15 SATISFIED BY A MANIFESTATION OF ASSENT TO THE TERM IN ACCORDANCE WITH
16 THIS TITLE.

17 21-106. RULES OF CONSTRUCTION.

18 (A) THIS TITLE SHALL BE LIBERALLY CONSTRUED AND APPLIED TO PROMOTE
19 ITS UNDERLYING PURPOSES AND POLICIES TO:

20 (1) SUPPORT AND FACILITATE THE REALIZATION OF THE FULL
21 POTENTIAL OF COMPUTER INFORMATION TRANSACTIONS;

22 (2) CLARIFY THE LAW GOVERNING COMPUTER INFORMATION
23 TRANSACTIONS;

24 (3) ENABLE EXPANDING COMMERCIAL PRACTICE IN COMPUTER
25 INFORMATION TRANSACTIONS BY COMMERCIAL USAGE AND AGREEMENT OF THE
26 PARTIES; ~~AND~~

27 (4) PROMOTE UNIFORMITY OF THE LAW WITH RESPECT TO THE
28 SUBJECT MATTER OF THIS TITLE AMONG STATES THAT ENACT IT; AND

29 (5) PERMIT THE CONTINUED EXPANSION OF COMMERCIAL PRACTICES
30 IN THE EXCLUDED TRANSACTIONS THROUGH CUSTOM, USAGE, AND AGREEMENT OF
31 THE PARTIES.

32 (B) EXCEPT AS OTHERWISE PROVIDED IN § 21-113(A) OF THIS SUBTITLE, THE
33 USE OF MANDATORY LANGUAGE OR THE ABSENCE OF A PHRASE SUCH AS "UNLESS
34 OTHERWISE AGREED" IN A PROVISION OF THIS TITLE DOES NOT PRECLUDE THE
35 PARTIES FROM VARYING THE EFFECT OF THE PROVISION BY AGREEMENT.

1 (C) THE FACT THAT A PROVISION OF THIS TITLE IMPOSES A CONDITION FOR A
2 RESULT DOES NOT BY ITSELF MEAN THAT THE ABSENCE OF THAT CONDITION
3 YIELDS A DIFFERENT RESULT.

4 (D) TO BE ENFORCEABLE, A TERM NEED NOT BE CONSPICUOUS, NEGOTIATED,
5 OR EXPRESSLY ASSENTED OR AGREED TO, UNLESS ~~THIS TITLE EXPRESSLY SO~~
6 REQUIRES REQUIRED BY APPLICABLE LAW.

7 21-107. LEGAL RECOGNITION OF ELECTRONIC RECORD AND AUTHENTICATION; USE
8 OF ELECTRONIC AGENTS.

9 (A) A RECORD OR AUTHENTICATION MAY NOT BE DENIED LEGAL EFFECT OR
10 ENFORCEABILITY SOLELY BECAUSE IT IS IN ELECTRONIC FORM.

11 (B) THIS TITLE DOES NOT REQUIRE THAT A RECORD OR AUTHENTICATION BE
12 GENERATED, STORED, SENT, RECEIVED, OR OTHERWISE PROCESSED BY ELECTRONIC
13 MEANS OR IN ELECTRONIC FORM.

14 (C) IN ANY TRANSACTION, A PERSON MAY ESTABLISH REQUIREMENTS
15 REGARDING THE TYPE OF AUTHENTICATION OR RECORD ACCEPTABLE TO IT.

16 (D) A PERSON THAT USES AN ELECTRONIC AGENT THAT IT HAS SELECTED
17 FOR MAKING AN AUTHENTICATION, PERFORMANCE, OR AGREEMENT, INCLUDING
18 MANIFESTATION OF ASSENT, IS BOUND BY THE OPERATIONS OF THE ELECTRONIC
19 AGENT, EVEN IF NO INDIVIDUAL WAS AWARE OF OR REVIEWED THE AGENT'S
20 OPERATIONS OR THE RESULTS OF THE OPERATIONS.

21 21-108. PROOF AND EFFECT OF AUTHENTICATION.

22 (A) AUTHENTICATION MAY BE PROVEN IN ANY MANNER, INCLUDING A
23 SHOWING THAT A PARTY MADE USE OF INFORMATION OR ACCESS THAT COULD HAVE
24 BEEN AVAILABLE ONLY IF IT ENGAGED IN CONDUCT OR OPERATIONS THAT
25 AUTHENTICATED THE RECORD OR TERM.

26 (B) COMPLIANCE WITH A COMMERCIALY REASONABLE ATTRIBUTION
27 PROCEDURE AGREED TO OR ADOPTED BY THE PARTIES OR ESTABLISHED BY LAW
28 FOR AUTHENTICATING A RECORD AUTHENTICATES THE RECORD AS A MATTER OF
29 LAW.

30 21-109. CHOICE OF LAW.

31 (A) THE PARTIES IN THEIR AGREEMENT MAY CHOOSE THE APPLICABLE LAW.
32 HOWEVER, THE CHOICE IS NOT ENFORCEABLE IN A CONSUMER CONTRACT OR A
33 MASS MARKET LICENSE TO THE EXTENT IT WOULD VARY A RULE THAT MAY NOT BE
34 VARIED BY AGREEMENT UNDER THE LAW OF THE JURISDICTION WHOSE LAW
35 WOULD APPLY UNDER SUBSECTIONS (B) AND (C) OF THIS SECTION IN THE ABSENCE
36 OF THE AGREEMENT.

1 (B) IN THE ABSENCE OF AN ENFORCEABLE AGREEMENT ON CHOICE OF LAW,
2 THE FOLLOWING RULES DETERMINE WHICH JURISDICTION'S LAW GOVERNS IN ALL
3 RESPECTS FOR PURPOSES OF CONTRACT LAW:

4 (1) AN ACCESS CONTRACT OR A CONTRACT PROVIDING FOR
5 ELECTRONIC DELIVERY OF A COPY IS GOVERNED BY THE LAW OF THE JURISDICTION
6 IN WHICH THE LICENSOR WAS LOCATED WHEN THE AGREEMENT WAS ENTERED
7 INTO.

8 (2) A CONSUMER CONTRACT OR A MASS MARKET LICENSE THAT
9 REQUIRES DELIVERY OF A COPY ON A TANGIBLE MEDIUM IS GOVERNED BY THE LAW
10 OF THE JURISDICTION IN WHICH THE COPY IS OR SHOULD HAVE BEEN DELIVERED
11 TO THE CONSUMER OR A MASS MARKET LICENSEE.

12 (3) IN ALL OTHER CASES, THE CONTRACT IS GOVERNED BY THE LAW OF
13 THE JURISDICTION HAVING THE MOST SIGNIFICANT RELATIONSHIP TO THE
14 TRANSACTION.

15 (C) IN CASES GOVERNED BY SUBSECTION (B) OF THIS SECTION, IF THE
16 JURISDICTION WHOSE LAW GOVERNS IS OUTSIDE THE UNITED STATES, THE LAW OF
17 THAT JURISDICTION GOVERNS ONLY IF IT PROVIDES SUBSTANTIALLY SIMILAR
18 PROTECTIONS AND RIGHTS TO A PARTY NOT LOCATED IN THAT JURISDICTION AS
19 ARE PROVIDED UNDER THIS TITLE. OTHERWISE, THE LAW OF THE STATE THAT HAS
20 THE MOST SIGNIFICANT RELATIONSHIP TO THE TRANSACTION GOVERNS.

21 (D) FOR PURPOSES OF THIS SECTION, A PARTY IS LOCATED AT ITS PLACE OF
22 BUSINESS IF IT HAS ONE PLACE OF BUSINESS, AT ITS CHIEF EXECUTIVE OFFICE IF IT
23 HAS MORE THAN ONE PLACE OF BUSINESS, OR AT ITS PLACE OF INCORPORATION OR
24 PRIMARY REGISTRATION IF IT DOES NOT HAVE A PHYSICAL PLACE OF BUSINESS.
25 OTHERWISE, A PARTY IS LOCATED AT ITS PRIMARY RESIDENCE.

26 21-110. CONTRACTUAL CHOICE OF FORUM.

27 (A) THE PARTIES IN THEIR AGREEMENT MAY CHOOSE AN EXCLUSIVE
28 JUDICIAL FORUM UNLESS THE CHOICE IS UNREASONABLE AND UNJUST.

29 (B) A JUDICIAL FORUM SPECIFIED IN AN AGREEMENT IS NOT EXCLUSIVE
30 UNLESS THE AGREEMENT EXPRESSLY SO PROVIDES.

31 21-111. UNCONSCIONABLE CONTRACT OR TERM.

32 (A) IF A COURT AS A MATTER OF LAW FINDS A CONTRACT OR A TERM
33 THEREOF TO HAVE BEEN UNCONSCIONABLE AT THE TIME IT WAS MADE, THE COURT
34 MAY REFUSE TO ENFORCE THE CONTRACT, ENFORCE THE REMAINDER OF THE
35 CONTRACT WITHOUT THE UNCONSCIONABLE TERM, OR LIMIT THE APPLICATION OF
36 THE UNCONSCIONABLE TERM SO AS TO AVOID AN UNCONSCIONABLE RESULT.

37 (B) IF IT IS CLAIMED OR APPEARS TO THE COURT THAT A CONTRACT OR TERM
38 THEREOF MAY BE UNCONSCIONABLE, THE PARTIES MUST BE AFFORDED A
39 REASONABLE OPPORTUNITY TO PRESENT EVIDENCE AS TO ITS COMMERCIAL

1 SETTING, PURPOSE, AND EFFECT TO AID THE COURT IN MAKING THE
2 DETERMINATION.

3 21-112. MANIFESTING ASSENT; OPPORTUNITY TO REVIEW.

4 (A) A PERSON MANIFESTS ASSENT TO A RECORD OR TERM IF THE PERSON,
5 ACTING WITH KNOWLEDGE OF, OR AFTER HAVING AN OPPORTUNITY TO REVIEW THE
6 RECORD OR TERM OR A COPY OF IT:

7 (1) AUTHENTICATES THE RECORD OR TERM WITH INTENT TO ADOPT OR
8 ACCEPT IT; OR

9 (2) INTENTIONALLY ENGAGES IN CONDUCT OR MAKES STATEMENTS
10 WITH REASON TO KNOW THAT THE OTHER PARTY OR ITS ELECTRONIC AGENT MAY
11 INFER FROM THE CONDUCT OR STATEMENT THAT THE PERSON ASSENTS TO THE
12 RECORD OR TERM.

13 (B) AN ELECTRONIC AGENT MANIFESTS ASSENT TO A RECORD OR TERM IF,
14 AFTER HAVING AN OPPORTUNITY TO REVIEW IT, THE ELECTRONIC AGENT:

15 (1) AUTHENTICATES THE RECORD OR TERM; OR

16 (2) ENGAGES IN OPERATIONS THAT IN THE CIRCUMSTANCES INDICATE
17 ACCEPTANCE OF THE RECORD OR TERM.

18 (C) IF THIS TITLE OR OTHER LAW REQUIRES ASSENT TO A SPECIFIC TERM, A
19 MANIFESTATION OF ASSENT MUST RELATE SPECIFICALLY TO THE TERM.

20 (D) CONDUCT OR OPERATIONS MANIFESTING ASSENT MAY BE PROVED IN ANY
21 MANNER, INCLUDING A SHOWING THAT A PERSON OR AN ELECTRONIC AGENT
22 OBTAINED OR USED THE INFORMATION OR INFORMATIONAL RIGHTS AND THAT A
23 PROCEDURE EXISTED BY WHICH A PERSON OR AN ELECTRONIC AGENT MUST HAVE
24 ENGAGED IN THE CONDUCT OR OPERATIONS IN ORDER TO DO SO. PROOF OF
25 COMPLIANCE WITH SUBSECTION (A)(2) OF THIS SECTION IS SUFFICIENT IF THERE IS
26 CONDUCT THAT ASSENTS AND SUBSEQUENT CONDUCT THAT REAFFIRMS ASSENT BY
27 ELECTRONIC MEANS.

28 (E) WITH RESPECT TO AN OPPORTUNITY TO REVIEW, THE FOLLOWING RULES
29 APPLY:

30 (1) A PERSON HAS AN OPPORTUNITY TO REVIEW A RECORD OR TERM
31 ONLY IF IT IS MADE AVAILABLE IN A MANNER THAT OUGHT TO CALL IT TO THE
32 ATTENTION OF A REASONABLE PERSON AND PERMIT REVIEW.

33 (2) AN ELECTRONIC AGENT HAS AN OPPORTUNITY TO REVIEW A
34 RECORD OR TERM ONLY IF IT IS MADE AVAILABLE IN MANNER THAT WOULD ENABLE
35 A REASONABLY CONFIGURED ELECTRONIC AGENT TO REACT TO THE RECORD OR
36 TERM.

1 (3) IF A RECORD OR TERM IS AVAILABLE FOR REVIEW ONLY AFTER A
2 PERSON BECOMES OBLIGATED TO PAY OR BEGINS ITS PERFORMANCE, THE PERSON
3 HAS AN OPPORTUNITY TO REVIEW ONLY IF IT HAS A RIGHT TO A RETURN IF IT
4 REJECTS THE RECORD. HOWEVER, A RIGHT TO A RETURN IS NOT REQUIRED IF:

5 (A) THE RECORD PROPOSES A MODIFICATION OF CONTRACT OR
6 PROVIDES PARTICULARS OF PERFORMANCE UNDER § 21-305 OF THIS TITLE; OR

7 (B) THE PRIMARY PERFORMANCE IS OTHER THAN DELIVERY OR
8 ACCEPTANCE OF A COPY, THE AGREEMENT IS NOT A MASS-MARKET TRANSACTION,
9 AND THE PARTIES AT THE TIME OF CONTRACTING HAD REASON TO KNOW THAT A
10 RECORD OR TERM WOULD BE PRESENTED AFTER PERFORMANCE, USE, OR ACCESS
11 TO THE INFORMATION BEGAN.

12 (4) THE RIGHT TO A RETURN UNDER PARAGRAPH (3) OF THIS
13 SUBSECTION MAY ARISE BY LAW OR BY AGREEMENT.

14 (F) THE EFFECT OF PROVISIONS OF THIS SECTION MAY BE MODIFIED BY AN
15 AGREEMENT SETTING OUT STANDARDS APPLICABLE TO FUTURE TRANSACTIONS
16 BETWEEN THE PARTIES.

17 21-113. VARIATION BY AGREEMENT; COMMERCIAL PRACTICE.

18 (A) THE EFFECT OF ANY PROVISION OF THIS TITLE, INCLUDING AN
19 ALLOCATION OF RISK OR IMPOSITION OF A BURDEN, MAY BE VARIED BY AGREEMENT
20 OF THE PARTIES. HOWEVER, THE FOLLOWING RULES APPLY:

21 (1) OBLIGATIONS OF GOOD FAITH, DILIGENCE, REASONABLENESS, AND
22 CARE IMPOSED BY THIS TITLE MAY NOT BE DISCLAIMED BY AGREEMENT, BUT THE
23 PARTIES BY AGREEMENT MAY DETERMINE THE STANDARDS BY WHICH THE
24 PERFORMANCE OF THE OBLIGATION IS TO BE MEASURED IF THE STANDARDS ARE
25 NOT MANIFESTLY UNREASONABLE.

26 (2) THE LIMITATIONS ON ENFORCEABILITY IMPOSED BY
27 UNCONSCIONABILITY UNDER § 21-111 OF THIS SUBTITLE AND FUNDAMENTAL
28 PUBLIC POLICY UNDER § 21-105(B) OF THIS SUBTITLE MAY NOT BE VARIED BY
29 AGREEMENT.

30 (3) LIMITATIONS ON ENFORCEABILITY OF, OR AGREEMENT TO, A
31 CONTRACT, TERM, OR RIGHT EXPRESSLY STATED IN THE SECTIONS OF THIS TITLE
32 LISTED IN THE FOLLOWING SUBPARAGRAPHS MAY NOT BE VARIED BY AGREEMENT
33 EXCEPT TO THE EXTENT PROVIDED IN EACH SECTION:

34 (A) THE LIMITATIONS ON AGREED CHOICE OF LAW IN § 21-109(A);

35 (B) THE LIMITATIONS ON AGREED CHOICE OF FORUM IN § 21-110;

36 (C) THE REQUIREMENTS FOR MANIFESTING ASSENT AND
37 OPPORTUNITY FOR REVIEW IN § 21-112;

- 1 (D) THE LIMITATIONS ON ENFORCEABILITY IN § 21-201;
- 2 (E) THE LIMITATIONS ON A MASS-MARKET LICENSE IN § 21-209;
- 3 (F) THE CONSUMER DEFENSE ARISING FROM AN ELECTRONIC
4 ERROR IN § 21-214;
- 5 (G) THE REQUIREMENTS FOR AN ENFORCEABLE TERM IN §§
6 21-303(B), 21-307(G), 21-406(B) AND (C), AND 21-804(A);
- 7 (H) THE LIMITATIONS ON A FINANCIER IN §§ 21-507 THROUGH
8 21-511;
- 9 (I) THE RESTRICTIONS ON ALTERING THE PERIOD OF
10 LIMITATIONS IN § 21-805(A) AND (B); AND
- 11 (J) THE LIMITATIONS ON SELF-HELP REPOSSESSION IN §§
12 21-815(B) AND 21-816.

13 (B) ANY USAGE OF TRADE OF WHICH THE PARTIES ARE OR SHOULD BE AWARE
14 AND ANY COURSE OF DEALING OR COURSE OF PERFORMANCE BETWEEN THE
15 PARTIES ARE RELEVANT TO DETERMINING THE EXISTENCE OR MEANING OF AN
16 AGREEMENT.

17 21-114. SUPPLEMENTAL PRINCIPLES; GOOD FAITH; DECISION FOR COURT;
18 REASONABLE TIME; REASON TO KNOW.

19 (A) UNLESS DISPLACED BY THIS TITLE, PRINCIPLES OF LAW AND EQUITY,
20 INCLUDING THE LAW MERCHANT AND THE COMMON LAW OF THIS STATE RELATIVE
21 TO CAPACITY TO CONTRACT, PRINCIPAL AND AGENT, ESTOPPEL, FRAUD,
22 MISREPRESENTATION, DURESS, COERCION, MISTAKE, AND OTHER VALIDATING OR
23 INVALIDATING CAUSE, SUPPLEMENT THIS TITLE. AMONG THE LAWS
24 SUPPLEMENTING AND NOT DISPLACED BY THIS TITLE ARE TRADE SECRET LAWS AND
25 UNFAIR COMPETITION LAWS.

26 (B) EVERY CONTRACT OR DUTY WITHIN THE SCOPE OF THIS TITLE IMPOSES
27 AN OBLIGATION OF GOOD FAITH IN ITS PERFORMANCE OR ENFORCEMENT.

28 (C) WHETHER A TERM IS CONSPICUOUS OR IS UNENFORCEABLE UNDER §
29 21-105(A) OR (B), § 21-111, OR § 21-209(A) OF THIS TITLE AND WHETHER AN
30 ATTRIBUTION PROCEDURE IS COMMERCIALY REASONABLE OR EFFECTIVE UNDER §
31 21-108, § 21-212, OR § 21-213 OF THIS TITLE ARE QUESTIONS TO BE DETERMINED BY
32 THE COURT.

33 (D) WHETHER AN AGREEMENT HAS LEGAL CONSEQUENCES IS DETERMINED
34 BY THIS TITLE.

35 (E) WHENEVER THIS TITLE REQUIRES ANY ACTION TO BE TAKEN WITHIN A
36 REASONABLE TIME, THE FOLLOWING RULES APPLY:

1 (1) WHAT IS A REASONABLE TIME FOR TAKING THE ACTION DEPENDS
2 ON THE NATURE, PURPOSE, AND CIRCUMSTANCES OF THE ACTION.

3 (2) ANY TIME THAT IS NOT MANIFESTLY UNREASONABLE MAY BE FIXED
4 BY AGREEMENT.

5 (F) A PERSON HAS REASON TO KNOW A FACT IF THE PERSON HAS
6 KNOWLEDGE OF THE FACT OR, FROM ALL THE FACTS AND CIRCUMSTANCES KNOWN
7 TO THE PERSON WITHOUT INVESTIGATION, THE PERSON SHOULD BE AWARE THAT
8 THE FACT EXISTS.

9 SUBTITLE 2. FORMATION AND TERMS; FORMATION OF A CONTRACT; TERMS OF
10 RECORDS; ELECTRONIC CONTRACTS: GENERALLY.

11 FORMATION OF A CONTRACT.

12 21-201. FORMAL REQUIREMENTS.

13 (A) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, A CONTRACT
14 REQUIRING PAYMENT OF A CONTRACT FEE OF \$5,000 OR MORE IS NOT ENFORCEABLE
15 BY WAY OF ACTION OR DEFENSE UNLESS:

16 (1) THE PARTY AGAINST WHICH ENFORCEMENT IS SOUGHT
17 AUTHENTICATED A RECORD SUFFICIENT TO INDICATE THAT A CONTRACT HAS BEEN
18 FORMED AND WHICH REASONABLY IDENTIFIES THE COPY OR SUBJECT MATTER TO
19 WHICH THE CONTRACT REFERS; OR

20 (2) THE AGREEMENT IS A LICENSE FOR AN AGREED DURATION OF ONE
21 YEAR OR LESS OR WHICH MAY BE TERMINATED AT WILL BY THE PARTY AGAINST
22 WHICH THE CONTRACT IS ASSERTED.

23 (B) A RECORD IS SUFFICIENT UNDER SUBSECTION (A) OF THIS SECTION EVEN
24 IF IT OMITTS OR INCORRECTLY STATES A TERM, BUT THE CONTRACT IS NOT
25 ENFORCEABLE UNDER THAT SUBSECTION BEYOND THE NUMBER OF COPIES OR
26 SUBJECT MATTER SHOWN IN THE RECORD.

27 (C) A CONTRACT THAT DOES NOT SATISFY THE REQUIREMENTS OF
28 SUBSECTION (A) OF THIS SECTION IS NEVERTHELESS ENFORCEABLE UNDER THAT
29 SUBSECTION IF:

30 (1) A PERFORMANCE WAS TENDERED OR THE INFORMATION WAS MADE
31 AVAILABLE BY ONE PARTY AND THE TENDER WAS ACCEPTED OR THE INFORMATION
32 ACCESSED BY THE OTHER; OR

33 (2) THE PARTY AGAINST WHICH ENFORCEMENT IS SOUGHT ADMITS IN
34 COURT, BY PLEADING OR BY TESTIMONY OR OTHERWISE UNDER OATH, FACTS
35 SUFFICIENT TO INDICATE A CONTRACT HAS BEEN MADE, BUT THE AGREEMENT IS
36 NOT ENFORCEABLE UNDER THIS PARAGRAPH BEYOND THE NUMBER OF COPIES OR
37 THE SUBJECT MATTER ADMITTED.

1 (D) BETWEEN MERCHANTS, IF, WITHIN A REASONABLE TIME, A RECORD IN
2 CONFIRMATION OF THE CONTRACT AND SUFFICIENT AGAINST THE SENDER IS
3 RECEIVED AND THE PARTY RECEIVING IT HAS REASON TO KNOW ITS CONTENTS, THE
4 RECORD SATISFIES SUBSECTION (A) OF THIS SECTION AGAINST THE PARTY
5 RECEIVING IT UNLESS NOTICE OF OBJECTION TO ITS CONTENTS IS GIVEN IN A
6 RECORD WITHIN ~~10 DAYS~~ A REASONABLE TIME AFTER THE CONFIRMING RECORD IS
7 RECEIVED.

8 (E) AN AGREEMENT THAT THE REQUIREMENTS OF THIS SECTION NEED NOT
9 BE SATISFIED AS TO FUTURE TRANSACTIONS IS EFFECTIVE IF EVIDENCED IN A
10 RECORD AUTHENTICATED BY THE PERSON AGAINST WHICH ENFORCEMENT IS
11 SOUGHT.

12 (F) A TRANSACTION WITHIN THE SCOPE OF THIS TITLE IS NOT SUBJECT TO A
13 STATUTE OF FRAUDS CONTAINED IN ANOTHER LAW OF THIS STATE.

14 21-202. FORMATION IN GENERAL.

15 (A) A CONTRACT MAY BE FORMED IN ANY MANNER SUFFICIENT TO SHOW
16 AGREEMENT, INCLUDING OFFER AND ACCEPTANCE OR CONDUCT OF BOTH PARTIES
17 OR OPERATIONS OF ELECTRONIC AGENTS WHICH RECOGNIZE THE EXISTENCE OF A
18 CONTRACT.

19 (B) IF THE PARTIES SO INTEND, AN AGREEMENT SUFFICIENT TO CONSTITUTE
20 A CONTRACT MAY BE FOUND EVEN IF THE TIME OF ITS MAKING IS UNDETERMINED,
21 ONE OR MORE TERMS ARE LEFT OPEN OR TO BE AGREED ON, THE RECORDS OF THE
22 PARTIES DO NOT OTHERWISE ESTABLISH A CONTRACT, OR ONE PARTY RESERVES
23 THE RIGHT TO MODIFY TERMS.

24 (C) EVEN IF ONE OR MORE TERMS ARE LEFT OPEN OR TO BE AGREED UPON, A
25 CONTRACT DOES NOT FAIL FOR INDEFINITENESS IF THE PARTIES INTENDED TO
26 MAKE A CONTRACT AND THERE IS A REASONABLY CERTAIN BASIS FOR GIVING AN
27 APPROPRIATE REMEDY.

28 (D) IN THE ABSENCE OF CONDUCT OR PERFORMANCE BY BOTH PARTIES TO
29 THE CONTRARY, A CONTRACT IS NOT FORMED IF THERE IS A MATERIAL
30 DISAGREEMENT ABOUT A MATERIAL TERM, INCLUDING A TERM CONCERNING
31 SCOPE.

32 (E) IF A TERM IS TO BE ADOPTED BY LATER AGREEMENT AND THE PARTIES
33 INTEND NOT TO BE BOUND UNLESS THE TERM IS SO ADOPTED, A CONTRACT IS NOT
34 FORMED IF THE PARTIES DO NOT AGREE TO THE TERM. IN THAT CASE, EACH PARTY
35 SHALL DELIVER TO THE OTHER PARTY, OR WITH THE CONSENT OF THE OTHER
36 PARTY DESTROY, ALL COPIES OF INFORMATION, ACCESS MATERIALS, AND OTHER
37 MATERIALS RECEIVED OR MADE, AND EACH PARTY IS ENTITLED TO A RETURN WITH
38 RESPECT TO ANY CONTRACT FEE PAID FOR WHICH PERFORMANCE HAS NOT BEEN
39 RECEIVED, HAS NOT BEEN ACCEPTED, OR HAS BEEN REDELIVERED WITHOUT ANY
40 BENEFIT BEING RETAINED. THE PARTIES REMAIN BOUND BY ANY CONTRACTUAL
41 USE TERM ONLY WITH RESPECT TO INFORMATION OR COPIES RECEIVED OR MADE
42 FROM COPIES RECEIVED PURSUANT TO THE AGREEMENT ~~AND NOT DELIVERED OR~~

1 ~~DELIVERABLE TO THE OTHER PARTY, BUT THE CONTRACTUAL USE TERM DOES NOT~~
2 ~~APPLY TO INFORMATION OR COPIES PROPERLY RECEIVED OR OBTAINED FROM~~
3 ~~ANOTHER SOURCE.~~

4 21-203. OFFER AND ACCEPTANCE IN GENERAL.

5 UNLESS OTHERWISE UNAMBIGUOUSLY INDICATED BY THE LANGUAGE OR THE
6 CIRCUMSTANCES:

7 (1) AN OFFER TO MAKE A CONTRACT INVITES ACCEPTANCE IN ANY
8 MANNER AND BY ANY MEDIUM REASONABLE UNDER THE CIRCUMSTANCES.

9 (2) AN ORDER OR OTHER OFFER TO ACQUIRE A COPY FOR PROMPT OR
10 CURRENT DELIVERY INVITES ACCEPTANCE BY EITHER A PROMPT PROMISE TO SHIP
11 OR A PROMPT OR CURRENT SHIPMENT OF A CONFORMING OR NONCONFORMING
12 COPY. HOWEVER, A SHIPMENT OF A NONCONFORMING COPY IS NOT AN ACCEPTANCE
13 IF THE LICENSOR SEASONABLY NOTIFIES THE LICENSEE THAT THE SHIPMENT IS
14 OFFERED ONLY AS AN ACCOMMODATION TO THE LICENSEE.

15 (3) IF THE BEGINNING OF A REQUESTED PERFORMANCE IS A
16 REASONABLE MODE OF ACCEPTANCE, AN OFFEROR THAT IS NOT NOTIFIED OF
17 ACCEPTANCE OR PERFORMANCE WITHIN A REASONABLE TIME MAY TREAT THE
18 OFFER AS HAVING LAPSED BEFORE ACCEPTANCE.

19 (4) IF AN OFFER IN AN ELECTRONIC MESSAGE EVOKES AN ELECTRONIC
20 MESSAGE ACCEPTING THE OFFER, A CONTRACT IS FORMED:

21 (A) WHEN AN ELECTRONIC ACCEPTANCE IS RECEIVED; OR

22 (B) IF THE RESPONSE CONSISTS OF BEGINNING PERFORMANCE,
23 FULL PERFORMANCE, OR GIVING ACCESS TO INFORMATION, WHEN THE
24 PERFORMANCE IS RECEIVED OR THE ACCESS IS ENABLED AND NECESSARY ACCESS
25 MATERIALS ARE RECEIVED.

26 21-204. ACCEPTANCE WITH VARYING TERMS.

27 (A) IN THIS SECTION, AN ACCEPTANCE MATERIALLY ALTERS AN OFFER IF IT
28 CONTAINS A TERM THAT MATERIALLY CONFLICTS WITH OR VARIES A TERM OF THE
29 OFFER OR THAT ADDS A MATERIAL TERM NOT CONTAINED IN THE OFFER.

30 (B) EXCEPT AS OTHERWISE PROVIDED IN § 21-205 OF THIS SUBTITLE, A
31 DEFINITE AND SEASONABLE EXPRESSION OF ACCEPTANCE OPERATES AS AN
32 ACCEPTANCE, EVEN IF THE ACCEPTANCE CONTAINS TERMS THAT VARY FROM THE
33 TERMS OF THE OFFER, UNLESS THE ACCEPTANCE MATERIALLY ALTERS THE OFFER.

34 (C) IF AN ACCEPTANCE MATERIALLY ALTERS THE OFFER, THE FOLLOWING
35 RULES APPLY:

36 (1) A CONTRACT IS NOT FORMED UNLESS:

1 (A) A PARTY AGREES, SUCH AS BY MANIFESTING ASSENT, TO THE
2 OTHER PARTY'S OFFER OR ACCEPTANCE; OR

3 (B) ALL THE OTHER CIRCUMSTANCES, INCLUDING THE CONDUCT
4 OF THE PARTIES, ESTABLISH A CONTRACT.

5 (2) IF A CONTRACT IS FORMED BY THE CONDUCT OF BOTH PARTIES, THE
6 TERMS OF THE CONTRACT ARE DETERMINED UNDER § 21-210 OF THIS SUBTITLE.

7 (D) IF AN ACCEPTANCE VARIES FROM BUT DOES NOT MATERIALLY ALTER
8 THE OFFER, A CONTRACT IS FORMED BASED ON THE TERMS OF THE OFFER. IN
9 ADDITION, THE FOLLOWING RULES APPLY:

10 (1) TERMS IN THE ACCEPTANCE WHICH CONFLICT WITH TERMS IN THE
11 OFFER ARE NOT PART OF THE CONTRACT.

12 (2) AN ADDITIONAL NONMATERIAL TERM IN THE ACCEPTANCE IS A
13 PROPOSAL FOR AN ADDITIONAL TERM. BETWEEN MERCHANTS, THE PROPOSED
14 ADDITIONAL TERM BECOMES PART OF THE CONTRACT UNLESS THE OFFEROR GIVES
15 NOTICE OF OBJECTION BEFORE, OR WITHIN A REASONABLE TIME AFTER, IT
16 RECEIVES THE PROPOSED TERMS.

17 21-205. CONDITIONAL OFFER OR ACCEPTANCE.

18 (A) IN THIS SECTION, AN OFFER OR ACCEPTANCE IS CONDITIONAL IF IT IS
19 CONDITIONED ON AGREEMENT BY THE OTHER PARTY TO ALL THE TERMS OF THE
20 OFFER OR ACCEPTANCE.

21 (B) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (C) OF THIS SECTION, A
22 CONDITIONAL OFFER OR ACCEPTANCE PRECLUDES FORMATION OF A CONTRACT
23 UNLESS THE OTHER PARTY AGREES TO ITS TERMS, SUCH AS BY MANIFESTING
24 ASSENT.

25 (C) IF AN OFFER AND ACCEPTANCE ARE IN STANDARD FORMS AND AT LEAST
26 ONE FORM IS CONDITIONAL, THE FOLLOWING RULES APPLY:

27 (1) CONDITIONAL LANGUAGE IN A STANDARD TERM PRECLUDES
28 FORMATION OF A CONTRACT ONLY IF THE ACTIONS OF THE PARTY PROPOSING THE
29 FORM ARE CONSISTENT WITH THE CONDITIONAL LANGUAGE, SUCH AS BY REFUSING
30 TO PERFORM, REFUSING TO PERMIT PERFORMANCE, OR REFUSING TO ACCEPT THE
31 BENEFITS OF THE AGREEMENT, UNTIL ITS PROPOSED TERMS ARE ACCEPTED.

32 (2) A PARTY THAT AGREES, SUCH AS BY MANIFESTING ASSENT, TO A
33 CONDITIONAL OFFER THAT IS EFFECTIVE UNDER PARAGRAPH (1) OF THIS
34 SUBSECTION ADOPTS THE TERMS OF THE OFFER UNDER § 21-208 OR § 21-209 OF THIS
35 SUBTITLE, EXCEPT A TERM THAT CONFLICTS WITH AN EXPRESSLY AGREED TERM
36 REGARDING PRICE OR QUANTITY.

1 21-206. OFFER AND ACCEPTANCE: ELECTRONIC AGENTS.

2 (A) A CONTRACT MAY BE FORMED BY THE INTERACTION OF ELECTRONIC
3 AGENTS. IF THE INTERACTION RESULTS IN THE ELECTRONIC AGENTS' ENGAGING IN
4 OPERATIONS THAT UNDER THE CIRCUMSTANCES INDICATE ACCEPTANCE OF AN
5 OFFER, A CONTRACT IS FORMED, BUT A COURT MAY GRANT APPROPRIATE RELIEF IF
6 THE OPERATIONS RESULTED FROM FRAUD, ELECTRONIC MISTAKE, OR THE LIKE.

7 (B) A CONTRACT MAY BE FORMED BY THE INTERACTION OF AN ELECTRONIC
8 AGENT AND AN INDIVIDUAL ACTING ON THE INDIVIDUAL'S OWN BEHALF OR FOR
9 ANOTHER PERSON. A CONTRACT IS FORMED IF THE INDIVIDUAL TAKES AN ACTION
10 OR MAKES A STATEMENT THAT THE INDIVIDUAL CAN REFUSE TO TAKE OR SAY AND
11 THAT THE INDIVIDUAL HAS REASON TO KNOW WILL:

12 (1) CAUSE THE ELECTRONIC AGENT TO PERFORM, PROVIDE BENEFITS,
13 OR ALLOW THE USE OR ACCESS THAT IS THE SUBJECT OF THE CONTRACT, OR SEND
14 INSTRUCTIONS TO DO SO; OR

15 (2) INDICATE ACCEPTANCE, REGARDLESS OF OTHER EXPRESSIONS OR
16 ACTIONS BY THE INDIVIDUAL TO WHICH THE INDIVIDUAL HAS REASON TO KNOW
17 THE ELECTRONIC AGENT CANNOT REACT.

18 (C) THE TERMS OF A CONTRACT FORMED UNDER SUBSECTION (B) OF THIS
19 SECTION ARE DETERMINED UNDER § 21-208 OR § 21-209 OF THIS SUBTITLE BUT DO
20 NOT INCLUDE A TERM PROVIDED BY THE INDIVIDUAL IF THE INDIVIDUAL HAD
21 REASON TO KNOW THAT THE ELECTRONIC AGENT COULD NOT REACT TO THE TERM.

22 21-207. FORMATION: RELEASES OF INFORMATIONAL RIGHTS.

23 (A) A RELEASE IS EFFECTIVE WITHOUT CONSIDERATION IF IT IS:

24 (1) IN A RECORD TO WHICH THE RELEASING PARTY AGREES, SUCH AS
25 BY MANIFESTING ASSENT, AND WHICH IDENTIFIES THE INFORMATIONAL RIGHTS
26 RELEASED; OR

27 (2) ENFORCEABLE UNDER ESTOPPEL, IMPLIED LICENSE, OR OTHER
28 LAW.

29 (B) A RELEASE CONTINUES FOR THE DURATION OF THE INFORMATIONAL
30 RIGHTS RELEASED IF THE RELEASE DOES NOT SPECIFY ITS DURATION AND DOES
31 NOT REQUIRE AFFIRMATIVE PERFORMANCE AFTER THE GRANT OF THE RELEASE BY:

32 (1) THE PARTY GRANTING THE RELEASE; OR

33 (2) THE PARTY RECEIVING THE RELEASE, EXCEPT FOR RELATIVELY
34 INSIGNIFICANT ACTS.

35 (C) IN CASES NOT GOVERNED BY SUBSECTION (B) OF THIS SECTION, THE
36 DURATION OF A RELEASE IS GOVERNED BY § 21-308 OF THIS TITLE.

1 TERMS OF RECORDS.

2 21-208. ADOPTING TERMS OF RECORDS.

3 EXCEPT AS OTHERWISE PROVIDED IN § 21-209 OF THIS SUBTITLE, THE
4 FOLLOWING RULES APPLY:

5 (1) A PARTY ADOPTS THE TERMS OF A RECORD, INCLUDING A STANDARD
6 FORM, AS THE TERMS OF THE CONTRACT IF THE PARTY AGREES TO THE RECORD,
7 SUCH AS BY MANIFESTING ASSENT.

8 (2) THE TERMS OF A RECORD MAY BE ADOPTED PURSUANT TO
9 PARAGRAPH (1) OF THIS SECTION AFTER BEGINNING PERFORMANCE OR USE IF THE
10 PARTIES HAD REASON TO KNOW THAT THEIR AGREEMENT WOULD BE REPRESENTED
11 IN WHOLE OR PART BY A LATER RECORD TO BE AGREED ON AND THERE WOULD NOT
12 BE AN OPPORTUNITY TO REVIEW THE RECORD OR A COPY OF IT BEFORE
13 PERFORMANCE OR USE BEGINS. IF THE PARTIES FAIL TO AGREE TO THE LATER
14 TERMS AND DID NOT INTEND TO FORM A CONTRACT UNLESS THEY SO AGREED, §
15 21-202(E) OF THIS SUBTITLE APPLIES.

16 (3) IF A PARTY ADOPTS THE TERMS OF A RECORD, THE TERMS BECOME
17 PART OF THE CONTRACT WITHOUT REGARD TO THE PARTY'S KNOWLEDGE OR
18 UNDERSTANDING OF INDIVIDUAL TERMS IN THE RECORD, EXCEPT FOR A TERM THAT
19 IS UNENFORCEABLE BECAUSE IT FAILS TO SATISFY ANOTHER REQUIREMENT OF
20 THIS TITLE.

21 21-209. MASS-MARKET LICENSE.

22 (A) A PARTY ADOPTS THE TERMS OF A MASS-MARKET LICENSE FOR
23 PURPOSES OF § 21-208 OF THIS SUBTITLE ONLY IF THE PARTY AGREES TO THE
24 LICENSE, SUCH AS BY MANIFESTING ASSENT, BEFORE OR DURING THE PARTY'S
25 INITIAL PERFORMANCE OR USE OF OR ACCESS TO THE INFORMATION. A TERM IS NOT
26 PART OF THE LICENSE IF:

27 (1) THE TERM IS UNCONSCIONABLE OR IS UNENFORCEABLE UNDER §
28 21-105(A) OR (B) OF THIS TITLE; OR

29 (2) SUBJECT TO § 21-301 OF THIS TITLE, THE TERM CONFLICTS WITH A
30 TERM TO WHICH THE PARTIES TO THE LICENSE HAVE EXPRESSLY AGREED.

31 (B) IF A MASS-MARKET LICENSE OR A COPY OF THE LICENSE IS NOT
32 AVAILABLE IN A MANNER PERMITTING AN OPPORTUNITY TO REVIEW BY THE
33 LICENSEE BEFORE THE LICENSEE BECOMES OBLIGATED TO PAY AND THE LICENSEE
34 DOES NOT AGREE, SUCH AS BY MANIFESTING ASSENT, TO THE LICENSE AFTER
35 HAVING AN OPPORTUNITY TO REVIEW, THE LICENSEE IS ENTITLED TO A RETURN
36 UNDER § 21-112 OF THIS TITLE AND, IN ADDITION, TO:

37 (1) REIMBURSEMENT OF ANY REASONABLE EXPENSES INCURRED IN
38 COMPLYING WITH THE LICENSOR'S INSTRUCTIONS FOR RETURNING OR DESTROYING
39 THE COMPUTER INFORMATION OR, IN THE ABSENCE OF INSTRUCTIONS, EXPENSES

1 INCURRED FOR RETURN POSTAGE OR SIMILAR REASONABLE EXPENSE IN
2 RETURNING THE COMPUTER INFORMATION; AND

3 (2) COMPENSATION FOR ANY REASONABLE AND FORESEEABLE COSTS
4 OF RESTORING THE LICENSEE'S INFORMATION PROCESSING SYSTEM TO REVERSE
5 CHANGES IN THE SYSTEM CAUSED BY THE INSTALLATION, IF:

6 (A) THE INSTALLATION OCCURS BECAUSE INFORMATION MUST BE
7 INSTALLED TO ENABLE REVIEW OF THE LICENSE; AND

8 (B) THE INSTALLATION ALTERS THE SYSTEM OR INFORMATION IN
9 IT BUT DOES NOT RESTORE THE SYSTEM OR INFORMATION AFTER REMOVAL OF THE
10 INSTALLED INFORMATION BECAUSE THE LICENSEE REJECTED THE LICENSE.

11 (C) IN A MASS-MARKET TRANSACTION, IF THE LICENSOR DOES NOT HAVE AN
12 OPPORTUNITY TO REVIEW A RECORD CONTAINING PROPOSED TERMS FROM THE
13 LICENSEE BEFORE THE LICENSOR DELIVERS OR BECOMES OBLIGATED TO DELIVER
14 THE INFORMATION, AND IF THE LICENSOR DOES NOT AGREE, SUCH AS BY
15 MANIFESTING ASSENT, TO THOSE TERMS AFTER HAVING THAT OPPORTUNITY, THE
16 LICENSOR IS ENTITLED TO A RETURN.

17 (D) A TERM IN A MASS MARKET LICENSE THAT LIMITS THE DURATION OF THE
18 LICENSE SHALL BE CONSPICUOUS.

19 21-210. TERMS OF CONTRACT FORMED BY CONDUCT.

20 (A) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (B) OF THIS SECTION
21 AND SUBJECT TO § 21-301 OF THIS TITLE, IF A CONTRACT IS FORMED BY CONDUCT OF
22 THE PARTIES, THE TERMS OF THE CONTRACT ARE DETERMINED BY CONSIDERATION
23 OF THE TERMS AND CONDITIONS TO WHICH THE PARTIES EXPRESSLY AGREED,
24 COURSE OF PERFORMANCE, COURSE OF DEALING, USAGE OF TRADE, THE NATURE
25 OF THE PARTIES' CONDUCT, THE RECORDS EXCHANGED, THE INFORMATION OR
26 INFORMATIONAL RIGHTS INVOLVED, ~~THE SUPPLEMENTARY PROVISIONS OF THIS~~
27 ~~TITLE~~, AND ALL OTHER RELEVANT CIRCUMSTANCES. IF A COURT CANNOT
28 DETERMINE THE TERMS OF THE CONTRACT FROM THE FOREGOING FACTORS, THE
29 SUPPLEMENTARY PRINCIPLES OF THIS TITLE APPLY.

30 (B) THIS SECTION DOES NOT APPLY IF THE PARTIES AUTHENTICATE A
31 RECORD OF THE CONTRACT OR A PARTY AGREES, SUCH AS BY MANIFESTING ASSENT,
32 TO THE RECORD CONTAINING THE TERMS OF THE OTHER PARTY.

33 21-211. PRETRANSACTION DISCLOSURES IN INTERNET-TYPE TRANSACTIONS.

34 THIS SECTION APPLIES TO A LICENSOR THAT MAKES ITS COMPUTER
35 INFORMATION AVAILABLE TO A LICENSEE BY ELECTRONIC MEANS FROM ITS
36 INTERNET OR SIMILAR ELECTRONIC SITE. IN SUCH A CASE, THE LICENSOR AFFORDS
37 AN OPPORTUNITY TO REVIEW THE TERMS OF A STANDARD FORM LICENSE WHICH
38 OPPORTUNITY SATISFIES § 21-112(E) OF THIS TITLE WITH RESPECT TO A LICENSEE
39 THAT ACQUIRES THE INFORMATION FROM THAT SITE, IF THE LICENSOR:

1 (1) MAKES THE STANDARD TERMS OF THE LICENSE READILY
2 AVAILABLE FOR REVIEW BY THE LICENSEE BEFORE THE INFORMATION IS
3 DELIVERED OR THE LICENSEE BECOMES OBLIGATED TO PAY, WHICHEVER OCCURS
4 FIRST, BY:

5 (A) DISPLAYING PROMINENTLY AND IN CLOSE PROXIMITY TO A
6 DESCRIPTION OF THE COMPUTER INFORMATION, OR TO INSTRUCTIONS OR STEPS
7 FOR ACQUIRING IT, THE STANDARD TERMS OR A REFERENCE TO AN ELECTRONIC
8 LOCATION FROM WHICH THEY CAN BE READILY OBTAINED; OR

9 (B) DISCLOSING THE AVAILABILITY OF THE STANDARD TERMS IN A
10 PROMINENT PLACE ON THE SITE FROM WHICH THE COMPUTER INFORMATION IS
11 OFFERED AND PROMPTLY FURNISHING A COPY OF THE STANDARD TERMS ON
12 REQUEST BEFORE THE TRANSFER OF THE COMPUTER INFORMATION; AND

13 (2) DOES NOT TAKE AFFIRMATIVE ACTS TO PREVENT PRINTING OR
14 STORAGE OF THE STANDARD TERMS FOR ARCHIVAL OR REVIEW PURPOSES BY THE
15 LICENSEE.

16 ELECTRONIC CONTRACTS: GENERALLY.

17 21-212. EFFICACY AND COMMERCIAL REASONABLENESS OF ATTRIBUTION
18 PROCEDURE.

19 THE EFFICACY, INCLUDING THE COMMERCIAL REASONABLENESS, OF AN
20 ATTRIBUTION PROCEDURE IS DETERMINED BY THE COURT. IN MAKING THIS
21 DETERMINATION, THE FOLLOWING RULES APPLY:

22 (1) AN ATTRIBUTION PROCEDURE ESTABLISHED BY LAW IS EFFECTIVE
23 FOR TRANSACTIONS WITHIN THE COVERAGE OF THE STATUTE OR RULE.

24 (2) EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (1) OF THIS
25 SECTION, COMMERCIAL REASONABLENESS AND EFFECTIVENESS IS DETERMINED IN
26 LIGHT OF THE PURPOSES OF THE PROCEDURE AND THE COMMERCIAL
27 CIRCUMSTANCES AT THE TIME THE PARTIES AGREED TO OR ADOPTED THE
28 PROCEDURE.

29 (3) AN ATTRIBUTION PROCEDURE MAY USE ANY SECURITY DEVICE OR
30 METHOD THAT IS COMMERCIALY REASONABLE UNDER THE CIRCUMSTANCES.

31 21-213. DETERMINING ATTRIBUTION.

32 (A) AN ELECTRONIC AUTHENTICATION, DISPLAY, MESSAGE, RECORD, OR
33 PERFORMANCE IS ATTRIBUTED TO A PERSON IF IT WAS THE ACT OF THE PERSON OR
34 ITS ELECTRONIC AGENT, OR IF THE PERSON IS BOUND BY IT UNDER AGENCY OR
35 OTHER LAW. THE PARTY RELYING ON ATTRIBUTION OF AN ELECTRONIC
36 AUTHENTICATION, DISPLAY, MESSAGE, RECORD, OR PERFORMANCE TO ANOTHER
37 PERSON HAS THE BURDEN OF ESTABLISHING ATTRIBUTION.

1 (B) THE ACT OF A PERSON MAY BE SHOWN IN ANY MANNER, INCLUDING A
2 SHOWING OF THE EFFICACY OF AN ATTRIBUTION PROCEDURE THAT WAS AGREED
3 TO OR ADOPTED BY THE PARTIES OR ESTABLISHED BY LAW.

4 (C) THE EFFECT OF AN ELECTRONIC ACT ATTRIBUTED TO A PERSON UNDER
5 SUBSECTION (A) OF THIS SECTION IS DETERMINED FROM THE CONTEXT AT THE TIME
6 OF ITS CREATION, EXECUTION, OR ADOPTION, INCLUDING THE PARTIES'
7 AGREEMENT, IF ANY, OR OTHERWISE AS PROVIDED BY LAW.

8 (D) IF AN ATTRIBUTION PROCEDURE EXISTS TO DETECT ERRORS OR CHANGES
9 IN AN ELECTRONIC AUTHENTICATION, DISPLAY, MESSAGE, RECORD, OR
10 PERFORMANCE, AND WAS AGREED TO OR ADOPTED BY THE PARTIES OR
11 ESTABLISHED BY LAW, AND ONE PARTY CONFORMED TO THE PROCEDURE BUT THE
12 OTHER PARTY DID NOT, AND THE NONCONFORMING PARTY WOULD HAVE DETECTED
13 THE CHANGE OR ERROR HAD THAT PARTY ALSO CONFORMED, THE EFFECT OF
14 NONCOMPLIANCE IS DETERMINED BY THE AGREEMENT BUT, IN THE ABSENCE OF
15 AGREEMENT, THE CONFORMING PARTY MAY AVOID THE EFFECT OF THE ERROR OR
16 CHANGE.

17 21-214. ELECTRONIC ERROR: CONSUMER DEFENSES.

18 (A) IN THIS SECTION, "ELECTRONIC ERROR" MEANS AN ERROR IN AN
19 ELECTRONIC MESSAGE CREATED BY A CONSUMER USING AN INFORMATION
20 PROCESSING SYSTEM IF A REASONABLE METHOD TO DETECT AND CORRECT OR
21 AVOID THE ERROR WAS NOT PROVIDED.

22 (B) IN AN AUTOMATED TRANSACTION, A CONSUMER IS NOT BOUND BY AN
23 ELECTRONIC MESSAGE THAT THE CONSUMER DID NOT INTEND AND WHICH WAS
24 CAUSED BY AN ELECTRONIC ERROR, IF THE CONSUMER:

25 (1) PROMPTLY ON LEARNING OF THE ERROR:

26 (A) NOTIFIES THE OTHER PARTY OF THE ERROR; AND

27 (B) CAUSES DELIVERY TO THE OTHER PARTY OR, PURSUANT TO
28 REASONABLE INSTRUCTIONS RECEIVED FROM THE OTHER PARTY, DELIVERS TO
29 ANOTHER PERSON OR DESTROYS ALL COPIES OF THE INFORMATION; AND

30 (2) HAS NOT USED, OR RECEIVED ANY BENEFIT OR VALUE FROM, THE
31 INFORMATION OR CAUSED THE INFORMATION OR BENEFIT TO BE MADE AVAILABLE
32 TO A THIRD PARTY.

33 (C) IF SUBSECTION (B) OF THIS SECTION DOES NOT APPLY, THE EFFECT OF AN
34 ELECTRONIC ERROR IS DETERMINED BY OTHER LAW.

35 21-215. ELECTRONIC MESSAGE: WHEN EFFECTIVE; EFFECT OF ACKNOWLEDGMENT.

36 (A) RECEIPT OF AN ELECTRONIC MESSAGE IS EFFECTIVE WHEN RECEIVED
37 EVEN IF NO INDIVIDUAL IS AWARE OF ITS RECEIPT.

1 (B) RECEIPT OF AN ELECTRONIC ACKNOWLEDGMENT OF AN ELECTRONIC
2 MESSAGE ESTABLISHES THAT THE MESSAGE WAS RECEIVED BUT BY ITSELF DOES
3 NOT ESTABLISH THAT THE CONTENT SENT CORRESPONDS TO THE CONTENT
4 RECEIVED.

5 21-216. IDEA OR INFORMATION SUBMISSION.

6 (A) THE FOLLOWING RULES APPLY TO A SUBMISSION OF AN IDEA OR
7 INFORMATION FOR THE CREATION, DEVELOPMENT, OR ENHANCEMENT OF
8 COMPUTER INFORMATION WHICH IS NOT MADE PURSUANT TO AN EXISTING
9 AGREEMENT REQUIRING THE SUBMISSION:

10 (1) A CONTRACT IS NOT FORMED AND IS NOT IMPLIED FROM THE MERE
11 RECEIPT OF AN UNSOLICITED SUBMISSION;

12 (2) ENGAGING IN A BUSINESS, TRADE, OR INDUSTRY THAT BY CUSTOM
13 OR PRACTICE REGULARLY ACQUIRES IDEAS IS NOT IN ITSELF AN EXPRESS OR
14 IMPLIED SOLICITATION OF THE INFORMATION; AND

15 (3) IF THE RECIPIENT SEASONABLY NOTIFIES THE PERSON MAKING
16 THE SUBMISSION THAT THE RECIPIENT MAINTAINS A PROCEDURE TO RECEIVE AND
17 REVIEW SUBMISSIONS, A CONTRACT IS FORMED ONLY IF:

18 (A) THE SUBMISSION IS MADE AND ACCEPTED PURSUANT TO THAT
19 PROCEDURE; OR

20 (B) THE RECIPIENT EXPRESSLY AGREES TO TERMS CONCERNING
21 THE SUBMISSION.

22 (B) AN AGREEMENT TO DISCLOSE AN IDEA CREATES A CONTRACT
23 ENFORCEABLE AGAINST THE RECEIVING PARTY ONLY IF THE IDEA AS DISCLOSED IS
24 CONFIDENTIAL, CONCRETE, AND NOVEL TO THE BUSINESS, TRADE, OR INDUSTRY, OR
25 THE PARTY RECEIVING THE DISCLOSURE OTHERWISE EXPRESSLY AGREED.

26 SUBTITLE 3. CONSTRUCTION; GENERAL; INTERPRETATION.

27 GENERAL.

28 21-301. PAROL OR EXTRINSIC EVIDENCE.

29 TERMS WITH RESPECT TO WHICH CONFIRMATORY RECORDS OF THE PARTIES
30 AGREE OR WHICH ARE OTHERWISE SET FORTH IN A RECORD INTENDED BY THE
31 PARTIES AS A FINAL EXPRESSION OF THEIR AGREEMENT WITH RESPECT TO TERMS
32 INCLUDED THEREIN MAY NOT BE CONTRADICTED BY EVIDENCE OF ANY PREVIOUS
33 AGREEMENT OR OF A CONTEMPORANEOUS ORAL AGREEMENT BUT MAY BE
34 EXPLAINED OR SUPPLEMENTED BY:

35 (1) COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF
36 TRADE; AND

1 (2) EVIDENCE OF CONSISTENT ADDITIONAL TERMS, UNLESS THE COURT
2 FINDS THE RECORD TO HAVE BEEN INTENDED AS A COMPLETE AND EXCLUSIVE
3 STATEMENT OF THE TERMS OF THE AGREEMENT.

4 21-302. PRACTICAL CONSTRUCTION.

5 (A) THE EXPRESS TERMS OF AN AGREEMENT AND ANY COURSE OF
6 PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE MUST BE CONSTRUED
7 WHENEVER REASONABLE AS CONSISTENT WITH EACH OTHER. HOWEVER, IF THAT
8 CONSTRUCTION IS UNREASONABLE:

9 (1) EXPRESS TERMS PREVAIL OVER COURSE OF PERFORMANCE, COURSE
10 OF DEALING, AND USAGE OF TRADE;

11 (2) COURSE OF PERFORMANCE PREVAILS OVER COURSE OF DEALING
12 AND USAGE OF TRADE; AND

13 (3) COURSE OF DEALING PREVAILS OVER USAGE OF TRADE.

14 (B) AN APPLICABLE USAGE OF TRADE IN THE PLACE WHERE ANY PART OF
15 PERFORMANCE IS TO OCCUR MUST BE USED IN INTERPRETING THE AGREEMENT AS
16 TO THAT PART OF THE PERFORMANCE.

17 (C) EVIDENCE OF A RELEVANT COURSE OF PERFORMANCE, COURSE OF
18 DEALING, OR USAGE OF TRADE OFFERED BY ONE PARTY IN A PROCEEDING IS NOT
19 ADMISSIBLE UNLESS AND UNTIL THE PARTY OFFERING THE EVIDENCE HAS GIVEN
20 THE OTHER PARTY NOTICE THAT THE COURT FINDS SUFFICIENT TO PREVENT
21 UNFAIR SURPRISE.

22 (D) THE EXISTENCE AND SCOPE OF A USAGE OF TRADE MUST BE PROVED AS
23 FACTS.

24 21-303. MODIFICATION AND RESCISSION.

25 (A) AN AGREEMENT MODIFYING A CONTRACT SUBJECT TO THIS TITLE NEEDS
26 NO CONSIDERATION TO BE BINDING.

27 (B) AN AUTHENTICATED RECORD THAT PRECLUDES MODIFICATION OR
28 RESCISSION EXCEPT BY AN AUTHENTICATED RECORD MAY NOT OTHERWISE BE
29 MODIFIED OR RESCINDED. IN A STANDARD FORM SUPPLIED BY A MERCHANT TO A
30 CONSUMER, A TERM REQUIRING AN AUTHENTICATED RECORD FOR MODIFICATION
31 OF THE CONTRACT IS NOT ENFORCEABLE UNLESS THE CONSUMER MANIFESTS
32 ASSENT TO THE TERM.

33 (C) A MODIFICATION OF A CONTRACT AND THE CONTRACT AS MODIFIED
34 MUST SATISFY THE REQUIREMENTS OF §§ 21-201(A) AND 21-307(G) OF THIS TITLE IF
35 THE CONTRACT AS MODIFIED IS WITHIN THOSE PROVISIONS.

1 (D) AN ATTEMPT AT MODIFICATION OR RESCISSION WHICH DOES NOT
2 SATISFY SUBSECTION (B) OR (C) OF THIS SECTION MAY OPERATE AS A WAIVER IF §
3 21-702 OF THIS TITLE IS SATISFIED.

4 21-304. CONTINUING CONTRACTUAL TERMS.

5 (A) TERMS OF AN AGREEMENT INVOLVING SUCCESSIVE PERFORMANCES
6 APPLY TO ALL PERFORMANCES, EVEN IF THE TERMS ARE NOT DISPLAYED OR
7 OTHERWISE BROUGHT TO THE ATTENTION OF A PARTY WITH RESPECT TO EACH
8 SUCCESSIVE PERFORMANCE, UNLESS THE TERMS ARE MODIFIED IN ACCORDANCE
9 WITH THIS TITLE OR THE CONTRACT.

10 (B) IF A CONTRACT PROVIDES THAT TERMS MAY BE CHANGED AS TO FUTURE
11 PERFORMANCES BY COMPLIANCE WITH A DESCRIBED PROCEDURE, A CHANGE
12 PROPOSED IN GOOD FAITH PURSUANT TO THAT PROCEDURE BECOMES PART OF THE
13 CONTRACT IF THE PROCEDURE:

14 (1) REASONABLY NOTIFIES THE OTHER PARTY OF THE CHANGE; AND

15 (2) IN A MASS-MARKET TRANSACTION, PERMITS THE OTHER PARTY TO
16 TERMINATE THE CONTRACT AS TO FUTURE PERFORMANCE IF THE CHANGE ALTERS
17 A MATERIAL TERM AND THE PARTY IN GOOD FAITH DETERMINES THAT THE
18 MODIFICATION IS UNACCEPTABLE.

19 (C) THE PARTIES BY AGREEMENT MAY DETERMINE THE STANDARDS FOR
20 REASONABLE NOTICE UNLESS THE AGREED STANDARDS ARE MANIFESTLY
21 UNREASONABLE IN LIGHT OF THE COMMERCIAL CIRCUMSTANCES.

22 (D) THE ENFORCEABILITY OF CHANGES MADE PURSUANT TO A PROCEDURE
23 THAT DOES NOT COMPLY WITH SUBSECTION (B) OF THIS SECTION IS DETERMINED
24 BY THE OTHER PROVISIONS OF THIS TITLE OR OTHER LAW.

25 21-305. TERMS TO BE SPECIFIED.

26 AN AGREEMENT THAT IS OTHERWISE SUFFICIENTLY DEFINITE TO BE A
27 CONTRACT IS NOT INVALID BECAUSE IT LEAVES PARTICULARS OF PERFORMANCE TO
28 BE SPECIFIED BY ONE OF THE PARTIES. IF PARTICULARS OF PERFORMANCE ARE TO
29 BE SPECIFIED BY A PARTY, THE FOLLOWING RULES APPLY:

30 (1) SPECIFICATION MUST BE MADE IN GOOD FAITH AND WITHIN LIMITS
31 SET BY COMMERCIAL REASONABLENESS.

32 (2) IF A SPECIFICATION MATERIALLY AFFECTS THE OTHER PARTY'S
33 PERFORMANCE BUT IS NOT SEASONABLY MADE, THE OTHER PARTY:

34 (A) IS EXCUSED FOR ANY RESULTING DELAY IN ITS
35 PERFORMANCE; AND

36 (B) MAY PERFORM, SUSPEND PERFORMANCE, OR TREAT THE
37 FAILURE TO SPECIFY AS A BREACH OF CONTRACT.

1 21-306. PERFORMANCE UNDER OPEN TERMS.

2 A PERFORMANCE OBLIGATION OF A PARTY THAT CANNOT BE DETERMINED
3 FROM THE AGREEMENT OR FROM OTHER PROVISIONS OF THIS TITLE REQUIRES THE
4 PARTY TO PERFORM IN A MANNER AND IN A TIME THAT IS REASONABLE IN LIGHT OF
5 THE COMMERCIAL CIRCUMSTANCES EXISTING AT THE TIME OF AGREEMENT.

6 INTERPRETATION.

7 21-307. INTERPRETATION AND REQUIREMENTS FOR A GRANT.

8 (A) A LICENSE GRANTS:

9 (1) THE CONTRACTUAL RIGHTS THAT ARE EXPRESSLY DESCRIBED; AND

10 (2) A CONTRACTUAL RIGHT TO USE ANY INFORMATIONAL RIGHTS
11 WITHIN THE LICENSOR'S CONTROL AT THE TIME OF CONTRACTING WHICH ARE
12 NECESSARY IN THE ORDINARY COURSE TO EXERCISE THE EXPRESSLY DESCRIBED
13 RIGHTS.

14 (B) IF A LICENSE EXPRESSLY LIMITS USE OF THE INFORMATION OR
15 INFORMATIONAL RIGHTS, USE IN ANY OTHER MANNER IS A BREACH OF CONTRACT.
16 IN ALL OTHER CASES, A LICENSE CONTAINS AN IMPLIED LIMITATION THAT THE
17 LICENSEE WILL NOT USE THE INFORMATION OR INFORMATIONAL RIGHTS
18 OTHERWISE THAN AS DESCRIBED IN SUBSECTION (A) OF THIS SECTION. HOWEVER,
19 USE INCONSISTENT WITH THIS IMPLIED LIMITATION IS NOT A BREACH IF IT IS
20 PERMITTED UNDER APPLICABLE LAW IN THE ABSENCE OF THE IMPLIED
21 LIMITATION.

22 (C) AN AGREEMENT THAT DOES NOT SPECIFY THE NUMBER OF PERMITTED
23 USERS PERMITS A NUMBER OF USERS WHICH IS REASONABLE IN LIGHT OF THE
24 INFORMATIONAL RIGHTS INVOLVED AND THE COMMERCIAL CIRCUMSTANCES
25 EXISTING AT THE TIME OF THE AGREEMENT.

26 (D) UNLESS OTHERWISE AGREED, A PARTY IS NOT ENTITLED TO ANY RIGHTS
27 IN NEW VERSIONS OF, OR IMPROVEMENTS OR MODIFICATIONS TO, INFORMATION
28 MADE BY THE OTHER PARTY. A LICENSOR'S AGREEMENT TO PROVIDE NEW VERSIONS,
29 IMPROVEMENTS, OR MODIFICATIONS REQUIRES THAT THE LICENSOR PROVIDE
30 THEM AS DEVELOPED AND MADE GENERALLY COMMERCIALY AVAILABLE FROM
31 TIME TO TIME BY THE LICENSOR.

32 (E) UNLESS OTHERWISE AGREED, NEITHER PARTY IS ENTITLED TO RECEIVE
33 COPIES OF SOURCE CODE, SCHEMATICS, MASTER COPY, DESIGN MATERIAL, OR
34 OTHER INFORMATION USED BY THE OTHER PARTY IN CREATING, DEVELOPING, OR
35 IMPLEMENTING THE INFORMATION.

36 (F) TERMS CONCERNING SCOPE MUST BE CONSTRUED UNDER ORDINARY
37 PRINCIPLES OF CONTRACT INTERPRETATION IN LIGHT OF THE INFORMATIONAL
38 RIGHTS AND THE COMMERCIAL CONTEXT. IN ADDITION, THE FOLLOWING RULES
39 APPLY:

1 (1) A GRANT OF "ALL POSSIBLE RIGHTS AND FOR ALL MEDIA" OR "ALL
2 RIGHTS AND FOR ALL MEDIA NOW KNOWN OR LATER DEVELOPED", OR A GRANT IN
3 SIMILAR TERMS, INCLUDES ALL RIGHTS THEN EXISTING OR LATER CREATED BY LAW
4 AND ALL USES, MEDIA, AND METHODS OF DISTRIBUTION OR EXHIBITION, WHETHER
5 THEN EXISTING OR DEVELOPED IN THE FUTURE AND WHETHER OR NOT
6 ANTICIPATED AT THE TIME OF THE GRANT.

7 (2) A GRANT OF AN "EXCLUSIVE LICENSE", OR A GRANT IN SIMILAR
8 TERMS, MEANS THAT:

9 (A) FOR THE DURATION OF THE LICENSE, THE LICENSOR WILL NOT
10 EXERCISE, AND WILL NOT GRANT TO ANY OTHER PERSON, RIGHTS IN THE SAME
11 INFORMATION OR INFORMATIONAL RIGHTS WITHIN THE SCOPE OF THE EXCLUSIVE
12 GRANT; AND

13 (B) THE LICENSOR AFFIRMS THAT IT HAS NOT PREVIOUSLY
14 GRANTED THOSE RIGHTS IN A CONTRACT IN EFFECT WHEN THE LICENSEE'S RIGHTS
15 MAY BE EXERCISED.

16 (G) THE RULES IN THIS SECTION MAY BE VARIED ONLY BY A RECORD THAT IS
17 SUFFICIENT TO INDICATE THAT A CONTRACT HAS BEEN MADE AND WHICH IS:

18 (1) AUTHENTICATED BY THE PARTY AGAINST WHICH ENFORCEMENT IS
19 SOUGHT; OR

20 (2) PREPARED AND DELIVERED BY ONE PARTY AND ADOPTED BY THE
21 OTHER UNDER § 21-208 OR § 21-209 OF THIS TITLE.

22 21-308. DURATION OF CONTRACT.

23 IF AN AGREEMENT DOES NOT SPECIFY ITS DURATION, TO THE EXTENT
24 ALLOWED BY OTHER LAW, THE FOLLOWING RULES APPLY:

25 (1) EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (2) OF THIS
26 SECTION, THE AGREEMENT IS ENFORCEABLE FOR A TIME REASONABLE IN LIGHT OF
27 THE LICENSED SUBJECT MATTER AND COMMERCIAL CIRCUMSTANCES BUT MAY BE
28 TERMINATED AS TO FUTURE PERFORMANCES AT WILL BY EITHER PARTY DURING
29 THAT TIME ON GIVING SEASONABLE NOTICE TO THE OTHER PARTY.

30 (2) THE DURATION OF CONTRACTUAL RIGHTS TO USE LICENSED
31 SUBJECT MATTER IS A TIME REASONABLE IN LIGHT OF THE LICENSED
32 INFORMATIONAL RIGHTS AND THE COMMERCIAL CIRCUMSTANCES. HOWEVER,
33 SUBJECT TO CANCELLATION FOR BREACH OF CONTRACT, THE DURATION OF THE
34 LICENSE IS PERPETUAL AS TO THE CONTRACTUAL RIGHTS AND CONTRACTUAL USE
35 TERMS IF:

36 (A) THE LICENSE IS OF A COMPUTER PROGRAM THAT DOES NOT
37 INCLUDE SOURCE CODE AND THE LICENSE:

38 (I) TRANSFERS OWNERSHIP OF A COPY; OR

1 (II) DELIVERS A COPY FOR A CONTRACT FEE THE TOTAL
2 AMOUNT OF WHICH IS FIXED AT OR BEFORE THE TIME OF DELIVERY OF THE COPY;
3 OR

4 (B) THE LICENSE EXPRESSLY GRANTS THE RIGHT TO
5 INCORPORATE OR USE THE LICENSED INFORMATION OR INFORMATIONAL RIGHTS
6 WITH INFORMATION OR INFORMATIONAL RIGHTS FROM OTHER SOURCES IN A
7 COMBINED WORK FOR PUBLIC DISTRIBUTION OR PUBLIC PERFORMANCE.

8 21-309. AGREEMENT FOR PERFORMANCE TO A PARTY'S SATISFACTION.

9 (A) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (B) OF THIS SECTION,
10 AN AGREEMENT THAT PROVIDES THAT THE PERFORMANCE OF ONE PARTY IS TO BE
11 TO THE SATISFACTION OR APPROVAL OF THE OTHER PARTY REQUIRES
12 PERFORMANCE SUFFICIENT TO SATISFY A REASONABLE PERSON IN THE POSITION
13 OF THE PARTY THAT MUST BE SATISFIED.

14 (B) PERFORMANCE MUST BE TO THE SUBJECTIVE SATISFACTION OF THE
15 OTHER PARTY IF:

16 (1) THE AGREEMENT EXPRESSLY SO PROVIDES, SUCH AS BY STATING
17 THAT APPROVAL IS IN THE "SOLE DISCRETION" OF THE PARTY, OR WORDS OF
18 SIMILAR IMPORT; OR

19 (2) THE AGREEMENT IS FOR INFORMATIONAL CONTENT TO BE
20 EVALUATED IN REFERENCE TO SUBJECTIVE CHARACTERISTICS SUCH AS
21 AESTHETICS, APPEAL, SUITABILITY TO TASTE, OR SUBJECTIVE QUALITY.

22 SUBTITLE 4. WARRANTIES.

23 21-401. WARRANTY AND OBLIGATIONS CONCERNING NONINTERFERENCE AND
24 NONINFRINGEMENT.

25 (A) A LICENSOR OF INFORMATION THAT IS A MERCHANT REGULARLY
26 DEALING IN INFORMATION OF THE KIND WARRANTS THAT THE INFORMATION WILL
27 BE DELIVERED FREE OF THE RIGHTFUL CLAIM OF ANY THIRD PERSON BY WAY OF
28 INFRINGEMENT OR MISAPPROPRIATION, BUT A LICENSEE THAT FURNISHES
29 DETAILED SPECIFICATIONS TO THE LICENSOR AND THE METHOD REQUIRED FOR
30 MEETING THE SPECIFICATIONS HOLDS THE LICENSOR HARMLESS AGAINST ANY
31 SUCH CLAIM THAT ARISES OUT OF COMPLIANCE WITH EITHER THE REQUIRED
32 SPECIFICATION OR THE REQUIRED METHOD EXCEPT FOR A CLAIM THAT RESULTS
33 FROM THE FAILURE OF THE LICENSOR TO ADOPT, OR NOTIFY THE LICENSEE OF, A
34 NONINFRINGEMENT ALTERNATIVE OF WHICH THE LICENSOR HAD REASON TO KNOW.

35 (B) A LICENSOR WARRANTS:

36 (1) FOR THE DURATION OF THE LICENSE, THAT NO PERSON HOLDS A
37 RIGHTFUL CLAIM TO, OR INTEREST IN, THE INFORMATION WHICH AROSE FROM AN
38 ACT OR OMISSION OF THE LICENSOR, OTHER THAN A CLAIM BY WAY OF

1 INFRINGEMENT OR MISAPPROPRIATION, WHICH WILL INTERFERE WITH THE
2 LICENSEE'S ENJOYMENT OF ITS INTEREST; AND

3 (2) AS TO RIGHTS GRANTED EXCLUSIVELY TO THE LICENSEE, THAT
4 WITHIN THE SCOPE OF THE LICENSE:

5 (A) TO THE KNOWLEDGE OF THE LICENSOR, ANY LICENSED
6 PATENT RIGHTS ARE VALID AND EXCLUSIVE TO THE EXTENT EXCLUSIVITY AND
7 VALIDITY ARE RECOGNIZED BY THE LAW UNDER WHICH THE PATENT RIGHTS WERE
8 CREATED; AND

9 (B) IN ALL OTHER CASES, THE LICENSED INFORMATIONAL RIGHTS
10 ARE VALID AND EXCLUSIVE FOR THE INFORMATION AS A WHOLE TO THE EXTENT
11 EXCLUSIVITY AND VALIDITY ARE RECOGNIZED BY THE LAW APPLICABLE TO THE
12 LICENSED RIGHTS IN A JURISDICTION TO WHICH THE LICENSE APPLIES.

13 (C) THE WARRANTIES IN THIS SECTION ARE SUBJECT TO THE FOLLOWING
14 RULES:

15 (1) IF THE LICENSED INFORMATIONAL RIGHTS ARE SUBJECT TO A
16 RIGHT OF PRIVILEGED USE, COLLECTIVE ADMINISTRATION, OR COMPULSORY
17 LICENSING, THE WARRANTY IS NOT MADE WITH RESPECT TO THOSE RIGHTS.

18 (2) THE OBLIGATIONS UNDER SUBSECTIONS (A) AND (B)(2) OF THIS
19 SECTION APPLY SOLELY TO INFORMATIONAL RIGHTS ARISING UNDER THE LAWS OF
20 THE UNITED STATES OR A STATE, UNLESS THE CONTRACT EXPRESSLY PROVIDES
21 THAT THE WARRANTY OBLIGATIONS EXTEND TO RIGHTS UNDER THE LAWS OF
22 OTHER COUNTRIES. LANGUAGE IS SUFFICIENT FOR THIS PURPOSE IF IT STATES
23 "THE LICENSOR WARRANTS `EXCLUSIVITY', `NONINFRINGEMENT', `IN SPECIFIED
24 COUNTRIES', `WORLDWIDE'", OR WORDS OF SIMILAR IMPORT. IN THAT CASE, THE
25 WARRANTY EXTENDS TO THE SPECIFIED COUNTRY OR, IN THE CASE OF A
26 REFERENCE TO "WORLDWIDE" OR THE LIKE, TO ALL COUNTRIES WITHIN THE
27 DESCRIPTION, BUT ONLY TO THE EXTENT THE RIGHTS ARE RECOGNIZED UNDER A
28 TREATY OR INTERNATIONAL CONVENTION TO WHICH THE COUNTRY AND THE
29 UNITED STATES ARE SIGNATORIES.

30 (3) THE WARRANTIES UNDER SUBSECTIONS (A) AND (B)(2) OF THIS
31 SECTION ARE NOT MADE BY A LICENSE THAT MERELY PERMITS USE, OR COVENANTS
32 NOT TO CLAIM INFRINGEMENT BECAUSE OF THE USE, OF RIGHTS UNDER A
33 LICENSED PATENT.

34 (D) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (E) OF THIS SECTION, A
35 WARRANTY UNDER THIS SECTION MAY BE DISCLAIMED OR MODIFIED ONLY BY
36 SPECIFIC LANGUAGE OR BY CIRCUMSTANCES THAT GIVE THE LICENSEE REASON TO
37 KNOW THAT THE LICENSOR DOES NOT WARRANT THAT COMPETING CLAIMS DO NOT
38 EXIST OR THAT THE LICENSOR PURPORTS TO GRANT ONLY THE RIGHTS IT MAY
39 HAVE. IN AN AUTOMATED TRANSACTION, LANGUAGE IS SUFFICIENT IF IT IS
40 CONSPICUOUS. OTHERWISE, LANGUAGE IN A RECORD IS SUFFICIENT IF IT STATES
41 "THERE IS NO WARRANTY AGAINST INTERFERENCE WITH YOUR ENJOYMENT OF THE
42 INFORMATION OR AGAINST INFRINGEMENT", OR WORDS OF SIMILAR IMPORT.

1 (E) BETWEEN MERCHANTS, A GRANT OF A "QUITCLAIM", OR A GRANT IN
2 SIMILAR TERMS, GRANTS THE INFORMATION OR INFORMATIONAL RIGHTS WITHOUT
3 AN IMPLIED WARRANTY AS TO INFRINGEMENT OR MISAPPROPRIATION OR AS TO THE
4 RIGHTS ACTUALLY POSSESSED OR TRANSFERRED BY THE LICENSOR.

5 21-402. EXPRESS WARRANTY.

6 (A) SUBJECT TO SUBSECTION (C) OF THIS SECTION, AN EXPRESS WARRANTY
7 BY A LICENSOR IS CREATED AS FOLLOWS:

8 (1) AN AFFIRMATION OF FACT OR PROMISE MADE BY THE LICENSOR TO
9 ITS LICENSEE, INCLUDING BY ADVERTISING, WHICH RELATES TO THE INFORMATION
10 AND BECOMES PART OF THE BASIS OF THE BARGAIN CREATES AN EXPRESS
11 WARRANTY THAT THE INFORMATION TO BE FURNISHED UNDER THE AGREEMENT
12 WILL CONFORM TO THE AFFIRMATION OR PROMISE.

13 (2) ANY DESCRIPTION OF THE INFORMATION WHICH IS MADE PART OF
14 THE BASIS OF THE BARGAIN CREATES AN EXPRESS WARRANTY THAT THE
15 INFORMATION WILL CONFORM TO THE DESCRIPTION.

16 (3) ANY SAMPLE, MODEL, OR DEMONSTRATION OF A FINAL PRODUCT
17 WHICH IS MADE PART OF THE BASIS OF THE BARGAIN CREATES AN EXPRESS
18 WARRANTY THAT THE PERFORMANCE OF THE INFORMATION WILL REASONABLY
19 CONFORM TO THE PERFORMANCE OF THE SAMPLE, MODEL, OR DEMONSTRATION,
20 TAKING INTO ACCOUNT DIFFERENCES THAT WOULD APPEAR TO A REASONABLE
21 PERSON IN THE POSITION OF THE LICENSEE BETWEEN THE SAMPLE, MODEL, OR
22 DEMONSTRATION AND THE INFORMATION AS IT WILL BE USED.

23 (B) IT IS NOT NECESSARY TO THE CREATION OF AN EXPRESS WARRANTY
24 THAT THE LICENSOR USE FORMAL WORDS, SUCH AS "WARRANTY" OR "GUARANTY",
25 OR STATE A SPECIFIC INTENTION TO MAKE A WARRANTY. HOWEVER, AN EXPRESS
26 WARRANTY IS NOT CREATED BY:

27 (1) AN AFFIRMATION OR PREDICTION MERELY OF THE VALUE OF THE
28 INFORMATION OR INFORMATIONAL RIGHTS;

29 (2) A DISPLAY OR DESCRIPTION OF A PORTION OF THE INFORMATION TO
30 ILLUSTRATE THE AESTHETICS, APPEAL, SUITABILITY TO TASTE, SUBJECTIVE
31 QUALITY, OR THE LIKE OF INFORMATIONAL CONTENT; OR

32 (3) A STATEMENT PURPORTING TO BE MERELY ~~THE LICENSOR'S~~
33 OPINION OR COMMENDATION OF THE INFORMATION OR INFORMATIONAL RIGHTS.

34 (C) AN EXPRESS WARRANTY OR SIMILAR EXPRESS CONTRACTUAL
35 OBLIGATION, IF ANY, EXISTS WITH RESPECT TO PUBLISHED INFORMATIONAL
36 CONTENT COVERED BY THIS TITLE TO THE SAME EXTENT THAT IT WOULD EXIST IF
37 THE PUBLISHED INFORMATIONAL CONTENT HAD BEEN PUBLISHED IN A FORM THAT
38 PLACED IT OUTSIDE THIS TITLE. HOWEVER, IF THE WARRANTY OR SIMILAR EXPRESS
39 CONTRACTUAL OBLIGATION IS BREACHED, THE REMEDIES OF THE AGGRIEVED
40 PARTY ARE THOSE UNDER THIS TITLE AND THE AGREEMENT.

1 21-403. IMPLIED WARRANTY: MERCHANTABILITY OF A COMPUTER PROGRAM.

2 (A) UNLESS THE WARRANTY IS DISCLAIMED OR MODIFIED, A LICENSOR THAT
3 IS A MERCHANT WITH RESPECT TO COMPUTER PROGRAMS OF THE KIND WARRANTS:

4 (1) TO THE END USER THAT THE COMPUTER PROGRAM IS FIT FOR THE
5 ORDINARY PURPOSES FOR WHICH SUCH COMPUTER PROGRAMS ARE USED;

6 (2) TO THE DISTRIBUTOR THAT:

7 (A) THE PROGRAM IS ADEQUATELY PACKAGED AND LABELED AS
8 THE AGREEMENT REQUIRES; AND

9 (B) IN THE CASE OF MULTIPLE COPIES, THE COPIES ARE WITHIN
10 THE VARIATIONS PERMITTED BY THE AGREEMENT, OF EVEN KIND, QUALITY, AND
11 QUANTITY WITHIN EACH UNIT AND AMONG ALL UNITS INVOLVED; AND

12 (3) THAT THE PROGRAM CONFORMS TO ANY PROMISES OR
13 AFFIRMATIONS OF FACT MADE ON THE CONTAINER OR LABEL.

14 (B) UNLESS DISCLAIMED OR MODIFIED, OTHER IMPLIED WARRANTIES WITH
15 RESPECT TO COMPUTER PROGRAMS MAY ARISE FROM COURSE OF DEALING OR
16 USAGE OF TRADE.

17 (C) NO WARRANTY IS CREATED UNDER THIS SECTION WITH RESPECT TO
18 INFORMATIONAL CONTENT, BUT AN IMPLIED WARRANTY MAY ARISE UNDER § 21-404
19 OF THIS SUBTITLE.

20 21-404. IMPLIED WARRANTY: INFORMATIONAL CONTENT.

21 (A) UNLESS THE WARRANTY IS DISCLAIMED OR MODIFIED, A MERCHANT
22 THAT, IN A SPECIAL RELATIONSHIP OF RELIANCE WITH A LICENSEE, COLLECTS,
23 COMPILES, PROCESSES, PROVIDES, OR TRANSMITS INFORMATIONAL CONTENT
24 WARRANTS TO THAT LICENSEE THAT THERE IS NO INACCURACY IN THE
25 INFORMATIONAL CONTENT CAUSED BY THE MERCHANT'S FAILURE TO PERFORM
26 WITH REASONABLE CARE.

27 (B) A WARRANTY DOES NOT ARISE UNDER SUBSECTION (A) OF THIS SECTION
28 WITH RESPECT TO:

29 (1) PUBLISHED INFORMATIONAL CONTENT; OR

30 (2) A PERSON THAT ACTS AS A CONDUIT OR PROVIDES NO MORE THAN
31 EDITORIAL SERVICES IN COLLECTING, COMPILING, DISTRIBUTING, PROCESSING,
32 PROVIDING, OR TRANSMITTING INFORMATIONAL CONTENT THAT UNDER THE
33 CIRCUMSTANCES CAN BE IDENTIFIED AS THAT OF A THIRD PERSON.

34 (C) THE WARRANTY UNDER THIS SECTION IS NOT SUBJECT TO THE
35 PRECLUSION IN § 21-113(A)(1) OF THIS TITLE ON DISCLAIMING OBLIGATIONS OF
36 DILIGENCE, REASONABLENESS, OR CARE.

1 21-405. IMPLIED WARRANTY: LICENSEE'S PURPOSE; SYSTEM INTEGRATION.

2 (A) UNLESS THE WARRANTY IS DISCLAIMED OR MODIFIED, IF A LICENSOR AT
3 THE TIME OF CONTRACTING HAS REASON TO KNOW ANY PARTICULAR PURPOSE FOR
4 WHICH THE COMPUTER INFORMATION IS REQUIRED AND THAT THE LICENSEE IS
5 RELYING ON THE LICENSOR'S SKILL OR JUDGMENT TO SELECT, DEVELOP, OR
6 FURNISH SUITABLE INFORMATION, THE FOLLOWING RULES APPLY:

7 (1) EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (2), THERE IS AN
8 IMPLIED WARRANTY THAT THE INFORMATION IS FIT FOR THAT PURPOSE.

9 (2) IF FROM ALL THE CIRCUMSTANCES IT APPEARS THAT THE LICENSOR
10 WAS TO BE PAID FOR THE AMOUNT OF ITS TIME OR EFFORT REGARDLESS OF THE
11 FITNESS OF THE RESULTING INFORMATION, THE WARRANTY UNDER PARAGRAPH (1)
12 IS THAT THE INFORMATION WILL NOT FAIL TO ACHIEVE THE LICENSEE'S
13 PARTICULAR PURPOSE AS A RESULT OF THE LICENSOR'S LACK OF REASONABLE
14 EFFORT.

15 (B) THERE IS NO WARRANTY UNDER SUBSECTION (A) OF THIS SECTION WITH
16 REGARD TO:

17 (1) THE AESTHETICS, APPEAL, SUITABILITY TO TASTE, OR SUBJECTIVE
18 QUALITY OF INFORMATIONAL CONTENT; OR

19 (2) PUBLISHED INFORMATIONAL CONTENT, BUT THERE MAY BE A
20 WARRANTY WITH REGARD TO THE LICENSOR'S SELECTION AMONG PUBLISHED
21 INFORMATIONAL CONTENT FROM DIFFERENT PROVIDERS IF THE SELECTION IS
22 MADE BY AN INDIVIDUAL ACTING AS OR ON BEHALF OF THE LICENSOR.

23 (C) IF AN AGREEMENT REQUIRES A LICENSOR TO PROVIDE OR SELECT A
24 SYSTEM CONSISTING OF COMPUTER PROGRAMS AND GOODS, AND THE LICENSOR
25 HAS REASON TO KNOW THAT THE LICENSEE IS RELYING ON THE SKILL OR
26 JUDGMENT OF THE LICENSOR TO SELECT THE COMPONENTS OF THE SYSTEM,
27 THERE IS AN IMPLIED WARRANTY THAT THE COMPONENTS PROVIDED OR SELECTED
28 WILL FUNCTION TOGETHER AS A SYSTEM.

29 (D) THE WARRANTY UNDER THIS SECTION IS NOT SUBJECT TO THE
30 PRECLUSION IN § 21-113(A)(1) OF THIS TITLE ON DISCLAIMING DILIGENCE,
31 REASONABLENESS, OR CARE.

32 21-406. DISCLAIMER OR MODIFICATION OF WARRANTY.

33 (A) WORDS OR CONDUCT RELEVANT TO THE CREATION OF AN EXPRESS
34 WARRANTY AND WORDS OR CONDUCT TENDING TO DISCLAIM OR MODIFY AN
35 EXPRESS WARRANTY MUST BE CONSTRUED WHEREVER REASONABLE AS
36 CONSISTENT WITH EACH OTHER. SUBJECT TO § 21-301 OF THIS TITLE WITH REGARD
37 TO PAROL OR EXTRINSIC EVIDENCE, THE DISCLAIMER OR MODIFICATION IS
38 INOPERATIVE TO THE EXTENT THAT SUCH CONSTRUCTION IS UNREASONABLE.

1 (B) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTIONS (C), (D), AND (E) OF
2 THIS SECTION, TO DISCLAIM OR MODIFY AN IMPLIED WARRANTY OR ANY PART OF IT,
3 BUT NOT THE WARRANTY IN § 21-401 OF THIS SUBTITLE, THE FOLLOWING RULES
4 APPLY:

5 (1) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION:

6 (A) TO DISCLAIM OR MODIFY THE IMPLIED WARRANTY ARISING
7 UNDER § 21-403 OF THIS SUBTITLE, LANGUAGE MUST MENTION "MERCHANTABILITY"
8 OR "QUALITY" OR USE WORDS OF SIMILAR IMPORT AND, IF IN A RECORD, MUST BE
9 CONSPICUOUS.

10 (B) TO DISCLAIM OR MODIFY THE IMPLIED WARRANTY ARISING
11 UNDER § 21-404 OF THIS SUBTITLE, LANGUAGE IN A RECORD MUST MENTION
12 "ACCURACY" OR USE WORDS OF SIMILAR IMPORT.

13 (2) LANGUAGE TO DISCLAIM OR MODIFY THE IMPLIED WARRANTY
14 ARISING UNDER § 21-405 OF THIS SUBTITLE MUST BE IN A RECORD AND BE
15 CONSPICUOUS. IT IS SUFFICIENT TO STATE "THERE IS NO WARRANTY THAT THIS
16 INFORMATION, OUR EFFORTS, OR THE SYSTEM WILL FULFILL ANY OF YOUR
17 PARTICULAR PURPOSES OR NEEDS", OR WORDS OF SIMILAR IMPORT.

18 (3) LANGUAGE IN A RECORD IS SUFFICIENT TO DISCLAIM ALL IMPLIED
19 WARRANTIES IF IT INDIVIDUALLY DISCLAIMS EACH IMPLIED WARRANTY OR, EXCEPT
20 FOR THE WARRANTY IN § 21-401 OF THIS SUBTITLE, IF IT IS CONSPICUOUS AND
21 STATES "EXCEPT FOR EXPRESS WARRANTIES STATED IN THIS CONTRACT, IF ANY,
22 THIS 'INFORMATION'/ 'COMPUTER PROGRAM' IS PROVIDED WITH ALL FAULTS, AND
23 THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY, AND
24 EFFORT IS WITH THE USER", OR WORDS OF SIMILAR IMPORT.

25 (4) A DISCLAIMER OR MODIFICATION SUFFICIENT UNDER TITLE 2 OR
26 TITLE 2A OF THIS ARTICLE TO DISCLAIM OR MODIFY AN IMPLIED WARRANTY OF
27 MERCHANTABILITY IS SUFFICIENT TO DISCLAIM OR MODIFY THE WARRANTIES
28 UNDER §§ 21-403 AND 21-404 OF THIS SUBTITLE. A DISCLAIMER OR MODIFICATION
29 SUFFICIENT UNDER TITLE 2 OR TITLE 2A OF THIS ARTICLE TO DISCLAIM OR MODIFY
30 AN IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE IS SUFFICIENT TO
31 DISCLAIM OR MODIFY THE WARRANTIES UNDER § 21-405 OF THIS SUBTITLE.

32 (C) UNLESS THE CIRCUMSTANCES INDICATE OTHERWISE, ALL IMPLIED
33 WARRANTIES, BUT NOT THE WARRANTY UNDER § 21-401 OF THIS SUBTITLE, ARE
34 DISCLAIMED BY EXPRESSIONS LIKE "AS IS" OR "WITH ALL FAULTS" OR OTHER
35 LANGUAGE THAT IN COMMON UNDERSTANDING CALLS THE LICENSEE'S ATTENTION
36 TO THE DISCLAIMER OF WARRANTIES AND MAKES PLAIN THAT THERE ARE NO
37 IMPLIED WARRANTIES.

38 (D) IF A LICENSEE BEFORE ENTERING INTO A CONTRACT HAS EXAMINED THE
39 INFORMATION OR THE SAMPLE OR MODEL AS FULLY AS IT DESIRED OR HAS
40 REFUSED TO EXAMINE THE INFORMATION, THERE IS NO IMPLIED WARRANTY WITH
41 REGARD TO DEFECTS THAT AN EXAMINATION OUGHT IN THE CIRCUMSTANCES TO
42 HAVE REVEALED TO THE LICENSEE.

1 (E) AN IMPLIED WARRANTY MAY ALSO BE DISCLAIMED OR MODIFIED BY
2 COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE.

3 (F) IF A CONTRACT REQUIRES ONGOING PERFORMANCE OR A SERIES OF
4 PERFORMANCES BY THE LICENSOR, LANGUAGE OF DISCLAIMER OR MODIFICATION
5 WHICH COMPLIES WITH THIS SECTION IS EFFECTIVE WITH RESPECT TO ALL
6 PERFORMANCES UNDER THE CONTRACT.

7 (G) REMEDIES FOR BREACH OF WARRANTY MAY BE LIMITED IN ACCORDANCE
8 WITH THIS TITLE WITH RESPECT TO LIQUIDATION OR LIMITATION OF DAMAGES AND
9 CONTRACTUAL MODIFICATION OF REMEDY.

10 (H) THE PROVISIONS OF SUBSECTIONS (A) THROUGH (G) OF THIS SECTION DO
11 NOT APPLY TO A CONSUMER CONTRACT FOR A COMPUTER PROGRAM.

12 (I) (1) ANY ORAL OR WRITTEN LANGUAGE USED IN A CONSUMER
13 CONTRACT FOR A COMPUTER PROGRAM, WHICH ATTEMPTS TO EXCLUDE OR MODIFY
14 ANY IMPLIED WARRANTIES OF MERCHANTABILITY OF A COMPUTER PROGRAM
15 CREATED UNDER § 21-403 OF THIS SUBTITLE, OR IMPLIED WARRANTIES OF FITNESS
16 FOR A PARTICULAR PURPOSE UNDER § 21-405 OF THIS SUBTITLE, OR EXCLUDE OR
17 MODIFY THE CONSUMER'S REMEDIES FOR A BREACH OF THOSE WARRANTIES, IS
18 UNENFORCEABLE.

19 (2) A MERCHANT MAY RECOVER FROM A MANUFACTURER OR A
20 LICENSOR THAT CAUSED THE BREACH ANY DAMAGES RESULTING FROM THE
21 BREACH OF IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A
22 PARTICULAR PURPOSE THAT COULD NOT BE DISCLAIMED OR MODIFIED UNDER THIS
23 SECTION.

24 (J) ANY ORAL OR WRITTEN LANGUAGE USED BY A MERCHANT, LICENSOR, OR
25 MANUFACTURER IN A CONSUMER CONTRACT FOR A COMPUTER PROGRAM WHICH
26 ATTEMPTS TO LIMIT OR MODIFY A CONSUMER'S REMEDIES FOR BREACH OF A
27 MANUFACTURER'S EXPRESS WARRANTIES IS UNENFORCEABLE UNLESS THE
28 MANUFACTURER PROVIDES REASONABLE AND EXPEDITIOUS MEANS OF
29 PERFORMING THE WARRANTY OBLIGATIONS.

30 (K) THE PROVISIONS OF §§ 21-403 AND 21-405 OF THIS SUBTITLE DO NOT
31 APPLY TO:

32 (1) AN INFORMATION/COMPUTER PROGRAM PROVIDED FOR NO FEE; OR

33 (2) AN INFORMATION/COMPUTER PROGRAM PROVIDED AS A BETA TEST
34 OR SIMILAR EXPERIMENTAL VERSION OF THE INFORMATION/COMPUTER PROGRAM.

35 21-407. MODIFICATION OF A COMPUTER PROGRAM.

36 A LICENSEE THAT MODIFIES A COMPUTER PROGRAM, OTHER THAN BY USING A
37 CAPABILITY OF THE PROGRAM INTENDED FOR THAT PURPOSE IN THE ORDINARY
38 COURSE, DOES NOT INVALIDATE ANY WARRANTY REGARDING PERFORMANCE OF AN
39 UNMODIFIED COPY BUT DOES INVALIDATE ANY WARRANTIES, EXPRESS OR IMPLIED,

1 REGARDING PERFORMANCE OF THE MODIFIED COPY. A MODIFICATION OCCURS IF A
2 LICENSEE ALTERS CODE IN, DELETES CODE FROM, OR ADDS CODE TO THE
3 COMPUTER PROGRAM.

4 21-408. CULMINATION AND CONFLICT OF WARRANTIES.

5 WARRANTIES, WHETHER EXPRESS OR IMPLIED, MUST BE CONSTRUED AS
6 CONSISTENT WITH EACH OTHER AND AS CUMULATIVE, BUT IF THAT CONSTRUCTION
7 IS UNREASONABLE, THE INTENTION OF THE PARTIES DETERMINES WHICH
8 WARRANTY IS DOMINANT. IN ASCERTAINING THAT INTENTION, THE FOLLOWING
9 RULES APPLY:

10 (1) EXACT OR TECHNICAL SPECIFICATIONS DISPLACE AN
11 INCONSISTENT SAMPLE OR MODEL OR GENERAL LANGUAGE OF DESCRIPTION.

12 (2) A SAMPLE DISPLACES INCONSISTENT GENERAL LANGUAGE OF
13 DESCRIPTION.

14 (3) EXPRESS WARRANTIES DISPLACE INCONSISTENT IMPLIED
15 WARRANTIES OTHER THAN AN IMPLIED WARRANTY UNDER § 21-405(A) OF THIS
16 SUBTITLE.

17 21-409. THIRD-PARTY BENEFICIARIES OF WARRANTY.

18 (A) EXCEPT FOR PUBLISHED INFORMATIONAL CONTENT, A WARRANTY TO A
19 LICENSEE EXTENDS TO PERSONS FOR WHOSE BENEFIT THE LICENSOR INTENDS TO
20 SUPPLY THE INFORMATION OR INFORMATIONAL RIGHTS AND WHICH RIGHTFULLY
21 USE THE INFORMATION IN A TRANSACTION OR APPLICATION OF A KIND IN WHICH
22 THE LICENSOR INTENDS THE INFORMATION TO BE USED.

23 (B) A WARRANTY TO A CONSUMER EXTENDS TO EACH INDIVIDUAL CONSUMER
24 IN THE LICENSEE'S IMMEDIATE FAMILY OR HOUSEHOLD IF THE INDIVIDUAL'S USE
25 WOULD HAVE BEEN REASONABLY EXPECTED BY THE LICENSOR.

26 (C) A CONTRACTUAL TERM THAT EXCLUDES OR LIMITS THE PERSONS TO
27 WHICH A WARRANTY EXTENDS IS EFFECTIVE EXCEPT AS TO INDIVIDUALS
28 DESCRIBED IN SUBSECTION (B) OF THIS SECTION.

29 (D) A DISCLAIMER OR MODIFICATION OF A WARRANTY OR REMEDY WHICH IS
30 EFFECTIVE AGAINST THE LICENSEE IS ALSO EFFECTIVE AGAINST THIRD PERSONS
31 TO WHICH A WARRANTY EXTENDS UNDER THIS SECTION.

32 SUBTITLE 5. TRANSFER OF INTERESTS AND RIGHTS; OWNERSHIP AND TRANSFERS;
33 FINANCING ARRANGEMENTS.

34 OWNERSHIP AND TRANSFERS.

1 21-501. OWNERSHIP OF INFORMATIONAL RIGHTS.

2 (A) IF AN AGREEMENT PROVIDES FOR CONVEYANCE OF OWNERSHIP OF
3 INFORMATIONAL RIGHTS IN A COMPUTER PROGRAM, OWNERSHIP PASSES AT THE
4 TIME AND PLACE SPECIFIED BY THE AGREEMENT BUT DOES NOT PASS UNTIL THE
5 PROGRAM IS IN EXISTENCE AND IDENTIFIED TO THE CONTRACT. IF THE AGREEMENT
6 DOES NOT SPECIFY A DIFFERENT TIME, OWNERSHIP PASSES WHEN THE PROGRAM
7 AND THE INFORMATIONAL RIGHTS ARE IN EXISTENCE AND IDENTIFIED TO THE
8 CONTRACT.

9 (B) TRANSFER OF A COPY DOES NOT TRANSFER OWNERSHIP OF
10 INFORMATIONAL RIGHTS.

11 21-502. TITLE TO COPY.

12 (A) IN A LICENSE:

13 (1) TITLE TO A COPY IS DETERMINED BY THE LICENSE;

14 (2) A LICENSEE'S RIGHT UNDER THE LICENSE TO POSSESSION OR
15 CONTROL OF A COPY IS GOVERNED BY THE LICENSE AND DOES NOT DEPEND SOLELY
16 ON TITLE TO THE COPY; AND

17 (3) IF A LICENSOR RESERVES TITLE TO A COPY, THE LICENSOR RETAINS
18 TITLE TO THAT COPY AND ANY COPIES MADE OF IT, UNLESS THE LICENSE GRANTS
19 THE LICENSEE A RIGHT TO MAKE AND SELL COPIES TO OTHERS, IN WHICH CASE THE
20 RESERVATION OF TITLE APPLIES ONLY TO COPIES DELIVERED TO THE LICENSEE BY
21 THE LICENSOR.

22 (B) IF AN AGREEMENT PROVIDES FOR TRANSFER OF TITLE TO A COPY, TITLE
23 PASSES:

24 (1) AT THE TIME AND PLACE SPECIFIED IN THE AGREEMENT; OR

25 (2) IF THE AGREEMENT DOES NOT SPECIFY A TIME AND PLACE:

26 (A) WITH RESPECT TO DELIVERY OF A COPY ON A TANGIBLE
27 MEDIUM, AT THE TIME AND PLACE THE LICENSOR COMPLETED ITS OBLIGATIONS
28 WITH RESPECT TO TENDER OF THE COPY; OR

29 (B) WITH RESPECT TO ELECTRONIC DELIVERY OF A COPY, IF A
30 FIRST SALE OCCURS UNDER FEDERAL COPYRIGHT LAW, AT THE TIME AND PLACE AT
31 WHICH THE LICENSOR COMPLETED ITS OBLIGATIONS WITH RESPECT TO TENDER OF
32 THE COPY.

33 (C) IF THE PARTY TO WHICH TITLE PASSES UNDER THE CONTRACT REFUSES
34 DELIVERY OF THE COPY OR REJECTS THE TERMS OF THE AGREEMENT, TITLE
35 REVESTS IN THE LICENSOR.

1 21-503. TRANSFER OF CONTRACTUAL INTEREST.

2 THE FOLLOWING RULES APPLY TO A TRANSFER OF A CONTRACTUAL INTEREST:

3 (1) A PARTY'S CONTRACTUAL INTEREST MAY BE TRANSFERRED UNLESS
4 THE TRANSFER:

5 (A) IS PROHIBITED BY OTHER LAW; OR

6 (B) EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (3) OF THIS
7 SUBSECTION, WOULD MATERIALLY CHANGE THE DUTY OF THE OTHER PARTY,
8 MATERIALLY INCREASE THE BURDEN OR RISK IMPOSED ON THE OTHER PARTY, OR
9 MATERIALLY IMPAIR THE OTHER PARTY'S PROPERTY OR ITS LIKELIHOOD OR
10 EXPECTATION OF OBTAINING RETURN PERFORMANCE.

11 (2) EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (3) OF THIS
12 SUBSECTION AND § 21-508(A)(1)(B) OF THIS SUBTITLE, A TERM PROHIBITING
13 TRANSFER OF A PARTY'S CONTRACTUAL INTEREST IS ENFORCEABLE, AND A
14 TRANSFER MADE IN VIOLATION OF THAT TERM IS A BREACH OF CONTRACT AND IS
15 INEFFECTIVE TO CREATE CONTRACTUAL RIGHTS IN THE TRANSFEREE AGAINST THE
16 NONTRANSFERRING PARTY, EXCEPT TO THE EXTENT THAT:

17 (A) THE CONTRACT IS A LICENSE FOR INCORPORATION OR USE OF
18 THE LICENSED INFORMATION OR INFORMATIONAL RIGHTS WITH INFORMATION OR
19 INFORMATIONAL RIGHTS FROM OTHER SOURCES IN A COMBINED WORK FOR PUBLIC
20 DISTRIBUTION OR PUBLIC PERFORMANCE AND THE TRANSFER IS OF THE
21 COMPLETED, COMBINED WORK; OR

22 (B) THE TRANSFER IS OF A RIGHT TO PAYMENT ARISING OUT OF
23 THE TRANSFEROR'S DUE PERFORMANCE OF LESS THAN ITS ENTIRE OBLIGATION
24 AND THE TRANSFER WOULD BE ENFORCEABLE UNDER PARAGRAPH (1) IN THE
25 ABSENCE OF THE TERM PROHIBITING TRANSFER.

26 (3) A RIGHT TO DAMAGES FOR BREACH OF THE WHOLE CONTRACT OR A
27 RIGHT TO PAYMENT ARISING OUT OF THE TRANSFEROR'S DUE PERFORMANCE OF ITS
28 ENTIRE OBLIGATION MAY BE TRANSFERRED NOTWITHSTANDING AN AGREEMENT
29 OTHERWISE.

30 (4) A TERM THAT PROHIBITS TRANSFER OF A CONTRACTUAL INTEREST
31 UNDER A MASS-MARKET LICENSE BY THE LICENSEE MUST BE CONSPICUOUS.

32 21-504. EFFECT OF TRANSFER OF CONTRACTUAL INTEREST.

33 (A) A TRANSFER OF "THE CONTRACT" OR OF "ALL MY RIGHTS UNDER THE
34 CONTRACT", OR A TRANSFER IN SIMILAR GENERAL TERMS, IS A TRANSFER OF ALL
35 CONTRACTUAL INTERESTS UNDER THE CONTRACT. WHETHER THE TRANSFER IS
36 EFFECTIVE IS DETERMINED BY §§ 21-503 AND 21-508(A)(1)(B) OF THIS SUBTITLE.

37 (B) THE FOLLOWING RULES APPLY TO A TRANSFER OF A PARTY'S
38 CONTRACTUAL INTERESTS:

1 (1) THE TRANSFEREE IS SUBJECT TO ALL CONTRACTUAL USE TERMS.

2 (2) UNLESS THE LANGUAGE OR CIRCUMSTANCES OTHERWISE
3 INDICATE, AS IN A TRANSFER AS SECURITY, THE TRANSFER DELEGATES THE DUTIES
4 OF THE TRANSFEROR AND TRANSFERS ITS RIGHTS.

5 (3) ACCEPTANCE OF THE TRANSFER IS A PROMISE BY THE TRANSFEREE
6 TO PERFORM THE DELEGATED DUTIES. THE PROMISE IS ENFORCEABLE BY THE
7 TRANSFEROR AND ANY OTHER PARTY TO THE ORIGINAL CONTRACT.

8 (4) THE TRANSFER DOES NOT RELIEVE THE TRANSFEROR OF ANY DUTY
9 TO PERFORM, OR OF LIABILITY FOR BREACH OF CONTRACT, UNLESS THE OTHER
10 PARTY TO THE ORIGINAL CONTRACT AGREES THAT THE TRANSFER HAS THAT
11 EFFECT.

12 (C) A PARTY TO THE ORIGINAL CONTRACT, OTHER THAN THE TRANSFEROR,
13 MAY TREAT A TRANSFER THAT CONVEYS A RIGHT OR DUTY OF PERFORMANCE
14 WITHOUT ITS CONSENT AS CREATING REASONABLE GROUNDS FOR INSECURITY AND,
15 WITHOUT PREJUDICE TO THE PARTY'S RIGHTS AGAINST THE TRANSFEROR, MAY
16 DEMAND ASSURANCES FROM THE TRANSFEREE UNDER § 21-708 OF THIS TITLE.

17 21-505. PERFORMANCE BY DELEGATE; SUBCONTRACT.

18 (A) A PARTY MAY PERFORM ITS CONTRACTUAL DUTIES OR EXERCISE ITS
19 CONTRACTUAL RIGHTS THROUGH A DELEGATE OR A SUBCONTRACT UNLESS:

20 (1) THE CONTRACT PROHIBITS DELEGATION OR SUBCONTRACTING; OR

21 (2) THE OTHER PARTY HAS A SUBSTANTIAL INTEREST IN HAVING THE
22 ORIGINAL PROMISOR PERFORM OR CONTROL THE PERFORMANCE.

23 (B) DELEGATING OR SUBCONTRACTING PERFORMANCE DOES NOT RELIEVE
24 THE DELEGATING PARTY OF A DUTY TO PERFORM OR OF LIABILITY FOR BREACH.

25 (C) AN ATTEMPTED DELEGATION THAT VIOLATES A TERM PROHIBITING
26 DELEGATION IS NOT EFFECTIVE.

27 21-506. TRANSFER BY LICENSEE.

28 (A) IF ALL OR ANY PART OF A LICENSEE'S INTEREST IN A LICENSE IS
29 TRANSFERRED, VOLUNTARILY OR INVOLUNTARILY, THE TRANSFEREE DOES NOT
30 ACQUIRE AN INTEREST IN INFORMATION, COPIES, OR THE CONTRACTUAL OR
31 INFORMATIONAL RIGHTS OF THE LICENSEE UNLESS THE TRANSFER IS EFFECTIVE
32 UNDER § 21-503 OR § 21-508(A)(1)(B) OF THIS SUBTITLE. IF THE TRANSFER IS
33 EFFECTIVE, THE TRANSFEREE TAKES SUBJECT TO THE TERMS OF THE LICENSE.

34 (B) EXCEPT AS OTHERWISE PROVIDED UNDER TRADE SECRET LAW, A
35 TRANSFEREE ACQUIRES NO MORE THAN THE CONTRACTUAL INTEREST OR OTHER
36 RIGHTS THAT THE TRANSFEROR WAS AUTHORIZED TO TRANSFER.

1 FINANCING ARRANGEMENTS.

2 21-507. FINANCING IF FINANCIER DOES NOT BECOME LICENSEE.

3 IF A FINANCIER DOES NOT BECOME A LICENSEE IN CONNECTION WITH ITS
4 FINANCIAL ACCOMMODATION CONTRACT, THE FOLLOWING RULES APPLY:

5 (1) THE FINANCIER DOES NOT RECEIVE THE BENEFITS OR BURDENS OF
6 THE LICENSE.

7 (2) THE LICENSEE'S RIGHTS AND OBLIGATIONS WITH RESPECT TO THE
8 INFORMATION AND INFORMATIONAL RIGHTS ARE GOVERNED BY:

9 (A) THE LICENSE;

10 (B) ANY RIGHTS OF THE LICENSOR UNDER OTHER LAW; AND

11 (C) TO THE EXTENT NOT INCONSISTENT WITH SUBPARAGRAPHS (A)
12 AND (B) OF THIS PARAGRAPH, ANY FINANCIAL ACCOMMODATION CONTRACT
13 BETWEEN THE FINANCIER AND THE LICENSEE, WHICH MAY ADD ADDITIONAL
14 CONDITIONS TO THE LICENSEE'S RIGHT TO USE THE LICENSED INFORMATION OR
15 INFORMATIONAL RIGHTS.

16 21-508. FINANCE LICENSES.

17 (A) IF A FINANCIER BECOMES A LICENSEE IN CONNECTION WITH ITS
18 FINANCIAL ACCOMMODATION CONTRACT AND THEN TRANSFERS ITS CONTRACTUAL
19 INTEREST UNDER THE LICENSE, OR SUBLICENSES THE LICENSED COMPUTER
20 INFORMATION OR INFORMATIONAL RIGHTS, TO A LICENSEE RECEIVING THE
21 FINANCIAL ACCOMMODATION, THE FOLLOWING RULES APPLY:

22 (1) THE TRANSFER OR SUBLICENSE TO THE ACCOMMODATED LICENSEE
23 IS NOT EFFECTIVE UNLESS:

24 (A) THE TRANSFER OR SUBLICENSE IS EFFECTIVE UNDER § 21-503
25 OF THIS TITLE; OR

26 (B) THE FOLLOWING CONDITIONS ARE FULFILLED:

27 (I) BEFORE THE LICENSOR DELIVERED THE INFORMATION
28 OR GRANTED THE LICENSE TO THE FINANCIER, THE LICENSOR RECEIVED NOTICE IN
29 A RECORD FROM THE FINANCIER GIVING THE NAME AND LOCATION OF THE
30 ACCOMMODATED LICENSEE AND CLEARLY INDICATING THAT THE LICENSE WAS
31 BEING OBTAINED IN ORDER TO TRANSFER THE CONTRACTUAL INTEREST OR
32 SUBLICENSE THE LICENSED INFORMATION OR INFORMATIONAL RIGHTS TO THE
33 ACCOMMODATED LICENSEE;

34 (II) THE FINANCIER BECAME A LICENSEE SOLELY TO MAKE
35 THE FINANCIAL ACCOMMODATION; AND

1 (III) THE ACCOMMODATED LICENSEE ADOPTS THE TERMS OF
2 THE LICENSE, WHICH TERMS MAY BE SUPPLEMENTED BY THE FINANCIAL
3 ACCOMMODATION CONTRACT, TO THE EXTENT THE TERMS OF THE FINANCIAL
4 ACCOMMODATION CONTRACT ARE NOT INCONSISTENT WITH THE LICENSE AND ANY
5 RIGHTS OF THE LICENSOR UNDER OTHER LAW.

6 (2) A FINANCIER THAT MAKES A TRANSFER THAT IS EFFECTIVE UNDER
7 SUBPARAGRAPH (1)(B) OF THIS PARAGRAPH MAY MAKE ONLY THE SINGLE TRANSFER
8 OR SUBLICENSE CONTEMPLATED BY THE NOTICE UNLESS THE LICENSOR CONSENTS
9 TO A LATER TRANSFER.

10 (B) IF A FINANCIER MAKES AN EFFECTIVE TRANSFER OF ITS CONTRACTUAL
11 INTEREST IN A LICENSE, OR AN EFFECTIVE SUBLICENSE OF THE LICENSED
12 INFORMATION OR INFORMATIONAL RIGHTS, TO AN ACCOMMODATED LICENSEE, THE
13 FOLLOWING RULES APPLY:

14 (1) THE ACCOMMODATED LICENSEE'S RIGHTS AND OBLIGATIONS ARE
15 GOVERNED BY:

16 (A) THE LICENSE;

17 (B) ANY RIGHTS OF THE LICENSOR UNDER OTHER LAW; AND

18 (C) TO THE EXTENT NOT INCONSISTENT WITH SUBPARAGRAPHS (A)
19 AND (B) OF THIS PARAGRAPH, THE FINANCIAL ACCOMMODATION CONTRACT, WHICH
20 MAY IMPOSE ADDITIONAL CONDITIONS TO THE LICENSEE'S RIGHT TO USE THE
21 LICENSED INFORMATION OR INFORMATIONAL RIGHTS.

22 (2) THE FINANCIER DOES NOT MAKE WARRANTIES TO THE
23 ACCOMMODATED LICENSEE OTHER THAN THE WARRANTY UNDER § 21-401(B)(1) OF
24 THIS TITLE AND ANY EXPRESS WARRANTIES IN THE FINANCIAL ACCOMMODATION
25 CONTRACT.

26 21-509. FINANCING ARRANGEMENTS: OBLIGATIONS IRREVOCABLE.

27 UNLESS THE ACCOMMODATED LICENSEE IS A CONSUMER, A TERM IN A
28 FINANCIAL ACCOMMODATION CONTRACT PROVIDING THAT THE ACCOMMODATED
29 LICENSEE'S OBLIGATIONS TO THE FINANCIER ARE IRREVOCABLE AND
30 INDEPENDENT IS ENFORCEABLE. THE OBLIGATIONS BECOME IRREVOCABLE AND
31 INDEPENDENT UPON THE LICENSEE'S ACCEPTANCE OF THE LICENSE OR THE
32 FINANCIER'S GIVING OF VALUE, WHICHEVER OCCURS FIRST.

33 21-510. FINANCING ARRANGEMENTS: REMEDIES OR ENFORCEMENT.

34 (A) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (B) OF THIS SECTION,
35 ON MATERIAL BREACH OF A FINANCIAL ACCOMMODATION CONTRACT BY THE
36 ACCOMMODATED LICENSEE, THE FOLLOWING RULES APPLY:

37 (1) THE FINANCIER MAY CANCEL THE FINANCIAL ACCOMMODATION
38 CONTRACT.

1 (2) SUBJECT TO PARAGRAPHS (3) AND (4) OF THIS SUBSECTION, THE
2 FINANCIER MAY PURSUE ITS REMEDIES AGAINST THE ACCOMMODATED LICENSEE
3 UNDER THE FINANCIAL ACCOMMODATION CONTRACT.

4 (3) IF THE FINANCIER BECAME A LICENSEE AND MADE A TRANSFER OR
5 SUBLICENSE THAT WAS EFFECTIVE UNDER § 21-508 OF THIS SUBTITLE, IT MAY
6 EXERCISE THE REMEDIES OF A LICENSOR FOR BREACH, INCLUDING THE RIGHTS OF
7 AN AGGRIEVED PARTY UNDER § 21-815 OF THIS TITLE, SUBJECT TO THE LIMITATIONS
8 OF § 21-816 OF THIS TITLE.

9 (4) IF THE FINANCIER DID NOT BECOME A LICENSEE OR DID NOT MAKE
10 A TRANSFER THAT WAS EFFECTIVE UNDER § 21-508 OF THIS SUBTITLE, IT MAY
11 ENFORCE A CONTRACTUAL RIGHT CONTAINED IN THE FINANCIAL ACCOMMODATION
12 CONTRACT TO PRECLUDE THE LICENSEE'S FURTHER USE OF THE INFORMATION.
13 HOWEVER, THE FOLLOWING RULES APPLY:

14 (A) THE FINANCIER HAS NO RIGHT TO TAKE POSSESSION OF
15 COPIES, USE THE INFORMATION OR INFORMATIONAL RIGHTS, OR TRANSFER ANY
16 CONTRACTUAL INTEREST IN THE LICENSE.

17 (B) IF THE ACCOMMODATED LICENSEE AGREED TO TRANSFER
18 POSSESSION OF COPIES TO THE FINANCIER IN THE EVENT OF MATERIAL BREACH OF
19 THE FINANCIAL ACCOMMODATION CONTRACT, THE FINANCIER MAY ENFORCE THAT
20 CONTRACTUAL RIGHT ONLY IF PERMITTED TO DO SO UNDER SUBSECTION (B)(1) OF
21 THIS SECTION AND § 21-503 OF THIS SUBTITLE.

22 (B) THE FOLLOWING ADDITIONAL LIMITATIONS APPLY TO A FINANCIER'S
23 REMEDIES UNDER SUBSECTION (A) OF THIS SECTION:

24 (1) A FINANCIER DESCRIBED IN SUBSECTION (A)(3) OF THIS SECTION
25 WHICH IS ENTITLED UNDER THE FINANCIAL ACCOMMODATION CONTRACT TO TAKE
26 POSSESSION OR PREVENT USE OF INFORMATION, COPIES, OR RELATED MATERIALS
27 MAY DO SO ONLY IF THE LICENSOR CONSENTS OR IF DOING SO WOULD NOT RESULT
28 IN A MATERIAL ADVERSE CHANGE OF THE DUTY OF THE LICENSOR, MATERIALLY
29 INCREASE THE BURDEN OR RISK IMPOSED ON THE LICENSOR, DISCLOSE OR
30 THREATEN TO DISCLOSE TRADE SECRETS OR CONFIDENTIAL MATERIAL OF THE
31 LICENSOR, OR MATERIALLY IMPAIR THE LICENSOR'S LIKELIHOOD OR EXPECTATION
32 OF OBTAINING RETURN PERFORMANCE.

33 (2) THE FINANCIER MAY NOT OTHERWISE EXERCISE CONTROL OVER,
34 HAVE ACCESS TO, OR SELL, TRANSFER, OR OTHERWISE USE THE INFORMATION OR
35 COPIES WITHOUT THE CONSENT OF THE LICENSOR UNLESS THE FINANCIER OR
36 TRANSFEREE IS SUBJECT TO THE TERMS OF THE LICENSE AND:

37 (A) THE LICENSEE OWNS THE LICENSED COPY, THE LICENSE DOES
38 NOT PRECLUDE TRANSFER OF THE LICENSEE'S CONTRACTUAL RIGHTS, AND THE
39 TRANSFER COMPLIES WITH FEDERAL COPYRIGHT LAW FOR THE OWNER OF A COPY
40 TO MAKE THE TRANSFER; OR

1 (B) THE LICENSE IS TRANSFERABLE BY ITS EXPRESS TERMS AND
2 THE FINANCIER FULFILLS ANY CONDITIONS TO, OR COMPLIES WITH ANY
3 RESTRICTIONS ON, TRANSFER.

4 (3) THE FINANCIER'S REMEDIES UNDER THE FINANCIAL
5 ACCOMMODATION CONTRACT ARE SUBJECT TO THE LICENSOR'S RIGHTS AND THE
6 TERMS OF THE LICENSE.

7 21-511. FINANCING ARRANGEMENTS: EFFECT ON LICENSOR'S RIGHTS.

8 (A) THE CREATION OF A FINANCIER'S INTEREST DOES NOT PLACE ANY
9 OBLIGATIONS ON OR ALTER THE RIGHTS OF A LICENSOR.

10 (B) A FINANCIER'S INTEREST DOES NOT ATTACH TO ANY INTELLECTUAL
11 PROPERTY RIGHTS OF THE LICENSOR UNLESS THE LICENSOR EXPRESSLY CONSENTS
12 TO SUCH ATTACHMENT IN A LICENSE OR ANOTHER RECORD.

13 SUBTITLE 6. PERFORMANCE; GENERAL; PERFORMANCE IN DELIVERY OF COPIES;
14 SPECIAL TYPES OF CONTRACTS; LOSS AND IMPOSSIBILITY; TERMINATION.

15 GENERAL.

16 21-601. PERFORMANCE OF CONTRACT IN GENERAL.

17 (A) A PARTY SHALL PERFORM IN A MANNER THAT CONFORMS TO THE
18 CONTRACT.

19 (B) IF AN UNCURED MATERIAL BREACH OF CONTRACT BY ONE PARTY
20 PRECEDES THE AGGRIEVED PARTY'S PERFORMANCE, THE AGGRIEVED PARTY NEED
21 NOT PERFORM EXCEPT WITH RESPECT TO CONTRACTUAL USE TERMS, BUT THE
22 CONTRACTUAL USE TERMS DO NOT APPLY TO INFORMATION OR COPIES PROPERLY
23 RECEIVED OR OBTAINED FROM ANOTHER SOURCE. IN ADDITION, THE FOLLOWING
24 RULES APPLY:

25 (1) THE AGGRIEVED PARTY MAY REFUSE A PERFORMANCE THAT IS A
26 MATERIAL BREACH AS TO THAT PERFORMANCE OR A PERFORMANCE THAT MAY BE
27 REFUSED UNDER § 21-704(B) OF THIS TITLE.

28 (2) THE AGGRIEVED PARTY MAY CANCEL THE CONTRACT ONLY IF THE
29 BREACH IS A MATERIAL BREACH OF THE WHOLE CONTRACT OR THE AGREEMENT SO
30 PROVIDES.

31 (C) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (B) OF THIS SECTION,
32 TENDER OF PERFORMANCE BY A PARTY ENTITLES THE PARTY TO ACCEPTANCE OF
33 THAT PERFORMANCE. IN ADDITION, THE FOLLOWING RULES APPLY:

34 (1) A TENDER OF PERFORMANCE OCCURS WHEN THE PARTY, WITH
35 MANIFEST PRESENT ABILITY AND WILLINGNESS TO PERFORM, OFFERS TO
36 COMPLETE THE PERFORMANCE.

1 (2) IF A PERFORMANCE BY THE OTHER PARTY IS DUE AT THE TIME OF
2 THE TENDERED PERFORMANCE, TENDER OF THE OTHER PARTY'S PERFORMANCE IS
3 A CONDITION TO THE TENDERING PARTY'S OBLIGATION TO COMPLETE THE
4 TENDERED PERFORMANCE.

5 (3) A PARTY SHALL PAY OR RENDER THE CONSIDERATION REQUIRED BY
6 THE AGREEMENT FOR A PERFORMANCE IT ACCEPTS. A PARTY THAT ACCEPTS A
7 PERFORMANCE HAS THE BURDEN OF ESTABLISHING A BREACH OF CONTRACT WITH
8 RESPECT TO THE ACCEPTED PERFORMANCE.

9 (D) EXCEPT AS OTHERWISE PROVIDED IN §§ 21-603 AND 21-604 OF THIS
10 SUBTITLE, IN THE CASE OF A PERFORMANCE WITH RESPECT TO A COPY, THIS
11 SECTION IS SUBJECT TO §§ 21-606 THROUGH 21-610 AND §§ 21-704 THROUGH 21-707
12 OF THIS TITLE.

13 21-602. LICENSOR'S OBLIGATION TO ENABLE USE.

14 (A) IN THIS SECTION, "ENABLE USE" MEANS TO GRANT A CONTRACTUAL
15 RIGHT OR PERMISSION WITH RESPECT TO INFORMATION OR INFORMATIONAL
16 RIGHTS AND TO COMPLETE THE ACTS, IF ANY, REQUIRED UNDER THE AGREEMENT
17 TO MAKE THE INFORMATION AVAILABLE TO THE LICENSEE.

18 (B) A LICENSOR SHALL ENABLE USE BY THE LICENSEE PURSUANT TO THE
19 CONTRACT. THE FOLLOWING RULES APPLY TO ENABLING USE:

20 (1) IF NOTHING OTHER THAN THE GRANT OF A CONTRACTUAL RIGHT OR
21 PERMISSION IS REQUIRED TO ENABLE USE, THE LICENSOR ENABLES USE WHEN THE
22 CONTRACT BECOMES ENFORCEABLE.

23 (2) IF THE AGREEMENT REQUIRES DELIVERY OF A COPY, ENABLING USE
24 OCCURS WHEN THE COPY IS TENDERED TO THE LICENSEE.

25 (3) IF THE AGREEMENT REQUIRES DELIVERY OF A COPY AND STEPS
26 AUTHORIZING THE LICENSEE'S USE, ENABLING USE OCCURS WHEN THE LAST OF
27 THOSE ACTS OCCURS.

28 (4) IN AN ACCESS CONTRACT, ENABLING USE REQUIRES TENDERING
29 ALL ACCESS MATERIAL NECESSARY TO ENABLE THE AGREED ACCESS.

30 (5) IF THE AGREEMENT REQUIRES A TRANSFER OF OWNERSHIP OF
31 INFORMATIONAL RIGHTS AND A FILING OR RECORDING IS ALLOWED BY LAW TO
32 ESTABLISH PRIORITY OF THE TRANSFERRED OWNERSHIP, ON REQUEST BY THE
33 LICENSEE, THE LICENSOR SHALL EXECUTE AND TENDER A RECORD APPROPRIATE
34 FOR THAT PURPOSE.

35 21-603. SUBMISSIONS OF INFORMATION TO SATISFACTION OF A PARTY.

36 IF AN AGREEMENT REQUIRES THAT SUBMITTED INFORMATION BE TO THE
37 SATISFACTION OF THE RECIPIENT, THE FOLLOWING RULES APPLY:

1 (1) §§ 21-606 THROUGH 21-610 AND §§ 21-704 THROUGH 21-707 OF THIS
2 TITLE DO NOT APPLY TO THE SUBMISSION.

3 (2) IF THE INFORMATION IS NOT SATISFACTORY TO THE RECIPIENT AND
4 THE PARTIES ENGAGE IN EFFORTS TO CORRECT THE DEFICIENCIES IN A MANNER
5 AND OVER A TIME CONSISTENT WITH THE ORDINARY STANDARDS OF THE BUSINESS,
6 TRADE, OR INDUSTRY, NEITHER THE EFFORTS NOR THE PASSAGE OF TIME REQUIRED
7 FOR THE EFFORTS IS AN ACCEPTANCE OR A REFUSAL OF THE SUBMISSION.

8 (3) EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (4), NEITHER
9 REFUSAL NOR ACCEPTANCE OCCURS UNLESS THE RECIPIENT EXPRESSLY REFUSES
10 OR ACCEPTS THE SUBMITTED INFORMATION, BUT THE RECIPIENT MAY NOT USE THE
11 SUBMITTED INFORMATION BEFORE ACCEPTANCE.

12 (4) SILENCE AND A FAILURE TO ACT IN REFERENCE TO A SUBMISSION
13 BEYOND A COMMERCIALY REASONABLE TIME TO RESPOND ENTITLE THE
14 SUBMITTING PARTY TO DEMAND, IN A RECORD DELIVERED TO THE RECIPIENT, A
15 DECISION ON THE SUBMISSION. IF THE RECIPIENT FAILS TO RESPOND WITHIN A
16 REASONABLE TIME AFTER RECEIPT OF THE DEMAND, THE SUBMISSION IS DEEMED
17 TO HAVE BEEN REFUSED.

18 21-604. IMMEDIATELY COMPLETED PERFORMANCE.

19 IF A PERFORMANCE INVOLVES DELIVERY OF INFORMATION OR SERVICES
20 WHICH, BECAUSE OF THEIR NATURE, MAY PROVIDE A LICENSEE, IMMEDIATELY ON
21 PERFORMANCE OR DELIVERY, WITH SUBSTANTIALLY ALL THE BENEFIT OF THE
22 PERFORMANCE OR WITH OTHER SIGNIFICANT BENEFIT THAT CANNOT BE
23 RETURNED, THE FOLLOWING RULES APPLY:

24 (1) §§ 21-607 THROUGH 21-610 AND §§ 21-704 THROUGH 21-707 OF THIS
25 TITLE DO NOT APPLY.

26 (2) THE RIGHTS OF THE PARTIES ARE DETERMINED UNDER §§ 21-601 OF
27 THIS SUBTITLE AND THE ORDINARY STANDARDS OF THE BUSINESS, TRADE, OR
28 INDUSTRY.

29 (3) BEFORE TENDER OF THE PERFORMANCE, A PARTY ENTITLED TO
30 RECEIVE THE TENDER MAY INSPECT THE MEDIA, LABELS, OR PACKAGING BUT MAY
31 NOT VIEW THE INFORMATION OR OTHERWISE RECEIVE THE PERFORMANCE BEFORE
32 COMPLETING ANY PERFORMANCE OF ITS OWN THAT IS THEN DUE.

33 21-605. ELECTRONIC REGULATION OF PERFORMANCE.

34 (A) IN THIS SECTION, "AUTOMATIC RESTRAINT" MEANS A PROGRAM, CODE,
35 DEVICE, OR SIMILAR ELECTRONIC OR PHYSICAL LIMITATION THE INTENDED
36 PURPOSE OF WHICH IS TO RESTRICT USE OF INFORMATION.

37 (B) A PARTY ENTITLED TO ENFORCE A LIMITATION ON USE OF INFORMATION
38 MAY INCLUDE AN AUTOMATIC RESTRAINT IN THE INFORMATION OR A COPY OF IT
39 AND USE THAT RESTRAINT IF:

1 (1) A CONSPICUOUS TERM OF THE AGREEMENT AUTHORIZES USE OF
2 THE RESTRAINT;

3 (2) THE RESTRAINT PREVENTS A USE THAT IS INCONSISTENT WITH THE
4 AGREEMENT;

5 (3) THE RESTRAINT PREVENTS USE AFTER EXPIRATION OF THE STATED
6 DURATION OF THE CONTRACT OR A STATED NUMBER OF USES; OR

7 (4) THE RESTRAINT PREVENTS USE AFTER THE CONTRACT
8 TERMINATES, OTHER THAN ON EXPIRATION OF A STATED DURATION OR NUMBER OF
9 USES, AND THE LICENSOR GIVES REASONABLE NOTICE TO THE LICENSEE BEFORE
10 FURTHER USE IS PREVENTED.

11 (C) THIS SECTION DOES NOT AUTHORIZE AN AUTOMATIC RESTRAINT THAT
12 AFFIRMATIVELY PREVENTS OR MAKES IMPRACTICABLE A LICENSEE'S ACCESS TO ITS
13 OWN INFORMATION OR INFORMATION OF A THIRD PARTY, OTHER THAN THE
14 LICENSOR, IF THAT INFORMATION IS IN THE POSSESSION OF THE LICENSEE OR A
15 THIRD PARTY AND ACCESSED WITHOUT USE OF THE LICENSOR'S INFORMATION OR
16 INFORMATIONAL RIGHTS.

17 (D) A PARTY THAT INCLUDES OR USES AN AUTOMATIC RESTRAINT
18 CONSISTENT WITH SUBSECTION (B) OR (C) OF THIS SECTION IS NOT LIABLE FOR ANY
19 LOSS CAUSED BY THE USE OF THE RESTRAINT.

20 (E) THIS SECTION DOES NOT PRECLUDE ELECTRONIC REPLACEMENT OR
21 DISABLING OF AN EARLIER COPY OF INFORMATION BY THE LICENSOR IN
22 CONNECTION WITH DELIVERY OF A NEW COPY OR VERSION UNDER AN AGREEMENT
23 TO REPLACE OR DISABLE THE EARLIER COPY BY ELECTRONIC MEANS WITH AN
24 UPGRADE OR OTHER NEW INFORMATION.

25 (F) THIS SECTION DOES NOT AUTHORIZE USE OF AN AUTOMATIC RESTRAINT
26 TO ENFORCE REMEDIES IN THE EVENT OF BREACH OF CONTRACT OR OF
27 CANCELLATION FOR BREACH.

28 PERFORMANCE IN DELIVERY OF COPIES.

29 21-606. COPY: DELIVERY; TENDER OF DELIVERY.

30 (A) DELIVERY OF A COPY MUST BE AT THE LOCATION DESIGNATED BY
31 AGREEMENT. IN THE ABSENCE OF A DESIGNATION, THE FOLLOWING RULES APPLY:

32 (1) THE PLACE FOR DELIVERY OF A COPY ON A TANGIBLE MEDIUM IS
33 THE TENDERING PARTY'S PLACE OF BUSINESS OR, IF IT HAS NONE, ITS RESIDENCE.
34 HOWEVER, IF THE PARTIES KNOW AT THE TIME OF CONTRACTING THAT THE COPY IS
35 LOCATED IN SOME OTHER PLACE, THAT PLACE IS THE PLACE FOR DELIVERY.

36 (2) THE PLACE FOR ELECTRONIC DELIVERY OF A COPY IS AN
37 INFORMATION PROCESSING SYSTEM DESIGNATED OR USED BY THE LICENSOR.

1 (3) DOCUMENTS OF TITLE MAY BE DELIVERED THROUGH CUSTOMARY
2 BANKING CHANNELS.

3 (B) TENDER OF DELIVERY OF A COPY REQUIRES THE TENDERING PARTY TO
4 PUT AND HOLD A CONFORMING COPY AT THE OTHER PARTY'S DISPOSITION AND GIVE
5 THE OTHER PARTY ANY NOTICE REASONABLY NECESSARY TO ENABLE IT TO OBTAIN
6 ACCESS TO, CONTROL, OR POSSESSION OF THE COPY. TENDER MUST BE AT A
7 REASONABLE HOUR AND, IF APPLICABLE, REQUIRES TENDER OF ACCESS MATERIAL
8 AND OTHER DOCUMENTS REQUIRED BY THE AGREEMENT. THE PARTY RECEIVING
9 TENDER SHALL FURNISH FACILITIES REASONABLY SUITED TO RECEIVE TENDER. IN
10 ADDITION, THE FOLLOWING RULES APPLY:

11 (1) IF THE CONTRACT REQUIRES DELIVERY OF A COPY HELD BY A THIRD
12 PERSON WITHOUT BEING MOVED, THE TENDERING PARTY SHALL TENDER ACCESS
13 MATERIAL OR DOCUMENTS REQUIRED BY THE AGREEMENT.

14 (2) IF THE TENDERING PARTY IS REQUIRED OR AUTHORIZED TO SEND A
15 COPY TO THE OTHER PARTY AND THE CONTRACT DOES NOT REQUIRE THE
16 TENDERING PARTY TO DELIVER THE COPY AT A PARTICULAR DESTINATION, THE
17 FOLLOWING RULES APPLY:

18 (A) IN TENDERING DELIVERY OF A COPY ON A TANGIBLE MEDIUM,
19 THE TENDERING PARTY SHALL PUT THE COPY IN THE POSSESSION OF A CARRIER
20 AND MAKE A CONTRACT FOR ITS TRANSPORTATION THAT IS REASONABLE IN LIGHT
21 OF THE NATURE OF THE INFORMATION AND OTHER CIRCUMSTANCES, WITH
22 EXPENSES OF TRANSPORTATION TO BE BORNE BY THE RECEIVING PARTY.

23 (B) IN TENDERING ELECTRONIC DELIVERY OF A COPY, THE
24 TENDERING PARTY SHALL INITIATE OR CAUSE TO HAVE INITIATED A TRANSMISSION
25 THAT IS REASONABLE IN LIGHT OF THE NATURE OF THE INFORMATION AND OTHER
26 CIRCUMSTANCES, WITH EXPENSES OF TRANSMISSION TO BE BORNE BY THE
27 RECEIVING PARTY.

28 (3) IF THE TENDERING PARTY IS REQUIRED TO DELIVER A COPY AT A
29 PARTICULAR DESTINATION, THE TENDERING PARTY SHALL MAKE A COPY
30 AVAILABLE AT THAT DESTINATION AND BEAR THE EXPENSES OF TRANSPORTATION
31 OR TRANSMISSION.

32 21-607. COPY: PERFORMANCE RELATED TO DELIVERY; PAYMENT.

33 (A) IF PERFORMANCE REQUIRES DELIVERY OF A COPY, THE FOLLOWING
34 RULES APPLY:

35 (1) THE PARTY REQUIRED TO DELIVER NEED NOT COMPLETE A
36 TENDERED DELIVERY UNTIL THE RECEIVING PARTY TENDERS ANY PERFORMANCE
37 THEN DUE.

38 (2) TENDER OF DELIVERY IS A CONDITION OF THE OTHER PARTY'S DUTY
39 TO ACCEPT THE COPY AND ENTITLES THE TENDERING PARTY TO ACCEPTANCE OF
40 THE COPY.

1 (B) IF PAYMENT IS DUE ON DELIVERY OF A COPY, THE FOLLOWING RULES
2 APPLY:

3 (1) TENDER OF DELIVERY IS A CONDITION OF THE RECEIVING PARTY'S
4 DUTY TO PAY AND ENTITLES THE TENDERING PARTY TO PAYMENT ACCORDING TO
5 THE CONTRACT.

6 (2) ALL COPIES REQUIRED BY THE CONTRACT MUST BE TENDERED IN A
7 SINGLE DELIVERY, AND PAYMENT IS DUE ONLY ON TENDER.

8 (C) IF THE CIRCUMSTANCES GIVE EITHER PARTY THE RIGHT TO MAKE OR
9 DEMAND DELIVERY IN LOTS, THE CONTRACT FEE, IF IT CAN BE APPORTIONED, MAY
10 BE DEMANDED FOR EACH LOT.

11 (D) IF PAYMENT IS DUE AND DEMANDED ON DELIVERY OF A COPY OR ON
12 DELIVERY OF A DOCUMENT OF TITLE, THE RIGHT OF THE PARTY RECEIVING TENDER
13 TO RETAIN OR DISPOSE OF THE COPY OR DOCUMENT, AS AGAINST THE TENDERING
14 PARTY, IS CONDITIONED ON MAKING THE PAYMENT DUE.

15 21-608. COPY: RIGHT TO INSPECT; PAYMENT BEFORE INSPECTION.

16 (A) EXCEPT AS OTHERWISE PROVIDED IN §§ 21-603 AND 21-604 OF THIS
17 SUBTITLE, IF PERFORMANCE REQUIRES DELIVERY OF A COPY, THE FOLLOWING
18 RULES APPLY:

19 (1) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, THE PARTY
20 RECEIVING THE COPY HAS A RIGHT BEFORE PAYMENT OR ACCEPTANCE TO INSPECT
21 THE COPY AT A REASONABLE PLACE AND TIME AND IN A REASONABLE MANNER TO
22 DETERMINE CONFORMANCE TO THE CONTRACT.

23 (2) THE PARTY MAKING THE INSPECTION SHALL BEAR THE EXPENSES
24 OF INSPECTION.

25 (3) A PLACE OR METHOD OF INSPECTION OR AN ACCEPTANCE
26 STANDARD FIXED BY THE PARTIES IS PRESUMED TO BE EXCLUSIVE. HOWEVER, THE
27 FIXING OF A PLACE, METHOD, OR STANDARD DOES NOT POSTPONE IDENTIFICATION
28 TO THE CONTRACT OR SHIFT THE PLACE FOR DELIVERY, PASSAGE OF TITLE, OR RISK
29 OF LOSS. IF COMPLIANCE WITH THE PLACE OR METHOD BECOMES IMPOSSIBLE,
30 INSPECTION MUST BE MADE AS PROVIDED IN THIS SECTION UNLESS THE PLACE OR
31 METHOD FIXED BY THE PARTIES WAS AN INDISPENSABLE CONDITION THE FAILURE
32 OF WHICH AVOIDS THE CONTRACT.

33 (4) A PARTY'S RIGHT TO INSPECT IS SUBJECT TO EXISTING OBLIGATIONS
34 OF CONFIDENTIALITY.

35 (B) IF A RIGHT TO INSPECT EXISTS UNDER SUBSECTION (A) OF THIS SECTION
36 BUT THE AGREEMENT IS INCONSISTENT WITH AN OPPORTUNITY TO INSPECT
37 BEFORE PAYMENT, THE PARTY DOES NOT HAVE A RIGHT TO INSPECT BEFORE
38 PAYMENT.

1 (C) IF A CONTRACT REQUIRES PAYMENT BEFORE INSPECTION OF A COPY,
2 NONCONFORMITY IN THE TENDER DOES NOT EXCUSE THE PARTY RECEIVING THE
3 TENDER FROM MAKING PAYMENT UNLESS:

4 (1) THE NONCONFORMITY APPEARS WITHOUT INSPECTION AND WOULD
5 JUSTIFY REFUSAL UNDER § 21-704 OF THIS TITLE; OR

6 (2) DESPITE TENDER OF THE REQUIRED DOCUMENTS, THE
7 CIRCUMSTANCES WOULD JUSTIFY AN INJUNCTION AGAINST HONOR OF A LETTER OF
8 CREDIT UNDER TITLE 5 OF THIS ARTICLE.

9 (D) PAYMENT MADE UNDER CIRCUMSTANCES DESCRIBED IN SUBSECTION (B)
10 OR (C) OF THIS SECTION IS NOT AN ACCEPTANCE OF THE COPY AND DOES NOT
11 IMPAIR A PARTY'S RIGHT TO INSPECT OR PRECLUDE ANY OF THE PARTY'S REMEDIES.

12 21-609. COPY: WHEN ACCEPTANCE OCCURS.

13 (A) ACCEPTANCE OF A COPY OCCURS WHEN THE PARTY TO WHICH THE COPY
14 IS TENDERED:

15 (1) SIGNIFIES, OR ACTS WITH RESPECT TO THE COPY IN A MANNER
16 THAT SIGNIFIES, THAT THE TENDER WAS CONFORMING OR THAT THE PARTY WILL
17 TAKE OR RETAIN THE COPY DESPITE THE NONCONFORMITY;

18 (2) DOES NOT MAKE AN EFFECTIVE REFUSAL;

19 (3) COMMINGLES THE COPY OR THE INFORMATION IN A MANNER THAT
20 MAKES COMPLIANCE WITH THE PARTY'S DUTIES AFTER REFUSAL IMPOSSIBLE;

21 (4) OBTAINS A SUBSTANTIAL BENEFIT FROM THE COPY AND CANNOT
22 RETURN THAT BENEFIT; OR

23 (5) ACTS IN A MANNER INCONSISTENT WITH THE LICENSOR'S
24 OWNERSHIP, BUT THE ACT IS AN ACCEPTANCE ONLY IF THE LICENSOR ELECTS TO
25 TREAT IT AS AN ACCEPTANCE AND RATIFIES THE ACT TO THE EXTENT IT WAS
26 WITHIN CONTRACTUAL USE TERMS.

27 (B) EXCEPT IN CASES GOVERNED BY SUBSECTION (A)(3) OR (4) OF THIS
28 SECTION, IF THERE IS A RIGHT TO INSPECT UNDER § 21-608 OF THIS SUBTITLE OR
29 THE AGREEMENT, ACCEPTANCE OF A COPY OCCURS ONLY AFTER THE PARTY HAS
30 HAD A REASONABLE OPPORTUNITY TO INSPECT THE COPY.

31 (C) IF AN AGREEMENT REQUIRES DELIVERY IN STAGES INVOLVING
32 SEPARATE PORTIONS THAT TAKEN TOGETHER COMPRISE THE WHOLE OF THE
33 INFORMATION, ACCEPTANCE OF ANY STAGE IS CONDITIONAL UNTIL ACCEPTANCE
34 OF THE WHOLE.

1 21-610. COPY: EFFECT OF ACCEPTANCE; BURDEN OF ESTABLISHING; NOTICE OF
2 CLAIMS.

3 (A) A PARTY ACCEPTING A COPY SHALL PAY OR RENDER THE CONSIDERATION
4 REQUIRED BY THE AGREEMENT FOR THE COPY IT ACCEPTS. ACCEPTANCE OF A COPY
5 PRECLUDES REFUSAL AND, IF MADE WITH KNOWLEDGE OF A NONCONFORMITY IN A
6 TENDER, MAY NOT BE REVOKED BECAUSE OF THE NONCONFORMITY UNLESS
7 ACCEPTANCE WAS ON THE REASONABLE ASSUMPTION THAT THE NONCONFORMITY
8 WOULD BE SEASONABLY CURED. ACCEPTANCE BY ITSELF DOES NOT IMPAIR ANY
9 OTHER REMEDY FOR NONCONFORMITY.

10 (B) A PARTY ACCEPTING A COPY HAS THE BURDEN OF ESTABLISHING A
11 BREACH OF CONTRACT WITH RESPECT TO THE COPY.

12 (C) IF A COPY HAS BEEN ACCEPTED, THE ACCEPTING PARTY SHALL:

13 (1) EXCEPT WITH RESPECT TO CLAIMS OF A TYPE DESCRIBED IN §
14 21-805(D)(1) OF THIS TITLE, WITHIN A REASONABLE TIME AFTER IT DISCOVERS OR
15 SHOULD HAVE DISCOVERED A BREACH OF CONTRACT, NOTIFY THE OTHER PARTY OF
16 THE BREACH OR BE BARRED FROM ANY REMEDY FOR THE BREACH; AND

17 (2) IF THE CLAIM IS FOR BREACH OF A WARRANTY REGARDING
18 NONINFRINGEMENT AND THE ACCEPTING PARTY IS SUED BY A THIRD PARTY
19 BECAUSE OF THE BREACH, NOTIFY THE WARRANTOR WITHIN A REASONABLE TIME
20 AFTER RECEIVING NOTICE OF THE LITIGATION OR BE PRECLUDED FROM ANY
21 REMEDY OVER FOR THE LIABILITY ESTABLISHED BY THE LITIGATION.

22 SPECIAL TYPES OF CONTRACTS.

23 21-611. ACCESS CONTRACTS.

24 (A) IF AN ACCESS CONTRACT PROVIDES FOR ACCESS OVER A PERIOD OF TIME,
25 THE FOLLOWING RULES APPLY:

26 (1) THE LICENSEE'S RIGHTS OF ACCESS ARE TO THE INFORMATION AS
27 MODIFIED AND MADE COMMERCIALY AVAILABLE BY THE LICENSOR FROM TIME TO
28 TIME DURING THAT PERIOD.

29 (2) A CHANGE IN THE CONTENT OF THE INFORMATION IS A BREACH OF
30 CONTRACT ONLY IF THE CHANGE CONFLICTS WITH AN EXPRESS TERM OF THE
31 AGREEMENT.

32 (3) UNLESS IT IS SUBJECT TO A CONTRACTUAL USE TERM,
33 INFORMATION OBTAINED BY THE LICENSEE IS FREE OF ANY USE RESTRICTION
34 OTHER THAN A RESTRICTION RESULTING FROM THE INFORMATIONAL RIGHTS OF
35 ANOTHER PERSON OR OTHER LAW.

36 (4) ACCESS MUST BE AVAILABLE:

1 (A) AT TIMES AND IN A MANNER CONFORMING TO THE EXPRESS
2 TERMS OF THE AGREEMENT; AND

3 (B) TO THE EXTENT NOT EXPRESSLY STATED IN THE AGREEMENT,
4 AT TIMES AND IN A MANNER REASONABLE FOR THE PARTICULAR TYPE OF
5 CONTRACT IN LIGHT OF THE ORDINARY STANDARDS OF THE BUSINESS, TRADE, OR
6 INDUSTRY.

7 (B) IN AN ACCESS CONTRACT THAT GIVES THE LICENSEE A RIGHT OF ACCESS
8 AT TIMES SUBSTANTIALLY OF ITS OWN CHOOSING DURING AGREED PERIODS, AN
9 OCCASIONAL FAILURE TO HAVE ACCESS AVAILABLE DURING THOSE TIMES IS NOT A
10 BREACH OF CONTRACT IF IT IS:

11 (1) CONSISTENT WITH ORDINARY STANDARDS OF THE BUSINESS,
12 TRADE, OR INDUSTRY FOR THE PARTICULAR TYPE OF CONTRACT; OR

13 (2) CAUSED BY:

14 (A) SCHEDULED DOWNTIME;

15 (B) REASONABLE NEEDS FOR MAINTENANCE;

16 (C) REASONABLE PERIODS OF FAILURE OF EQUIPMENT,
17 COMPUTER PROGRAMS, OR COMMUNICATIONS; OR

18 (D) EVENTS REASONABLY BEYOND THE LICENSOR'S CONTROL,
19 AND THE LICENSOR EXERCISES SUCH COMMERCIALY REASONABLE EFFORTS AS
20 THE CIRCUMSTANCES REQUIRE.

21 21-612. CORRECTION AND SUPPORT CONTRACTS.

22 (A) IF A PERSON AGREES TO PROVIDE SERVICES REGARDING THE
23 CORRECTION OF PERFORMANCE PROBLEMS IN COMPUTER INFORMATION, OTHER
24 THAN AN AGREEMENT TO CURE ITS OWN EXISTING BREACH OF CONTRACT, THE
25 FOLLOWING RULES APPLY:

26 (1) IF THE SERVICES ARE PROVIDED BY A LICENSOR OF THE
27 INFORMATION AS PART OF A LIMITED REMEDY, THE LICENSOR UNDERTAKES THAT
28 ITS PERFORMANCE WILL PROVIDE THE LICENSEE WITH INFORMATION THAT
29 CONFORMS TO THE AGREEMENT TO WHICH THE LIMITED REMEDY APPLIES.

30 (2) IN ALL OTHER CASES, THE PERSON:

31 (A) SHALL PERFORM AT A TIME AND PLACE AND IN A MANNER
32 CONSISTENT WITH THE EXPRESS TERMS OF THE AGREEMENT AND, TO THE EXTENT
33 NOT STATED IN THE EXPRESS TERMS, AT A TIME AND PLACE AND IN A MANNER THAT
34 IS REASONABLE IN LIGHT OF ORDINARY STANDARDS OF THE BUSINESS, TRADE, OR
35 INDUSTRY; AND

1 (B) DOES NOT UNDERTAKE THAT ITS SERVICES WILL CORRECT
2 PERFORMANCE PROBLEMS UNLESS THE AGREEMENT EXPRESSLY SO PROVIDES.

3 (B) UNLESS REQUIRED TO DO SO BY AN EXPRESS OR IMPLIED WARRANTY, A
4 LICENSOR IS NOT REQUIRED TO PROVIDE INSTRUCTION OR OTHER SUPPORT FOR
5 THE LICENSEE'S USE OF INFORMATION OR ACCESS. A PERSON THAT AGREES TO
6 PROVIDE SUPPORT SHALL MAKE THE SUPPORT AVAILABLE IN A MANNER AND WITH
7 A QUALITY CONSISTENT WITH EXPRESS TERMS OF THE SUPPORT AGREEMENT AND,
8 TO THE EXTENT NOT STATED IN THE EXPRESS TERMS, AT A TIME AND PLACE AND IN
9 A MANNER THAT IS REASONABLE IN LIGHT OF ORDINARY STANDARDS OF THE
10 BUSINESS, TRADE, OR INDUSTRY.

11 21-613. CONTRACTS INVOLVING PUBLISHERS, DEALERS, AND END USERS.

12 (A) IN THIS SECTION:

13 (1) "DEALER" MEANS A MERCHANT LICENSEE THAT RECEIVES
14 INFORMATION DIRECTLY OR INDIRECTLY FROM A LICENSOR FOR SALE OR LICENSE
15 TO END USERS.

16 (2) "END USER" MEANS A LICENSEE THAT ACQUIRES A COPY OF THE
17 INFORMATION FROM A DEALER BY DELIVERY ON A TANGIBLE MEDIUM FOR THE
18 LICENSEE'S OWN USE AND NOT FOR SALE, LICENSE, TRANSMISSION TO THIRD
19 PERSONS, OR PUBLIC DISPLAY OR PERFORMANCE FOR A FEE.

20 (3) "PUBLISHER" MEANS A LICENSOR, OTHER THAN A DEALER, THAT
21 OFFERS A LICENSE TO AN END USER WITH RESPECT TO INFORMATION DISTRIBUTED
22 BY A DEALER TO THE END USER.

23 (B) IN A CONTRACT BETWEEN A DEALER AND AN END USER, IF THE END
24 USER'S RIGHT TO USE THE INFORMATION OR INFORMATIONAL RIGHTS IS SUBJECT
25 TO A LICENSE BY THE PUBLISHER AND THERE WAS NO OPPORTUNITY TO REVIEW
26 THE LICENSE BEFORE THE END USER BECAME OBLIGATED TO PAY THE DEALER, THE
27 FOLLOWING RULES APPLY:

28 (1) THE CONTRACT BETWEEN THE END USER AND THE DEALER IS
29 CONDITIONED ON THE END USER'S AGREEMENT TO THE PUBLISHER'S LICENSE.

30 (2) IF THE END USER DOES NOT AGREE, SUCH AS BY MANIFESTING
31 ASSENT, TO THE TERMS OF THE PUBLISHER'S LICENSE, THE END USER HAS A RIGHT
32 TO A RETURN FROM THE DEALER. A RIGHT UNDER THIS PARAGRAPH IS A RETURN
33 FOR PURPOSES OF §§ 21-112, 21-208, AND 21-209 OF THIS TITLE.

34 (3) THE DEALER IS NOT BOUND BY THE TERMS, AND DOES NOT RECEIVE
35 THE BENEFITS, OF AN AGREEMENT BETWEEN THE PUBLISHER AND THE END USER
36 UNLESS THE DEALER AND END USER ADOPT THOSE TERMS AS PART OF THE
37 AGREEMENT.

38 (C) IF AN AGREEMENT PROVIDES FOR DISTRIBUTION OF COPIES ON A
39 TANGIBLE MEDIUM OR IN PACKAGING PROVIDED BY THE PUBLISHER OR AN

1 AUTHORIZED THIRD PARTY, A DEALER MAY DISTRIBUTE THOSE COPIES AND
2 DOCUMENTATION ONLY:

3 (1) IN THE FORM AS RECEIVED; AND

4 (2) SUBJECT TO THE TERMS OF ANY LICENSE THE PUBLISHER THAT THE
5 PUBLISHER PROVIDES TO THE DEALER TO BE FURNISHED TO END USERS.

6 (D) A DEALER THAT ENTERS INTO AN AGREEMENT WITH AN END USER IS A
7 LICENSOR WITH RESPECT TO THE END USER UNDER THIS TITLE.

8 LOSS AND IMPOSSIBILITY.

9 21-614. RISK OF LOSS OF COPY.

10 (A) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, THE RISK OF LOSS AS
11 TO A COPY THAT IS TO BE DELIVERED TO A LICENSEE, INCLUDING A COPY
12 DELIVERED BY ELECTRONIC MEANS, PASSES TO THE LICENSEE UPON ITS RECEIPT
13 OF THE COPY.

14 (B) IF AN AGREEMENT REQUIRES OR AUTHORIZES A LICENSOR TO SEND A
15 COPY ON A TANGIBLE MEDIUM BY CARRIER, THE FOLLOWING RULES APPLY:

16 (1) IF THE AGREEMENT DOES NOT REQUIRE THE LICENSOR TO DELIVER
17 THE COPY AT A PARTICULAR DESTINATION, THE RISK OF LOSS PASSES TO THE
18 LICENSEE WHEN THE COPY IS DULY DELIVERED TO THE CARRIER, EVEN IF THE
19 SHIPMENT IS UNDER RESERVATION.

20 (2) IF THE AGREEMENT REQUIRES THE LICENSOR TO DELIVER THE
21 COPY AT A PARTICULAR DESTINATION AND THE COPY IS DULY TENDERED THERE IN
22 THE POSSESSION OF THE CARRIER, THE RISK OF LOSS PASSES TO THE LICENSEE
23 WHEN THE COPY IS TENDERED AT THAT DESTINATION.

24 (3) IF A TENDER OF DELIVERY OF A COPY OR A SHIPPING DOCUMENT
25 FAILS TO CONFORM TO THE CONTRACT, THE RISK OF LOSS REMAINS WITH THE
26 LICENSOR UNTIL CURE OR ACCEPTANCE.

27 (C) IF A COPY IS HELD BY A THIRD PARTY TO BE DELIVERED OR REPRODUCED
28 WITHOUT BEING MOVED OR A COPY IS TO BE DELIVERED BY MAKING ACCESS
29 AVAILABLE TO A THIRD PARTY RESOURCE CONTAINING A COPY, THE RISK OF LOSS
30 PASSES TO THE LICENSEE UPON:

31 (1) THE LICENSEE'S RECEIPT OF A NEGOTIABLE DOCUMENT OF TITLE
32 OR OTHER ACCESS MATERIALS COVERING THE COPY;

33 (2) ACKNOWLEDGMENT BY THE THIRD PARTY TO THE LICENSEE OF THE
34 LICENSEE'S RIGHT TO POSSESSION OF OR ACCESS TO THE COPY; OR

1 (3) THE LICENSEE'S RECEIPT OF A RECORD DIRECTING THE THIRD
2 PARTY, PURSUANT TO AN AGREEMENT BETWEEN THE LICENSOR AND THE THIRD
3 PARTY, TO MAKE DELIVERY OR AUTHORIZING THE THIRD PARTY TO ALLOW ACCESS.

4 21-615. EXCUSE BY FAILURE OF PRESUPPOSED CONDITIONS.

5 (A) UNLESS A PARTY HAS ASSUMED A DIFFERENT OBLIGATION, DELAY IN
6 PERFORMANCE BY A PARTY, OR NONPERFORMANCE IN WHOLE OR PART BY A PARTY,
7 OTHER THAN OF AN OBLIGATION TO MAKE PAYMENTS OR TO CONFORM TO
8 CONTRACTUAL USE TERMS, IS NOT A BREACH OF CONTRACT IF THE DELAY OR
9 NONPERFORMANCE IS OF A PERFORMANCE THAT HAS BEEN MADE IMPRACTICABLE
10 BY:

11 (1) THE OCCURRENCE OF A CONTINGENCY THE NONOCCURRENCE OF
12 WHICH WAS A BASIC ASSUMPTION ON WHICH THE CONTRACT WAS MADE; OR

13 (2) COMPLIANCE IN GOOD FAITH WITH ANY FOREIGN OR DOMESTIC
14 STATUTE, GOVERNMENTAL RULE, REGULATION, OR ORDER, WHETHER OR NOT IT
15 LATER PROVES TO BE INVALID.

16 (B) A PARTY CLAIMING EXCUSE UNDER SUBSECTION (A) OF THIS SECTION
17 SHALL SEASONABLY NOTIFY THE OTHER PARTY THAT THERE WILL BE DELAY OR
18 NONPERFORMANCE.

19 (C) IF AN EXCUSE AFFECTS ONLY A PART OF A PARTY'S CAPACITY TO
20 PERFORM AN OBLIGATION FOR DELIVERY OF COPIES, THE PARTY CLAIMING EXCUSE
21 SHALL ALLOCATE PERFORMANCE AMONG ITS CUSTOMERS IN ANY MANNER THAT IS
22 FAIR AND REASONABLE AND NOTIFY THE OTHER PARTY OF THE ESTIMATED QUOTA
23 TO BE MADE AVAILABLE. IN MAKING THE ALLOCATION, THE PARTY CLAIMING
24 EXCUSE MAY INCLUDE THE REQUIREMENTS OF REGULAR CUSTOMERS NOT THEN
25 UNDER CONTRACT AND ITS OWN REQUIREMENTS.

26 (D) A PARTY THAT RECEIVES NOTICE PURSUANT TO SUBSECTION (B) OF THIS
27 SECTION OF A MATERIAL OR INDEFINITE DELAY IN DELIVERY OF COPIES OR OF AN
28 ALLOCATION UNDER SUBSECTION (C) OF THIS SECTION, BY NOTICE IN A RECORD,
29 MAY:

30 (1) TERMINATE AND THEREBY DISCHARGE ANY EXECUTORY PORTION
31 OF THE CONTRACT; OR

32 (2) MODIFY THE CONTRACT BY AGREEING TO TAKE THE AVAILABLE
33 ALLOCATION IN SUBSTITUTION.

34 (E) IF, AFTER RECEIPT OF NOTICE UNDER SUBSECTION (B) OF THIS SECTION,
35 A PARTY DOES NOT MODIFY THE CONTRACT WITHIN A REASONABLE TIME NOT
36 EXCEEDING 30 DAYS, THE CONTRACT LAPSES WITH RESPECT TO ANY PERFORMANCE
37 AFFECTED.

1 TERMINATION.

2 21-616. TERMINATION: SURVIVAL OF OBLIGATIONS.

3 (A) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (B) OF THIS SECTION,
4 ON TERMINATION ALL OBLIGATIONS THAT ARE STILL EXECUTORY ON BOTH SIDES
5 ARE DISCHARGED.

6 (B) THE FOLLOWING SURVIVE TERMINATION:

7 (1) A RIGHT BASED ON PREVIOUS BREACH OR PERFORMANCE OF THE
8 CONTRACT;

9 (2) AN OBLIGATION OF CONFIDENTIALITY, NONDISCLOSURE, OR
10 NONCOMPETITION TO THE EXTENT ENFORCEABLE UNDER OTHER LAW;

11 (3) A CONTRACTUAL USE TERM APPLICABLE TO ANY LICENSED COPY OR
12 INFORMATION RECEIVED FROM THE OTHER PARTY, OR COPIES MADE OF IT, WHICH
13 ARE NOT RETURNED OR RETURNABLE TO THE OTHER PARTY;

14 (4) AN OBLIGATION TO DELIVER, OR DISPOSE OF INFORMATION,
15 MATERIALS, DOCUMENTATION, COPIES, RECORDS, OR THE LIKE TO THE OTHER
16 PARTY, AN OBLIGATION TO DESTROY COPIES, OR A RIGHT TO OBTAIN INFORMATION
17 FROM AN ESCROW AGENT;

18 (5) A CHOICE OF LAW OR FORUM;

19 (6) AN OBLIGATION TO ARBITRATE OR OTHERWISE RESOLVE DISPUTES
20 BY ALTERNATIVE DISPUTE RESOLUTION PROCEDURES;

21 (7) A TERM LIMITING THE TIME FOR COMMENCING AN ACTION OR FOR
22 GIVING NOTICE;

23 (8) AN INDEMNITY TERM OR A RIGHT RELATED TO A CLAIM OF A TYPE
24 DESCRIBED IN § 21-805(D)(1) OF THIS TITLE;

25 (9) A LIMITATION OF REMEDY OR MODIFICATION OR DISCLAIMER OF
26 WARRANTY;

27 (10) AN OBLIGATION TO PROVIDE AN ACCOUNTING AND MAKE ANY
28 PAYMENT DUE UNDER THE ACCOUNTING; AND

29 (11) ANY TERM THAT THE AGREEMENT PROVIDES WILL SURVIVE.

30 21-617. NOTICE OF TERMINATION.

31 (A) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (B) OF THIS SECTION, A
32 PARTY MAY NOT TERMINATE A CONTRACT EXCEPT ON THE HAPPENING OF AN
33 AGREED EVENT, SUCH AS THE EXPIRATION OF THE STATED DURATION, UNLESS THE
34 PARTY GIVES REASONABLE NOTICE OF TERMINATION TO THE OTHER PARTY.

1 (B) AN ACCESS CONTRACT MAY BE TERMINATED WITHOUT GIVING NOTICE.
2 HOWEVER, EXCEPT ON THE HAPPENING OF AN AGREED EVENT, TERMINATION
3 REQUIRES GIVING REASONABLE NOTICE TO THE LICENSEE IF THE ACCESS
4 CONTRACT PERTAINS TO INFORMATION OWNED AND PROVIDED BY THE LICENSEE
5 TO THE LICENSOR.

6 (C) A TERM DISPENSING WITH A NOTICE REQUIRED UNDER THIS SECTION IS
7 INVALID IF ITS OPERATION WOULD BE UNCONSCIONABLE. HOWEVER, A TERM
8 SPECIFYING STANDARDS FOR GIVING NOTICE IS ENFORCEABLE IF THE STANDARDS
9 ARE NOT MANIFESTLY UNREASONABLE.

10 21-618. TERMINATION: ENFORCEMENT.

11 (A) ON TERMINATION OF A LICENSE, A PARTY IN POSSESSION OR CONTROL OF
12 INFORMATION, COPIES, OR OTHER MATERIALS THAT ARE THE PROPERTY OF THE
13 OTHER PARTY, OR ARE SUBJECT TO A CONTRACTUAL OBLIGATION TO BE DELIVERED
14 TO THAT PARTY ON TERMINATION, SHALL USE COMMERCIALY REASONABLE
15 EFFORTS TO DELIVER OR HOLD THEM FOR DISPOSAL ON INSTRUCTIONS OF THAT
16 PARTY. IF ANY MATERIALS ARE JOINTLY OWNED, THE PARTY IN POSSESSION OR
17 CONTROL SHALL MAKE THEM AVAILABLE TO THE JOINT OWNERS.

18 (B) TERMINATION OF A LICENSE ENDS ALL RIGHT UNDER THE LICENSE FOR
19 THE LICENSEE TO USE OR ACCESS THE LICENSED INFORMATION, INFORMATIONAL
20 RIGHTS, OR COPIES. CONTINUED USE OF THE LICENSED COPIES OR EXERCISE OF
21 TERMINATED RIGHTS IS A BREACH OF CONTRACT UNLESS AUTHORIZED BY A TERM
22 THAT SURVIVES TERMINATION.

23 (C) EACH PARTY MAY ENFORCE ITS RIGHTS UNDER SUBSECTIONS (A) AND (B)
24 OF THIS SECTION BY ACTING PURSUANT TO § 21-605 OF THIS SUBTITLE OR BY
25 JUDICIAL PROCESS, INCLUDING OBTAINING AN ORDER THAT THE PARTY OR AN
26 OFFICER OF THE COURT TAKE THE FOLLOWING ACTIONS WITH RESPECT TO ANY
27 LICENSED INFORMATION, DOCUMENTATION, COPIES, OR OTHER MATERIALS TO BE
28 DELIVERED:

29 (1) DELIVER OR TAKE POSSESSION OF THEM;

30 (2) WITHOUT REMOVAL, RENDER UNUSABLE OR ELIMINATE THE
31 CAPABILITY TO EXERCISE CONTRACTUAL RIGHTS IN OR USE OF THEM;

32 (3) DESTROY OR PREVENT ACCESS TO THEM; AND

33 (4) REQUIRE THAT THE PARTY OR ANY OTHER PERSON IN POSSESSION
34 OR CONTROL OF THEM MAKE THEM AVAILABLE TO THE OTHER PARTY AT A PLACE
35 DESIGNATED BY THAT PARTY WHICH IS REASONABLY CONVENIENT TO BOTH
36 PARTIES.

37 (D) IN AN APPROPRIATE CASE, A COURT OF COMPETENT JURISDICTION MAY
38 GRANT INJUNCTIVE RELIEF TO ENFORCE THE PARTIES' RIGHTS UNDER THIS
39 SECTION.

1 SUBTITLE 7. BREACH OF CONTRACT; GENERAL; DEFECTIVE COPIES; REPUDIATION
2 AND ASSURANCES.

3 GENERAL.

4 21-701. BREACH OF CONTRACT; MATERIAL BREACH.

5 (A) WHETHER A PARTY IS IN BREACH OF CONTRACT IS DETERMINED BY THE
6 AGREEMENT OR, IN THE ABSENCE OF AGREEMENT, THIS TITLE. A BREACH OCCURS IF
7 A PARTY WITHOUT LEGAL EXCUSE FAILS TO PERFORM AN OBLIGATION IN A TIMELY
8 MANNER, REPUDIATES A CONTRACT, OR EXCEEDS A CONTRACTUAL USE TERM, OR
9 OTHERWISE IS NOT IN COMPLIANCE WITH AN OBLIGATION PLACED ON IT BY THIS
10 TITLE OR THE AGREEMENT. A BREACH, WHETHER OR NOT MATERIAL, ENTITLES THE
11 AGGRIEVED PARTY TO ITS REMEDIES. WHETHER A BREACH OF A CONTRACTUAL USE
12 TERM IS AN INFRINGEMENT OR A MISAPPROPRIATION IS DETERMINED BY
13 APPLICABLE INFORMATIONAL PROPERTY RIGHTS LAW.

14 (B) A BREACH OF CONTRACT IS MATERIAL IF:

15 (1) THE CONTRACT SO PROVIDES;

16 (2) THE BREACH IS A SUBSTANTIAL FAILURE TO PERFORM A TERM THAT
17 IS AN ESSENTIAL ELEMENT OF THE AGREEMENT; OR

18 (3) THE CIRCUMSTANCES, INCLUDING THE LANGUAGE OF THE
19 AGREEMENT, THE REASONABLE EXPECTATIONS OF THE PARTIES, THE STANDARDS
20 AND PRACTICES OF THE BUSINESS, TRADE, OR INDUSTRY, AND THE CHARACTER OF
21 THE BREACH, INDICATE THAT:

22 (A) THE BREACH CAUSED OR IS LIKELY TO CAUSE SUBSTANTIAL
23 HARM TO THE AGGRIEVED PARTY; OR

24 (B) THE BREACH SUBSTANTIALLY DEPRIVED OR IS LIKELY
25 SUBSTANTIALLY TO DEPRIVE THE AGGRIEVED PARTY OF A SIGNIFICANT BENEFIT IT
26 REASONABLY EXPECTED UNDER THE CONTRACT.

27 (C) THE CUMULATIVE EFFECT OF NONMATERIAL BREACHES MAY BE
28 MATERIAL.

29 21-702. WAIVER OF REMEDY FOR BREACH OF CONTRACT.

30 (A) A CLAIM OR RIGHT ARISING OUT OF A BREACH OF CONTRACT MAY BE
31 DISCHARGED IN WHOLE OR PART WITHOUT CONSIDERATION BY A WAIVER IN A
32 RECORD TO WHICH THE PARTY MAKING THE WAIVER AGREES AFTER BREACH, SUCH
33 AS BY MANIFESTING ASSENT, OR WHICH THE PARTY MAKING THE WAIVER
34 AUTHENTICATES AND DELIVERS TO THE OTHER PARTY.

35 (B) A PARTY THAT ACCEPTS A PERFORMANCE WITH KNOWLEDGE THAT THE
36 PERFORMANCE CONSTITUTES A BREACH OF CONTRACT AND, WITHIN A REASONABLE
37 TIME AFTER ACCEPTANCE, DOES NOT NOTIFY THE OTHER PARTY OF THE BREACH

1 WAIVES ALL REMEDIES FOR THE BREACH, UNLESS ACCEPTANCE WAS MADE ON THE
2 REASONABLE ASSUMPTION THAT THE BREACH WOULD BE CURED AND IT HAS NOT
3 BEEN SEASONABLY CURED. HOWEVER, A PARTY THAT SEASONABLY NOTIFIES THE
4 OTHER PARTY OF A RESERVATION OF RIGHTS DOES NOT WAIVE THE RIGHTS
5 RESERVED.

6 (C) A PARTY THAT REFUSES A PERFORMANCE AND FAILS TO IDENTIFY A
7 PARTICULAR DEFECT THAT IS ASCERTAINABLE BY REASONABLE INSPECTION
8 WAIVES THE RIGHT TO RELY ON THAT DEFECT TO JUSTIFY REFUSAL ONLY IF:

9 (1) THE OTHER PARTY COULD HAVE CURED THE DEFECT IF IT WERE
10 IDENTIFIED SEASONABLY; OR

11 (2) BETWEEN MERCHANTS, THE OTHER PARTY AFTER REFUSAL MADE A
12 REQUEST IN A RECORD FOR A FULL AND FINAL STATEMENT OF ALL DEFECTS ON
13 WHICH THE REFUSING PARTY RELIED.

14 (D) WAIVER OF A REMEDY FOR BREACH OF CONTRACT IN ONE PERFORMANCE
15 DOES NOT WAIVE ANY REMEDY FOR THE SAME OR A SIMILAR BREACH IN FUTURE
16 PERFORMANCES UNLESS THE PARTY MAKING THE WAIVER EXPRESSLY SO STATES.

17 (E) A WAIVER MAY NOT BE RETRACTED AS TO THE PERFORMANCE TO WHICH
18 THE WAIVER APPLIES.

19 (F) EXCEPT FOR A WAIVER IN ACCORDANCE WITH SUBSECTION (A) OF THIS
20 SECTION OR A WAIVER SUPPORTED BY CONSIDERATION, A WAIVER AFFECTING AN
21 EXECUTORY PORTION OF A CONTRACT MAY BE RETRACTED BY SEASONABLE NOTICE
22 RECEIVED BY THE OTHER PARTY THAT STRICT PERFORMANCE WILL BE REQUIRED IN
23 THE FUTURE, UNLESS THE RETRACTION WOULD BE UNJUST IN VIEW OF A MATERIAL
24 CHANGE OF POSITION IN RELIANCE ON THE WAIVER BY THAT PARTY.

25 21-703. CURE OF BREACH OF CONTRACT.

26 (A) A PARTY IN BREACH OF CONTRACT MAY CURE THE BREACH AT ITS OWN
27 EXPENSE IF:

28 (1) THE TIME FOR PERFORMANCE HAS NOT EXPIRED AND THE PARTY IN
29 BREACH SEASONABLY NOTIFIES THE AGGRIEVED PARTY OF ITS INTENT TO CURE
30 AND, WITHIN THE TIME FOR PERFORMANCE, MAKES A CONFORMING PERFORMANCE;

31 (2) THE PARTY IN BREACH HAD REASONABLE GROUNDS TO BELIEVE
32 THE PERFORMANCE WOULD BE ACCEPTABLE WITH OR WITHOUT MONETARY
33 ALLOWANCE, SEASONABLY NOTIFIES THE AGGRIEVED PARTY OF ITS INTENT TO
34 CURE, AND PROVIDES A CONFORMING PERFORMANCE WITHIN A FURTHER
35 REASONABLE TIME AFTER PERFORMANCE WAS DUE; OR

36 (3) IN A CASE NOT GOVERNED BY PARAGRAPH (1) OR (2) OF THIS
37 SUBSECTION, THE PARTY IN BREACH SEASONABLY NOTIFIES THE AGGRIEVED PARTY
38 OF ITS INTENT TO CURE AND PROMPTLY PROVIDES A CONFORMING PERFORMANCE
39 BEFORE CANCELLATION BY THE AGGRIEVED PARTY.

1 (B) IN A LICENSE OTHER THAN IN A MASS-MARKET TRANSACTION, IF THE
2 AGREEMENT REQUIRED A SINGLE DELIVERY OF A COPY AND THE PARTY RECEIVING
3 TENDER OF DELIVERY WAS REQUIRED TO ACCEPT A NONCONFORMING COPY
4 BECAUSE THE NONCONFORMITY WAS NOT A MATERIAL BREACH OF CONTRACT, THE
5 PARTY IN BREACH SHALL PROMPTLY AND IN GOOD FAITH MAKE AN EFFORT TO CURE
6 IF:

7 (1) THE PARTY IN BREACH RECEIVES SEASONABLE NOTICE OF THE
8 SPECIFIC NONCONFORMITY AND A DEMAND FOR CURE OF IT; AND

9 (2) THE COST OF THE EFFORT TO CURE DOES NOT
10 DISPROPORTIONATELY EXCEED THE DIRECT DAMAGES CAUSED BY THE
11 NONCONFORMITY TO THE AGGRIEVED PARTY.

12 (C) A PARTY MAY NOT CANCEL A CONTRACT OR REFUSE A PERFORMANCE
13 BECAUSE OF A BREACH OF CONTRACT THAT HAS BEEN SEASONABLY CURED UNDER
14 SUBSECTION (A) OF THIS SECTION. HOWEVER, NOTICE OF INTENT TO CURE DOES
15 NOT PRECLUDE REFUSAL OR CANCELLATION FOR THE UNCURED BREACH.

16 DEFECTIVE COPIES.

17 21-704. COPY: REFUSAL OF DEFECTIVE TENDER.

18 (A) SUBJECT TO SUBSECTION (B) OF THIS SECTION AND § 21-705 OF THIS
19 SUBTITLE, TENDER OF A COPY THAT IS A MATERIAL BREACH OF CONTRACT PERMITS
20 THE PARTY TO WHICH TENDER IS MADE TO:

21 (1) REFUSE THE TENDER;

22 (2) ACCEPT THE TENDER; OR

23 (3) ACCEPT ANY COMMERCIALY REASONABLE UNITS AND REFUSE THE
24 REST.

25 (B) IN A MASS-MARKET TRANSACTION THAT CALLS FOR ONLY A SINGLE
26 TENDER OF A COPY, A LICENSEE MAY REFUSE THE TENDER IF THE TENDER DOES
27 NOT CONFORM TO THE CONTRACT.

28 (C) REFUSAL OF A TENDER IS INEFFECTIVE UNLESS:

29 (1) IT IS MADE BEFORE ACCEPTANCE;

30 (2) IT IS MADE WITHIN A REASONABLE TIME AFTER TENDER OR
31 COMPLETION OF ANY PERMITTED EFFORT TO CURE; AND

32 (3) THE REFUSING PARTY SEASONABLY NOTIFIES THE TENDERING
33 PARTY OF THE REFUSAL.

34 (D) EXCEPT IN A CASE GOVERNED BY SUBSECTION (B) OF THIS SECTION, A
35 PARTY THAT RIGHTFULLY REFUSES TENDER OF A COPY MAY CANCEL THE

1 CONTRACT ONLY IF THE TENDER WAS A MATERIAL BREACH OF THE WHOLE
2 CONTRACT OR THE AGREEMENT SO PROVIDES.

3 21-705. COPY: CONTRACT WITH PREVIOUS VESTED GRANT OF RIGHTS.

4 IF AN AGREEMENT GRANTS A RIGHT IN OR PERMISSION TO USE
5 INFORMATIONAL RIGHTS WHICH PRECEDES OR IS OTHERWISE INDEPENDENT OF
6 THE DELIVERY OF A COPY, THE FOLLOWING RULES APPLY:

7 (1) A PARTY MAY REFUSE A TENDER OF A COPY WHICH IS A MATERIAL
8 BREACH AS TO THAT COPY, BUT REFUSAL OF THAT TENDER DOES NOT CANCEL THE
9 CONTRACT.

10 (2) IN A CASE GOVERNED BY PARAGRAPH (1) OF THIS SUBSECTION, THE
11 TENDERING PARTY MAY CURE THE BREACH BY SEASONABLY PROVIDING A
12 CONFORMING COPY BEFORE THE BREACH BECOMES MATERIAL AS TO THE WHOLE
13 CONTRACT.

14 (3) A BREACH THAT IS MATERIAL WITH RESPECT TO A COPY ALLOWS
15 CANCELLATION OF THE CONTRACT ONLY IF THE BREACH CANNOT BE SEASONABLY
16 CURED AND IS A MATERIAL BREACH OF THE WHOLE CONTRACT.

17 21-706. COPY: DUTIES UPON RIGHTFUL REFUSAL.

18 (A) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, AFTER RIGHTFUL
19 REFUSAL OR REVOCATION OF ACCEPTANCE OF A COPY, THE FOLLOWING RULES
20 APPLY:

21 (1) IF THE REFUSING PARTY RIGHTFULLY CANCELS THE CONTRACT, §
22 21-802 OF THIS TITLE APPLIES AND ALL CONTRACTUAL USE TERMS CONTINUE.

23 (2) IF THE CONTRACT IS NOT CANCELED, THE PARTIES REMAIN BOUND
24 BY ALL CONTRACTUAL OBLIGATIONS.

25 (B) ON RIGHTFUL REFUSAL OR REVOCATION OF ACCEPTANCE OF A COPY, THE
26 FOLLOWING RULES APPLY TO THE EXTENT CONSISTENT WITH § 21-802 OF THIS
27 TITLE:

28 (1) ANY USE, SALE, DISPLAY, PERFORMANCE, OR TRANSFER OF THE
29 COPY OR INFORMATION IT CONTAINS, OR ANY FAILURE TO COMPLY WITH A
30 CONTRACTUAL USE TERM, IS A BREACH OF CONTRACT. THE LICENSEE SHALL PAY
31 THE LICENSOR THE REASONABLE VALUE OF ANY USE. HOWEVER, USE FOR A
32 LIMITED TIME WITHIN CONTRACTUAL USE TERMS IS NOT A BREACH, AND IS NOT AN
33 ACCEPTANCE UNDER § 21-609(A)(5) OF THIS TITLE, IF IT:

34 (A) OCCURS AFTER THE TENDERING PARTY IS SEASONABLY
35 NOTIFIED OF REFUSAL;

36 (B) IS NOT FOR DISTRIBUTION AND IS SOLELY PART OF MEASURES
37 REASONABLE UNDER THE CIRCUMSTANCES TO AVOID OR REDUCE LOSS; AND

1 (C) IS NOT CONTRARY TO INSTRUCTIONS CONCERNING
2 DISPOSITION OF THE COPY RECEIVED FROM THE PARTY IN BREACH.

3 (2) A PARTY THAT REFUSES A COPY SHALL:

4 (A) DELIVER THE COPY AND ALL COPIES MADE OF IT, ALL ACCESS
5 MATERIALS, AND DOCUMENTATION PERTAINING TO THE REFUSED INFORMATION TO
6 THE TENDERING PARTY OR HOLD THEM WITH REASONABLE CARE FOR A
7 REASONABLE TIME FOR DISPOSAL AT THAT PARTY'S INSTRUCTIONS; AND

8 (B) FOLLOW REASONABLE INSTRUCTIONS OF THE TENDERING
9 PARTY FOR RETURNING OR DELIVERING COPIES, ACCESS MATERIAL, AND
10 DOCUMENTATION, BUT INSTRUCTIONS ARE NOT REASONABLE IF THE TENDERING
11 PARTY DOES NOT ARRANGE FOR PAYMENT OF OR REIMBURSEMENT FOR
12 REASONABLE EXPENSES OF COMPLYING WITH THE INSTRUCTIONS.

13 (3) IF THE TENDERING PARTY DOES NOT GIVE INSTRUCTIONS WITHIN A
14 REASONABLE TIME AFTER BEING NOTIFIED OF REFUSAL, THE REFUSING PARTY, IN A
15 REASONABLE MANNER TO REDUCE OR AVOID LOSS, MAY STORE THE COPIES, ACCESS
16 MATERIAL, AND DOCUMENTATION FOR THE TENDERING PARTY'S ACCOUNT OR SHIP
17 THEM TO THE TENDERING PARTY AND IS ENTITLED TO REIMBURSEMENT FOR
18 REASONABLE COSTS OF STORAGE AND SHIPMENT.

19 (4) BOTH PARTIES REMAIN BOUND BY ALL CONTRACTUAL USE TERMS
20 THAT WOULD HAVE BEEN ENFORCEABLE HAD THE PERFORMANCE NOT BEEN
21 REFUSED.

22 (5) IN COMPLYING WITH THIS SECTION, THE REFUSING PARTY SHALL
23 ACT IN GOOD FAITH. CONDUCT IN GOOD FAITH UNDER THIS SECTION IS NOT
24 ACCEPTANCE OR CONVERSION AND MAY NOT BE A GROUND FOR AN ACTION FOR
25 DAMAGES UNDER THE CONTRACT.

26 21-707. COPY: REVOCATION OF ACCEPTANCE.

27 (A) A PARTY THAT ACCEPTS A NONCONFORMING TENDER OF A COPY MAY
28 REVOKE ACCEPTANCE ONLY IF THE NONCONFORMITY IS A MATERIAL BREACH OF
29 CONTRACT AND THE PARTY ACCEPTED IT:

30 (1) ON THE REASONABLE ASSUMPTION THAT THE NONCONFORMITY
31 WOULD BE CURED, AND THE NONCONFORMITY WAS NOT SEASONABLY CURED;

32 (2) DURING A CONTINUING EFFORT BY THE PARTY IN BREACH AT
33 ADJUSTMENT AND CURE, AND THE BREACH WAS NOT SEASONABLY CURED; OR

34 (3) WITHOUT DISCOVERY OF THE NONCONFORMITY, IF ACCEPTANCE
35 WAS REASONABLY INDUCED EITHER BY THE OTHER PARTY'S ASSURANCES OR BY
36 THE DIFFICULTY OF DISCOVERY BEFORE ACCEPTANCE.

37 (B) REVOCATION OF ACCEPTANCE IS NOT EFFECTIVE UNTIL THE REVOKING
38 PARTY NOTIFIES THE OTHER PARTY OF THE REVOCATION.

1 (C) REVOCATION OF ACCEPTANCE OF A COPY IS PRECLUDED IF:

2 (1) IT DOES NOT OCCUR WITHIN A REASONABLE TIME AFTER THE PARTY
3 ATTEMPTING TO REVOKE DISCOVERS OR SHOULD HAVE DISCOVERED THE GROUND
4 FOR IT;

5 (2) IT OCCURS AFTER A SUBSTANTIAL CHANGE IN CONDITION NOT
6 CAUSED BY DEFECTS IN THE INFORMATION, SUCH AS AFTER THE PARTY
7 COMMINGLES THE INFORMATION IN A MANNER THAT MAKES ITS RETURN
8 IMPOSSIBLE; OR

9 (3) THE PARTY ATTEMPTING TO REVOKE RECEIVED A SUBSTANTIAL
10 BENEFIT OR VALUE FROM THE INFORMATION, AND THE BENEFIT OR VALUE CANNOT
11 BE RETURNED.

12 (D) A PARTY THAT RIGHTFULLY REVOKES HAS THE SAME DUTIES AND IS
13 UNDER THE SAME RESTRICTIONS AS IF THE PARTY HAD REFUSED TENDER OF THE
14 COPY.

15 REPUDIATION AND ASSURANCES.

16 21-708. ADEQUATE ASSURANCE OF PERFORMANCE.

17 (A) A CONTRACT IMPOSES AN OBLIGATION ON EACH PARTY NOT TO IMPAIR
18 THE OTHER'S EXPECTATION OF RECEIVING DUE PERFORMANCE. IF REASONABLE
19 GROUNDS FOR INSECURITY ARISE WITH RESPECT TO THE PERFORMANCE OF EITHER
20 PARTY, THE AGGRIEVED PARTY MAY:

21 (1) DEMAND IN A RECORD ADEQUATE ASSURANCE OF DUE
22 PERFORMANCE; AND

23 (2) UNTIL THAT ASSURANCE IS RECEIVED, IF COMMERCIALY
24 REASONABLE, SUSPEND ANY PERFORMANCE, OTHER THAN WITH RESPECT TO
25 CONTRACTUAL USE TERMS, FOR WHICH THE AGREED RETURN PERFORMANCE HAS
26 NOT BEEN RECEIVED.

27 (B) BETWEEN MERCHANTS, THE REASONABLENESS OF GROUNDS FOR
28 INSECURITY AND THE ADEQUACY OF ANY ASSURANCE OFFERED IS DETERMINED
29 ACCORDING TO COMMERCIAL STANDARDS.

30 (C) ACCEPTANCE OF ANY IMPROPER DELIVERY OR PAYMENT DOES NOT
31 IMPAIR AN AGGRIEVED PARTY'S RIGHT TO DEMAND ADEQUATE ASSURANCE OF
32 FUTURE PERFORMANCE.

33 (D) AFTER RECEIPT OF A JUSTIFIED DEMAND UNDER SUBSECTION (A) OF
34 THIS SECTION, FAILURE, WITHIN A REASONABLE TIME NOT EXCEEDING 30 DAYS, TO
35 PROVIDE ASSURANCE OF DUE PERFORMANCE WHICH IS ADEQUATE UNDER THE
36 CIRCUMSTANCES OF THE PARTICULAR CASE IS A REPUDIATION OF THE CONTRACT
37 UNDER § 21-709 OF THIS SUBTITLE.

1 21-709. ANTICIPATORY REPUDIATION.

2 (A) IF A PARTY TO A CONTRACT REPUDIATES A PERFORMANCE NOT YET DUE
3 AND THE LOSS OF PERFORMANCE WILL SUBSTANTIALLY IMPAIR THE VALUE OF THE
4 CONTRACT TO THE OTHER PARTY, THE AGGRIEVED PARTY MAY:

5 (1) AWAIT PERFORMANCE BY THE REPUDIATING PARTY FOR A
6 COMMERCIALY REASONABLE TIME OR RESORT TO ANY REMEDY FOR BREACH OF
7 CONTRACT, EVEN IF IT HAS URGED THE REPUDIATING PARTY TO RETRACT THE
8 REPUDIATION OR HAS NOTIFIED THE REPUDIATING PARTY THAT IT WOULD AWAIT
9 ITS PERFORMANCE; AND

10 (2) IN EITHER CASE, SUSPEND ITS OWN PERFORMANCE OR PROCEED IN
11 ACCORDANCE WITH § 21-812 OR § 21-813 OF THIS TITLE, AS APPLICABLE.

12 (B) REPUDIATION INCLUDES LANGUAGE THAT ONE PARTY WILL NOT OR
13 CANNOT MAKE A PERFORMANCE STILL DUE UNDER THE CONTRACT OR VOLUNTARY,
14 AFFIRMATIVE CONDUCT THAT REASONABLY APPEARS TO THE OTHER PARTY TO
15 MAKE A FUTURE PERFORMANCE IMPOSSIBLE.

16 21-710. RETRACTION OF ANTICIPATORY REPUDIATION.

17 (A) A REPUDIATING PARTY MAY RETRACT ITS REPUDIATION UNTIL ITS NEXT
18 PERFORMANCE IS DUE UNLESS THE AGGRIEVED PARTY, AFTER THE REPUDIATION,
19 HAS CANCELED THE CONTRACT, MATERIALLY CHANGED ITS POSITION, OR
20 OTHERWISE INDICATED THAT IT CONSIDERS THE REPUDIATION FINAL.

21 (B) A RETRACTION MAY BE BY ANY METHOD THAT CLEARLY INDICATES TO
22 THE AGGRIEVED PARTY THAT THE REPUDIATING PARTY INTENDS TO PERFORM THE
23 CONTRACT. HOWEVER, A RETRACTION MUST CONTAIN ANY ASSURANCE
24 JUSTIFIABLY DEMANDED UNDER § 21-708 OF THIS SUBTITLE.

25 (C) RETRACTION RESTORES A REPUDIATING PARTY'S RIGHTS UNDER THE
26 CONTRACT WITH DUE EXCUSE AND ALLOWANCE TO THE AGGRIEVED PARTY FOR ANY
27 DELAY CAUSED BY THE REPUDIATION.

28 SUBTITLE 8. REMEDIES; GENERAL; DAMAGES; REMEDIES RELATED TO
29 PERFORMANCE.

30 GENERAL.

31 21-801. REMEDIES IN GENERAL.

32 (A) THE REMEDIES PROVIDED IN THIS TITLE ARE CUMULATIVE, BUT A PARTY
33 MAY NOT RECOVER MORE THAN ONCE FOR THE SAME LOSS.

34 (B) EXCEPT AS OTHERWISE PROVIDED IN §§ 21-803 AND 21-804 OF THIS
35 SUBTITLE, IF A PARTY IS IN BREACH OF CONTRACT, WHETHER OR NOT THE BREACH
36 IS MATERIAL, THE AGGRIEVED PARTY HAS THE REMEDIES PROVIDED IN THE
37 AGREEMENT OR THIS TITLE, BUT THE AGGRIEVED PARTY SHALL CONTINUE TO

1 COMPLY WITH ANY CONTRACTUAL USE TERMS WITH RESPECT TO INFORMATION OR
2 COPIES RECEIVED FROM THE OTHER PARTY ~~WHICH HAVE NOT BEEN RETURNED OR~~
3 ~~ARE NOT RETURNABLE TO THE OTHER PARTY, BUT THE CONTRACTUAL USE TERMS~~
4 DO NOT APPLY TO INFORMATION OR COPIES PROPERLY RECEIVED OR OBTAINED
5 FROM ANOTHER SOURCE.

6 (C) RESCISSION OR A CLAIM FOR RESCISSION OF THE CONTRACT, OR
7 REFUSAL OF THE INFORMATION, DOES NOT PRECLUDE AND IS NOT INCONSISTENT
8 WITH A CLAIM FOR DAMAGES OR OTHER REMEDY.

9 21-802. CANCELLATION.

10 (A) AN AGGRIEVED PARTY MAY CANCEL A CONTRACT IF THERE IS A
11 MATERIAL BREACH THAT HAS NOT BEEN CURED OR WAIVED OR THE AGREEMENT
12 ALLOWS CANCELLATION FOR THE BREACH.

13 (B) CANCELLATION IS NOT EFFECTIVE UNTIL THE CANCELING PARTY GIVES
14 NOTICE OF CANCELLATION TO THE PARTY IN BREACH, UNLESS A DELAY REQUIRED
15 TO NOTIFY THE PARTY WOULD CAUSE OR THREATEN MATERIAL HARM OR LOSS TO
16 THE AGGRIEVED PARTY. THE NOTIFICATION MAY BE IN ANY FORM REASONABLE
17 UNDER THE CIRCUMSTANCES. HOWEVER, IN AN ACCESS CONTRACT, A PARTY MAY
18 CANCEL RIGHTS OF ACCESS WITHOUT NOTICE.

19 (C) ON CANCELLATION, THE FOLLOWING RULES APPLY:

20 (1) IF A PARTY IS IN POSSESSION OR CONTROL OF LICENSED
21 INFORMATION, DOCUMENTATION, MATERIALS, OR COPIES OF LICENSED
22 INFORMATION, THE FOLLOWING RULES APPLY:

23 (A) A PARTY THAT HAS RIGHTFULLY REFUSED A COPY SHALL
24 COMPLY WITH § 21-706(B) OF THIS TITLE AS TO THE REFUSED COPY.

25 (B) A PARTY IN BREACH OF CONTRACT WHICH WOULD BE SUBJECT
26 TO AN OBLIGATION TO DELIVER UNDER § 21-618 OF THIS TITLE SHALL DELIVER ALL
27 INFORMATION, DOCUMENTATION, MATERIALS, AND COPIES TO THE OTHER PARTY
28 OR HOLD THEM WITH REASONABLE CARE FOR A REASONABLE TIME FOR DISPOSAL
29 AT THAT PARTY'S INSTRUCTIONS. THE PARTY IN BREACH OF CONTRACT SHALL
30 FOLLOW ANY REASONABLE INSTRUCTIONS RECEIVED FROM THE OTHER PARTY.

31 (C) EXCEPT AS OTHERWISE PROVIDED IN SUBPARAGRAPHS (A) AND
32 (B) OF THIS PARAGRAPH, THE PARTY SHALL COMPLY WITH § 21-618 OF THIS TITLE.

33 (2) ALL OBLIGATIONS THAT ARE EXECUTORY ON BOTH SIDES AT THE
34 TIME OF CANCELLATION ARE DISCHARGED, BUT THE FOLLOWING SURVIVE:

35 (A) ANY RIGHT BASED ON PREVIOUS BREACH OR PERFORMANCE;
36 AND

37 (B) THE RIGHTS, DUTIES, AND REMEDIES DESCRIBED IN § 21-616(B)
38 OF THIS TITLE.

1 (3) CANCELLATION OF A LICENSE BY THE LICENSOR ENDS ANY
2 CONTRACTUAL RIGHT OF THE LICENSEE TO USE THE INFORMATION,
3 INFORMATIONAL RIGHTS, COPIES, OR OTHER MATERIALS.

4 (4) CANCELLATION OF A LICENSE BY THE LICENSEE ENDS ANY
5 CONTRACTUAL RIGHT TO USE THE INFORMATION, INFORMATIONAL RIGHTS, COPIES,
6 OR OTHER MATERIALS, BUT THE LICENSEE MAY USE THE INFORMATION FOR A
7 LIMITED TIME AFTER THE LICENSE HAS BEEN CANCELED IF THE USE:

8 (A) IS WITHIN CONTRACTUAL USE TERMS;

9 (B) IS NOT FOR DISTRIBUTION AND IS SOLELY PART OF MEASURES
10 REASONABLE UNDER THE CIRCUMSTANCES TO AVOID OR REDUCE LOSS; AND

11 (C) IS NOT CONTRARY TO INSTRUCTIONS RECEIVED FROM THE PARTY IN
12 BREACH CONCERNING DISPOSITION OF THEM.

13 (5) THE LICENSEE SHALL PAY THE LICENSOR THE REASONABLE VALUE
14 OF ANY USE AFTER CANCELLATION PERMITTED UNDER PARAGRAPH (4) OF THIS
15 SUBSECTION.

16 (6) THE OBLIGATIONS UNDER THIS SUBSECTION APPLY TO ALL
17 INFORMATION, INFORMATIONAL RIGHTS, DOCUMENTATION, MATERIALS, AND
18 COPIES RECEIVED BY THE PARTY AND ANY COPIES MADE THEREFROM.

19 (D) A TERM PROVIDING THAT A CONTRACT MAY NOT BE CANCELED
20 PRECLUDES CANCELLATION BUT DOES NOT LIMIT OTHER REMEDIES.

21 (E) UNLESS A CONTRARY INTENTION CLEARLY APPEARS, AN EXPRESSION
22 SUCH AS "CANCELLATION," "RESCISSION", OR THE LIKE MAY NOT BE CONSTRUED AS
23 A RENUNCIATION OR DISCHARGE OF A CLAIM IN DAMAGES FOR AN ANTECEDENT
24 BREACH.

25 21-803. CONTRACTUAL MODIFICATION OF REMEDY.

26 (A) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION AND IN § 21-804 OF
27 THIS SUBTITLE:

28 (1) AN AGREEMENT MAY PROVIDE FOR REMEDIES IN ADDITION TO OR IN
29 SUBSTITUTION FOR THOSE PROVIDED IN THIS TITLE AND MAY LIMIT OR ALTER THE
30 MEASURE OF DAMAGES RECOVERABLE UNDER THIS TITLE OR A PARTY'S OTHER
31 REMEDIES UNDER THIS TITLE, SUCH AS BY PRECLUDING A PARTY'S RIGHT TO
32 CANCEL FOR BREACH OF CONTRACT, LIMITING REMEDIES TO RETURNING OR
33 DELIVERING COPIES AND REPAYMENT OF THE CONTRACT FEE, OR LIMITING
34 REMEDIES TO REPAIR OR REPLACEMENT OF THE NONCONFORMING COPIES; AND

35 (2) RESORT TO A CONTRACTUAL REMEDY IS OPTIONAL UNLESS THE
36 REMEDY IS EXPRESSLY AGREED TO BE EXCLUSIVE, IN WHICH CASE IT IS THE SOLE
37 REMEDY.

1 (B) SUBJECT TO SUBSECTION (C) OF THIS SECTION, IF PERFORMANCE OF AN
2 EXCLUSIVE OR LIMITED REMEDY CAUSES THE REMEDY TO FAIL OF ITS ESSENTIAL
3 PURPOSE, THE AGGRIEVED PARTY MAY PURSUE OTHER REMEDIES UNDER THIS
4 TITLE.

5 (C) FAILURE OR UNCONSCIONABILITY OF AN AGREED EXCLUSIVE OR
6 LIMITED REMEDY MAKES A TERM DISCLAIMING OR LIMITING CONSEQUENTIAL OR
7 INCIDENTAL DAMAGES UNENFORCEABLE UNLESS THE AGREEMENT EXPRESSLY
8 MAKES THE DISCLAIMER OR LIMITATION INDEPENDENT OF THE AGREED REMEDY.

9 (D) CONSEQUENTIAL DAMAGES AND INCIDENTAL DAMAGES MAY BE
10 EXCLUDED OR LIMITED BY AGREEMENT UNLESS THE EXCLUSION OR LIMITATION IS
11 UNCONSCIONABLE. EXCLUSION OR LIMITATION OF CONSEQUENTIAL DAMAGES FOR
12 PERSONAL INJURY IN A CONSUMER CONTRACT FOR A COMPUTER PROGRAM THAT IS
13 SUBJECT TO THIS TITLE AND IS CONTAINED IN CONSUMER GOODS IS PRIMA FACIE
14 UNCONSCIONABLE, BUT EXCLUSION OR LIMITATION OF DAMAGES FOR A
15 COMMERCIAL LOSS IS NOT UNCONSCIONABLE.

16 21-804. LIQUIDATION OF DAMAGES.

17 (A) DAMAGES FOR BREACH OF CONTRACT BY EITHER PARTY MAY BE
18 LIQUIDATED BY AGREEMENT IN AN AMOUNT THAT IS REASONABLE IN LIGHT OF:

19 (1) THE LOSS ANTICIPATED AT THE TIME OF CONTRACTING;

20 (2) THE ACTUAL LOSS; OR

21 (3) THE ACTUAL OR ANTICIPATED DIFFICULTIES OF PROVING LOSS IN
22 THE EVENT OF BREACH.

23 (B) IF A TERM LIQUIDATING DAMAGES IS UNENFORCEABLE UNDER THIS
24 SUBSECTION, THE AGGRIEVED PARTY MAY PURSUE THE REMEDIES PROVIDED IN
25 THIS TITLE, EXCEPT AS LIMITED BY OTHER TERMS OF THE CONTRACT.

26 (C) IF A PARTY JUSTIFIABLY WITHHOLDS DELIVERY OF COPIES BECAUSE OF
27 THE OTHER PARTY'S BREACH OF CONTRACT, THE PARTY IN BREACH IS ENTITLED TO
28 RESTITUTION FOR ANY AMOUNT BY WHICH THE SUM OF THE PAYMENTS IT MADE
29 FOR THE COPIES EXCEEDS THE AMOUNT OF THE LIQUIDATED DAMAGES PAYABLE TO
30 THE AGGRIEVED PARTY IN ACCORDANCE WITH SUBSECTION (A) OF THIS SECTION.
31 THE RIGHT TO RESTITUTION IS SUBJECT TO OFFSET TO THE EXTENT THAT THE
32 AGGRIEVED PARTY ESTABLISHES:

33 (1) A RIGHT TO RECOVER DAMAGES OTHER THAN UNDER SUBSECTION
34 (A) OF THIS SECTION; AND

35 (2) THE AMOUNT OR VALUE OF ANY BENEFITS RECEIVED BY THE PARTY
36 IN BREACH, DIRECTLY OR INDIRECTLY, BY REASON OF THE CONTRACT.

1 (D) A TERM THAT DOES NOT LIQUIDATE DAMAGES, BUT THAT LIMITS
2 DAMAGES AVAILABLE TO THE AGGRIEVED PARTY, MUST BE EVALUATED UNDER §
3 21-803 OF THIS SUBTITLE.

4 21-805. LIMITATION OF ACTIONS.

5 (A) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (B) OF THIS SECTION,
6 AN ACTION FOR BREACH OF CONTRACT MUST BE COMMENCED WITHIN THE LATER
7 OF FOUR YEARS AFTER THE RIGHT OF ACTION ACCRUES OR ONE YEAR AFTER THE
8 BREACH WAS OR SHOULD HAVE BEEN DISCOVERED, BUT NOT LATER THAN FIVE
9 YEARS AFTER THE RIGHT OF ACTION ACCRUES.

10 (B) IF THE ORIGINAL AGREEMENT OF THE PARTIES ALTERS THE PERIOD OF
11 LIMITATIONS, THE FOLLOWING RULES APPLY:

12 (1) THE PARTIES MAY REDUCE THE PERIOD OF LIMITATION TO NOT
13 LESS THAN ONE YEAR AFTER THE RIGHT OF ACTION ACCRUES BUT MAY NOT
14 EXTEND IT.

15 (2) IN A CONSUMER CONTRACT, THE PERIOD OF LIMITATION MAY NOT
16 BE REDUCED.

17 (C) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (D) OF THIS SECTION, A
18 RIGHT OF ACTION ACCRUES WHEN THE ACT OR OMISSION CONSTITUTING A BREACH
19 OF CONTRACT OCCURS, EVEN IF THE AGGRIEVED PARTY DID NOT KNOW OF THE
20 BREACH. A RIGHT OF ACTION FOR BREACH OF WARRANTY ACCRUES WHEN TENDER
21 OF DELIVERY OF A COPY PURSUANT TO § 21-606 OF THIS TITLE, OR ACCESS TO THE
22 INFORMATION, OCCURS. HOWEVER, IF THE WARRANTY EXPRESSLY EXTENDS TO
23 FUTURE PERFORMANCE OF THE INFORMATION OR A COPY, THE RIGHT OF ACTION
24 ACCRUES WHEN THE PERFORMANCE FAILS TO CONFORM TO THE WARRANTY, BUT
25 NOT LATER THAN THE DATE THE WARRANTY EXPIRES.

26 (D) IN THE FOLLOWING CASES, A RIGHT OF ACTION ACCRUES ON THE LATER
27 OF THE DATE THE ACT OR OMISSION CONSTITUTING THE BREACH OF CONTRACT
28 OCCURRED OR THE DATE ON WHICH IT WAS OR SHOULD HAVE BEEN DISCOVERED BY
29 THE AGGRIEVED PARTY, BUT NOT EARLIER THAN THE DATE FOR DELIVERY OF A
30 COPY IF THE CLAIM RELATES TO INFORMATION IN THE COPY:

31 (1) A BREACH OF WARRANTY AGAINST THIRD-PARTY CLAIMS FOR:

32 (A) INFRINGEMENT OR MISAPPROPRIATION; OR

33 (B) LIBEL, SLANDER, OR THE LIKE;

34 (2) A BREACH OF CONTRACT INVOLVING A PARTY'S DISCLOSURE OR
35 MISUSE OF CONFIDENTIAL INFORMATION; OR

36 (3) A FAILURE TO PROVIDE AN INDEMNITY OR TO PERFORM ANOTHER
37 OBLIGATION TO PROTECT OR DEFEND AGAINST A THIRD-PARTY CLAIM.

1 (E) IF AN ACTION COMMENCED WITHIN THE PERIOD OF LIMITATION IS SO
2 CONCLUDED AS TO LEAVE AVAILABLE A REMEDY BY ANOTHER ACTION FOR THE
3 SAME BREACH OF CONTRACT, THE OTHER ACTION MAY BE COMMENCED AFTER
4 EXPIRATION OF THE PERIOD OF LIMITATION IF THE ACTION IS COMMENCED WITHIN
5 SIX MONTHS AFTER CONCLUSION OF THE FIRST ACTION, UNLESS THE ACTION WAS
6 CONCLUDED AS A RESULT OF VOLUNTARY DISCONTINUANCE OR DISMISSAL FOR
7 FAILURE OR NEGLECT TO PROSECUTE.

8 (F) THIS SECTION DOES NOT ALTER THE LAW ON TOLLING OF THE STATUTE
9 OF LIMITATIONS AND DOES NOT APPLY TO A RIGHT OF ACTION THAT ACCRUED
10 BEFORE THE EFFECTIVE DATE OF THIS TITLE.

11 21-806. REMEDIES FOR FRAUD.

12 REMEDIES FOR MATERIAL MISREPRESENTATION OR FRAUD INCLUDE ALL
13 REMEDIES AVAILABLE UNDER THIS TITLE FOR NONFRAUDULENT BREACH OF
14 CONTRACT.

15 DAMAGES.

16 21-807. MEASUREMENT OF DAMAGES IN GENERAL.

17 (A) EXCEPT AS OTHERWISE PROVIDED IN THE CONTRACT, AN AGGRIEVED
18 PARTY MAY NOT RECOVER COMPENSATION FOR THAT PART OF A LOSS WHICH COULD
19 HAVE BEEN AVOIDED BY TAKING MEASURES REASONABLE UNDER THE
20 CIRCUMSTANCES TO AVOID OR REDUCE LOSS. THE BURDEN OF ESTABLISHING A
21 FAILURE OF THE AGGRIEVED PARTY TO TAKE MEASURES REASONABLE UNDER THE
22 CIRCUMSTANCES IS ON THE PARTY IN BREACH OF CONTRACT.

23 (B) A PARTY MAY NOT RECOVER:

24 (1) CONSEQUENTIAL DAMAGES FOR LOSSES RESULTING FROM THE
25 CONTENT OF PUBLISHED INFORMATIONAL CONTENT UNLESS THE AGREEMENT
26 EXPRESSLY SO PROVIDES; OR

27 (2) DAMAGES THAT ARE SPECULATIVE.

28 (C) THE REMEDY FOR BREACH OF CONTRACT FOR DISCLOSURE OR MISUSE OF
29 INFORMATION THAT IS A TRADE SECRET OR IN WHICH THE AGGRIEVED PARTY HAS A
30 RIGHT OF CONFIDENTIALITY INCLUDES AS CONSEQUENTIAL DAMAGES
31 COMPENSATION FOR THE BENEFIT OBTAINED AS A RESULT OF THE BREACH.

32 (D) FOR PURPOSES OF THIS TITLE, MARKET VALUE IS DETERMINED AS OF
33 THE DATE OF BREACH OF CONTRACT AND THE PLACE FOR PERFORMANCE.

34 (E) DAMAGES OR EXPENSES THAT RELATE TO EVENTS AFTER THE DATE OF
35 ENTRY OF JUDGMENT MUST BE REDUCED TO THEIR PRESENT VALUE AS OF THAT
36 DATE. IN THIS SUBSECTION, "PRESENT VALUE" MEANS THE AMOUNT, AS OF A DATE
37 CERTAIN, OF ONE OR MORE SUMS PAYABLE IN THE FUTURE OR THE VALUE OF ONE
38 OR MORE PERFORMANCES DUE IN THE FUTURE, DISCOUNTED TO THE DATE

1 CERTAIN. THE DISCOUNT IS DETERMINED BY THE INTEREST RATE SPECIFIED BY
2 THE PARTIES IN THEIR AGREEMENT UNLESS THAT RATE WAS MANIFESTLY
3 UNREASONABLE WHEN THE AGREEMENT WAS ENTERED INTO. OTHERWISE, THE
4 DISCOUNT IS DETERMINED BY A COMMERCIALY REASONABLE RATE THAT TAKES
5 INTO ACCOUNT THE CIRCUMSTANCES OF EACH CASE WHEN THE AGREEMENT WAS
6 ENTERED INTO.

7 21-808. LICENSOR'S DAMAGES.

8 (A) IN THIS SECTION, "SUBSTITUTE TRANSACTION" MEANS A TRANSACTION
9 BY THE LICENSOR WHICH WOULD NOT HAVE BEEN POSSIBLE EXCEPT FOR THE
10 LICENSEE'S BREACH AND WHICH TRANSACTION IS FOR THE SAME INFORMATION OR
11 INFORMATIONAL RIGHTS WITH THE SAME CONTRACTUAL USE TERMS AS THE
12 TRANSACTION TO WHICH THE LICENSEE'S BREACH APPLIES.

13 (B) EXCEPT AS OTHERWISE PROVIDED IN § 21-807 OF THIS SUBTITLE, A
14 BREACH OF CONTRACT BY A LICENSEE ENTITLES THE LICENSOR TO RECOVER THE
15 FOLLOWING COMPENSATION FOR LOSSES RESULTING IN THE ORDINARY COURSE
16 FROM THE BREACH, LESS EXPENSES AVOIDED AS A RESULT OF THE BREACH, TO THE
17 EXTENT NOT OTHERWISE ACCOUNTED FOR UNDER THIS SUBSECTION:

18 (1) DAMAGES MEASURED IN ANY COMBINATION OF THE FOLLOWING
19 WAYS BUT NOT TO EXCEED THE CONTRACT FEE AND THE MARKET VALUE OF OTHER
20 CONSIDERATION REQUIRED UNDER THE CONTRACT FOR THE PERFORMANCE THAT
21 WAS THE SUBJECT OF THE BREACH:

22 (A) THE AMOUNT OF ACCRUED AND UNPAID CONTRACT FEES AND
23 THE MARKET VALUE OF OTHER CONSIDERATION EARNED BUT NOT RECEIVED FOR:

24 (I) ANY PERFORMANCE ACCEPTED BY THE LICENSEE; AND

25 (II) ANY PERFORMANCE TO WHICH § 21-604 OF THIS TITLE
26 APPLIES;

27 (B) FOR PERFORMANCES NOT GOVERNED BY SUBPARAGRAPH (A)
28 OF THIS PARAGRAPH, IF THE LICENSEE REPUDIATED OR WRONGFULLY REFUSED
29 THE PERFORMANCE OR THE LICENSOR RIGHTFULLY CANCELED AND THE BREACH
30 MAKES POSSIBLE A SUBSTITUTE TRANSACTION, THE AMOUNT OF LOSS AS
31 DETERMINED BY CONTRACT FEES AND THE MARKET VALUE OF OTHER
32 CONSIDERATION REQUIRED UNDER THE CONTRACT FOR THE PERFORMANCE LESS:

33 (I) THE CONTRACT FEES AND MARKET VALUE OF OTHER
34 CONSIDERATION RECEIVED FROM AN ACTUAL AND COMMERCIALY REASONABLE
35 SUBSTITUTE TRANSACTION ENTERED INTO BY THE LICENSOR IN GOOD FAITH AND
36 WITHOUT UNREASONABLE DELAY; OR

37 (II) THE MARKET VALUE OF A COMMERCIALY REASONABLE
38 HYPOTHETICAL SUBSTITUTE TRANSACTION;

1 (C) FOR PERFORMANCES NOT GOVERNED BY SUBPARAGRAPH (A)
2 OF THIS PARAGRAPH, IF THE BREACH DOES NOT MAKE POSSIBLE A SUBSTITUTE
3 TRANSACTION, LOST PROFIT, INCLUDING REASONABLE OVERHEAD, THAT THE
4 LICENSOR WOULD HAVE REALIZED ON ACCEPTANCE AND FULL PAYMENT FOR
5 PERFORMANCE THAT WAS NOT DELIVERED TO THE LICENSEE BECAUSE OF THE
6 LICENSEE'S BREACH; OR

7 (D) DAMAGES CALCULATED IN ANY REASONABLE MANNER; AND

8 (2) CONSEQUENTIAL AND INCIDENTAL DAMAGES.

9 21-809. LICENSEE'S DAMAGES.

10 (A) SUBJECT TO SUBSECTION (B) OF THIS SECTION AND EXCEPT AS
11 OTHERWISE PROVIDED IN § 21-807 OF THIS SUBTITLE, A BREACH OF CONTRACT BY A
12 LICENSOR ENTITLES THE LICENSEE TO RECOVER THE FOLLOWING COMPENSATION
13 FOR LOSSES RESULTING IN THE ORDINARY COURSE FROM THE BREACH OR, IF
14 APPROPRIATE, AS TO THE WHOLE CONTRACT, LESS EXPENSES AVOIDED AS A RESULT
15 OF THE BREACH TO THE EXTENT NOT OTHERWISE ACCOUNTED FOR UNDER THIS
16 SECTION:

17 (1) DAMAGES MEASURED IN ANY COMBINATION OF THE FOLLOWING
18 WAYS, BUT NOT TO EXCEED THE MARKET VALUE OF THE PERFORMANCE THAT WAS
19 THE SUBJECT OF THE BREACH PLUS RESTITUTION OF ANY AMOUNTS PAID FOR
20 PERFORMANCE NOT RECEIVED AND NOT ACCOUNTED FOR WITHIN THE INDICATED
21 RECOVERY:

22 (A) WITH RESPECT TO PERFORMANCE THAT HAS BEEN ACCEPTED
23 AND THE ACCEPTANCE NOT RIGHTFULLY REVOKED, THE VALUE OF THE
24 PERFORMANCE REQUIRED LESS THE VALUE OF THE PERFORMANCE ACCEPTED AS
25 OF THE TIME AND PLACE OF ACCEPTANCE;

26 (B) WITH RESPECT TO PERFORMANCE THAT HAS NOT BEEN
27 RENDERED OR THAT WAS RIGHTFULLY REFUSED OR ACCEPTANCE OF WHICH WAS
28 RIGHTFULLY REVOKED:

29 (I) THE AMOUNT OF ANY PAYMENTS MADE AND THE VALUE
30 OF OTHER CONSIDERATION GIVEN TO THE LICENSOR WITH RESPECT TO THAT
31 PERFORMANCE AND NOT PREVIOUSLY RETURNED TO THE LICENSEE;

32 (II) THE MARKET VALUE OF THE PERFORMANCE LESS THE
33 CONTRACT FEE FOR THAT PERFORMANCE; OR

34 (III) THE COST OF A COMMERCIALY REASONABLE
35 SUBSTITUTE TRANSACTION LESS THE CONTRACT FEE UNDER THE BREACHED
36 CONTRACT, IF THE SUBSTITUTE TRANSACTION WAS ENTERED INTO BY THE
37 LICENSEE IN GOOD FAITH AND WITHOUT UNREASONABLE DELAY FOR
38 SUBSTANTIALLY SIMILAR INFORMATION WITH THE SAME CONTRACTUAL USE
39 TERMS; OR

1 (C) DAMAGES CALCULATED IN ANY REASONABLE MANNER; AND

2 (2) INCIDENTAL AND CONSEQUENTIAL DAMAGES.

3 (B) THE AMOUNT OF DAMAGES MUST BE REDUCED BY ANY UNPAID
4 CONTRACT FEES FOR PERFORMANCE BY THE LICENSOR WHICH HAS BEEN
5 ACCEPTED BY THE LICENSEE AND AS TO WHICH THE ACCEPTANCE HAS NOT BEEN
6 RIGHTFULLY REVOKED.

7 21-810. RECOUPMENT.

8 (A) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (B) OF THIS SECTION,
9 AN AGGRIEVED PARTY, UPON NOTIFYING THE PARTY IN BREACH OF CONTRACT OF
10 ITS INTENTION TO DO SO, MAY DEDUCT ALL OR ANY PART OF THE DAMAGES
11 RESULTING FROM THE BREACH FROM ANY PAYMENTS STILL DUE UNDER THE SAME
12 CONTRACT.

13 (B) IF A BREACH OF CONTRACT IS NOT MATERIAL WITH REFERENCE TO THE
14 PARTICULAR PERFORMANCE, AN AGGRIEVED PARTY MAY EXERCISE ITS RIGHTS
15 UNDER SUBSECTION (A) OF THIS SECTION ONLY IF THE AGREEMENT DOES NOT
16 REQUIRE FURTHER AFFIRMATIVE PERFORMANCE BY THE OTHER PARTY AND THE
17 AMOUNT OF DAMAGES DEDUCTED CAN BE READILY LIQUIDATED UNDER THE
18 AGREEMENT.

19 REMEDIES RELATED TO PERFORMANCE.

20 21-811. SPECIFIC PERFORMANCE.

21 (A) SPECIFIC PERFORMANCE MAY BE ORDERED:

22 (1) IF THE AGREEMENT PROVIDES FOR THAT REMEDY, OTHER THAN AN
23 OBLIGATION FOR THE PAYMENT OF MONEY;

24 (2) IF THE CONTRACT WAS NOT FOR PERSONAL SERVICES AND THE
25 AGREED PERFORMANCE IS UNIQUE; OR

26 (3) IN OTHER PROPER CIRCUMSTANCES.

27 (B) AN ORDER FOR SPECIFIC PERFORMANCE MAY CONTAIN ANY CONDITIONS
28 CONSIDERED JUST AND MUST PROVIDE ADEQUATE SAFEGUARDS CONSISTENT WITH
29 THE CONTRACT TO PROTECT THE CONFIDENTIALITY OF INFORMATION,
30 INFORMATION, AND INFORMATIONAL RIGHTS OF BOTH PARTIES.

31 21-812. COMPLETING PERFORMANCE.

32 (A) ON BREACH OF CONTRACT BY A LICENSEE, THE LICENSOR MAY:

33 (1) IDENTIFY TO THE CONTRACT ANY CONFORMING COPY NOT ALREADY
34 IDENTIFIED IF, AT THE TIME THE LICENSOR LEARNED OF THE BREACH, THE COPY
35 WAS IN ITS POSSESSION;

1 (2) IN THE EXERCISE OF REASONABLE COMMERCIAL JUDGMENT FOR
2 PURPOSES OF AVOIDING LOSS AND EFFECTIVE REALIZATION ON EFFORT OR
3 INVESTMENT, COMPLETE THE INFORMATION AND IDENTIFY IT TO THE CONTRACT,
4 CEASE WORK ON IT, RELICENSE OR DISPOSE OF IT, OR PROCEED IN ANY OTHER
5 COMMERCIALY REASONABLE MANNER; AND

6 (3) PURSUE ANY REMEDY FOR BREACH THAT HAS NOT BEEN WAIVED.

7 (B) ON BREACH BY A LICENSEE, BOTH PARTIES REMAIN BOUND BY ALL
8 CONTRACTUAL USE TERMS, BUT THE CONTRACTUAL USE TERMS DO NOT APPLY TO
9 INFORMATION OR COPIES PROPERLY RECEIVED OR OBTAINED FROM ANOTHER
10 SOURCE.

11 21-813. CONTINUING USE.

12 ON BREACH OF CONTRACT BY A LICENSOR, THE FOLLOWING RULES APPLY:

13 (1) A LICENSEE THAT HAS NOT CANCELED THE CONTRACT MAY
14 CONTINUE TO USE THE INFORMATION AND INFORMATIONAL RIGHTS UNDER THE
15 CONTRACT. IF THE LICENSEE CONTINUES TO USE THE INFORMATION OR
16 INFORMATIONAL RIGHTS, THE LICENSEE IS BOUND BY ALL TERMS OF THE
17 CONTRACT, INCLUDING CONTRACTUAL USE TERMS, OBLIGATIONS NOT TO COMPETE,
18 AND OBLIGATIONS TO PAY CONTRACT FEES.

19 (2) THE LICENSEE MAY PURSUE ANY REMEDY FOR BREACH WHICH HAS
20 NOT BEEN WAIVED.

21 (3) THE LICENSOR'S RIGHTS REMAIN IN EFFECT BUT ARE SUBJECT TO
22 THE LICENSEE'S REMEDY FOR BREACH, INCLUDING ANY RIGHT OF RECOUPMENT OR
23 SETOFF.

24 21-814. DISCONTINUING ACCESS.

25 (A) SUBJECT TO THE PROVISIONS OF SUBSECTION (B) OF THIS SECTION, ON
26 MATERIAL BREACH OF AN ACCESS CONTRACT OR IF THE AGREEMENT SO PROVIDES,
27 A PARTY MAY DISCONTINUE ALL CONTRACTUAL RIGHTS OF ACCESS OF THE PARTY
28 IN BREACH AND DIRECT ANY PERSON THAT IS ASSISTING THE PERFORMANCE OF
29 THE CONTRACT TO DISCONTINUE ITS PERFORMANCE.

30 (B) EXCEPT FOR DISCONTINUATION TO MEET A STATUTORY OR LEGAL
31 REQUIREMENT, BEFORE DISCONTINUING ALL CONTRACTUAL RIGHTS OF ACCESS IN
32 AN ACCESS CONTRACT, A PARTY SHALL GIVE NOTICE IN A RECORD TO THE PERSON
33 DESIGNATED BY THE AGREEMENT OR LICENSE STATING:

34 (1) THAT THE PARTY INTENDS TO DISCONTINUE ALL CONTRACTUAL
35 RIGHTS OF ACCESS IN THE ACCESS CONTRACT ON OR AFTER 3 DAYS FOLLOWING
36 RECEIPT BY THE OTHER PARTY OF THE NOTICE;

37 (2) THE NATURE OF THE CLAIMED BREACH THAT ENTITLES THE PARTY
38 TO DISCONTINUE ALL CONTRACTUAL RIGHTS OF ACCESS IN THE ACCESS CONTRACT;

1 (3) THE NAME, TITLE, ADDRESS, INCLUDING DIRECT TELEPHONE
2 NUMBER, FACSIMILE NUMBER, OR E-MAIL ADDRESS, TO WHICH THE PARTY MAY
3 COMMUNICATE CONCERNING THE CLAIMED BREACH; AND

4 (4) THAT THE PARTY IN BREACH HAS AN OPPORTUNITY TO CURE AS
5 PROVIDED IN § 21-703 OF THIS TITLE.

6 (C) THE AGREEMENT SHALL CONTAIN A TERM PROVIDING FOR THE NOTICE
7 IN SUBSECTION (B) OF THIS SECTION THAT:

8 (1) STATES THE NAME OF THE PERSON DESIGNATED TO RECEIVE THE
9 NOTICE AND THE MANNER IN WHICH THE NOTICE SHALL BE GIVEN AND THE PLACE
10 TO WHICH NOTICE MUST BE SENT TO THAT PERSON; AND

11 (2) PROVIDES A SIMPLE PROCEDURE FOR THE LICENSEE TO CHANGE
12 THE DESIGNATED PERSON OR PLACE.

13 21-815. RIGHT TO POSSESSION AND PREVENT USE.

14 (A) ON CANCELLATION OF A LICENSE, THE LICENSOR HAS THE RIGHT:

15 (1) TO POSSESSION OF ALL COPIES OF THE LICENSED INFORMATION IN
16 THE POSSESSION OR CONTROL OF THE LICENSEE AND ANY OTHER MATERIALS
17 PERTAINING TO THAT INFORMATION WHICH BY CONTRACT ARE TO BE RETURNED OR
18 DELIVERED BY THE LICENSEE TO THE LICENSOR; AND

19 (2) TO PREVENT THE CONTINUED EXERCISE OF CONTRACTUAL AND
20 INFORMATIONAL RIGHTS IN THE LICENSED INFORMATION UNDER THE LICENSE.

21 (B) EXCEPT AS OTHERWISE PROVIDED IN § 21-814 OF THIS SUBTITLE, A
22 LICENSOR MAY EXERCISE ITS RIGHTS UNDER SUBSECTION (A) OF THIS SECTION
23 WITHOUT JUDICIAL PROCESS ONLY IF THIS CAN BE DONE:

24 (1) WITHOUT A BREACH OF THE PEACE;

25 (2) WITHOUT A FORESEEABLE RISK OF PERSONAL INJURY OR
26 SIGNIFICANT PHYSICAL DAMAGE TO INFORMATION OR PROPERTY OTHER THAN THE
27 LICENSED INFORMATION; AND

28 (3) IN ACCORDANCE WITH § 21-816 OF THIS SUBTITLE.

29 (C) IN A JUDICIAL PROCEEDING, THE COURT MAY ENJOIN A LICENSEE IN
30 BREACH OF CONTRACT FROM CONTINUED USE OF THE INFORMATION AND
31 INFORMATIONAL RIGHTS AND MAY ORDER THE LICENSOR OR A JUDICIAL OFFICER
32 TO TAKE THE STEPS DESCRIBED IN § 21-618 OF THIS TITLE.

33 (D) A PARTY HAS A RIGHT TO AN EXPEDITED JUDICIAL HEARING ON A
34 REQUEST FOR PREJUDGMENT RELIEF TO ENFORCE OR PROTECT ITS RIGHTS UNDER
35 THIS SECTION.

1 (E) THE RIGHT TO POSSESSION UNDER THIS SECTION IS NOT AVAILABLE TO
2 THE EXTENT THAT THE INFORMATION, BEFORE BREACH OF THE LICENSE AND IN
3 THE ORDINARY COURSE OF PERFORMANCE UNDER THE LICENSE, WAS SO ALTERED
4 OR COMMINGLED THAT THE INFORMATION IS NO LONGER IDENTIFIABLE OR
5 SEPARABLE.

6 (F) A LICENSEE THAT PROVIDES INFORMATION TO A LICENSOR SUBJECT TO
7 CONTRACTUAL USE TERMS HAS THE RIGHTS AND IS SUBJECT TO THE LIMITATIONS
8 OF A LICENSOR UNDER THIS SECTION WITH RESPECT TO THE INFORMATION IT
9 PROVIDES.

10 21-816. LIMITATIONS ON ELECTRONIC SELF-HELP.

11 (A) IN THIS SECTION, "ELECTRONIC SELF-HELP" MEANS THE USE OF
12 ELECTRONIC MEANS TO EXERCISE A LICENSOR'S RIGHTS UNDER § 21-815(B) OF THIS
13 SUBTITLE.

14 (B) NOTWITHSTANDING THE PROVISIONS OF THIS SECTION, ELECTRONIC
15 SELF-HELP IS PROHIBITED IN MASS-MARKET TRANSACTIONS.

16 (C) PRIOR TO CANCELLATION OF A LICENSE IN WHICH THE PARTIES HAVE
17 AGREED TO PERMIT THE USE OF ELECTRONIC SELF-HELP, THE LICENSOR SHALL
18 PROVIDE A LICENSEE WITH THE OPPORTUNITY TO CURE THE CLAIMED BREACH
19 GIVING RISE TO THE CANCELLATION AS PROVIDED IN § 21-703 OF THIS TITLE.

20 ~~(B)~~ (D) ON CANCELLATION OF A LICENSE, ELECTRONIC SELF-HELP IS NOT
21 PERMITTED, EXCEPT AS PROVIDED IN THIS SECTION.

22 ~~(C)~~ (E) IF THE PARTIES AGREE TO PERMIT ELECTRONIC SELF-HELP, A
23 LICENSEE SHALL SEPARATELY MANIFEST ASSENT TO A TERM AUTHORIZING USE OF
24 ELECTRONIC SELF-HELP. THE TERM MUST:

25 (1) PROVIDE FOR NOTICE OF EXERCISE AS PROVIDED IN SUBSECTION
26 ~~(D)~~ (E) OF THIS SECTION;

27 (2) STATE THE NAME OF THE PERSON DESIGNATED BY THE LICENSEE
28 TO WHICH NOTICE OF EXERCISE MUST BE GIVEN AND THE MANNER IN WHICH
29 NOTICE MUST BE GIVEN AND PLACE TO WHICH NOTICE MUST BE SENT TO THAT
30 PERSON; AND

31 (3) PROVIDE A SIMPLE PROCEDURE FOR THE LICENSEE TO CHANGE THE
32 DESIGNATED PERSON OR PLACE.

33 ~~(D)~~ (F) BEFORE RESORTING TO ELECTRONIC SELF-HELP AUTHORIZED BY A
34 TERM OF THE LICENSE, THE LICENSOR SHALL GIVE NOTICE IN A RECORD TO THE
35 PERSON DESIGNATED BY THE LICENSEE STATING:

1 (1) THAT THE LICENSOR INTENDS TO RESORT TO ELECTRONIC
2 SELF-HELP AS A REMEDY ON OR AFTER ~~45~~ 30 DAYS FOLLOWING RECEIPT BY THE
3 LICENSEE OF THE NOTICE;

4 (2) THE NATURE OF THE CLAIMED BREACH THAT ENTITLES THE
5 LICENSOR TO RESORT TO SELF-HELP; AND

6 (3) THE NAME, TITLE, AND ADDRESS, INCLUDING DIRECT TELEPHONE
7 NUMBER, FACSIMILE NUMBER, OR E-MAIL ADDRESS, TO WHICH THE LICENSEE MAY
8 COMMUNICATE CONCERNING THE CLAIMED BREACH.

9 ~~(E)~~ (G) A LICENSEE MAY RECOVER DIRECT AND INCIDENTAL DAMAGES
10 CAUSED BY WRONGFUL USE OF ELECTRONIC SELF-HELP. THE LICENSEE MAY ALSO
11 RECOVER CONSEQUENTIAL DAMAGES FOR WRONGFUL USE OF ELECTRONIC
12 SELF-HELP, WHETHER OR NOT THOSE DAMAGES ARE EXCLUDED BY THE TERMS OF
13 THE LICENSE, IF:

14 (1) WITHIN THE PERIOD SPECIFIED IN SUBSECTION ~~(D)(4)~~ (F)(1) OF THIS
15 SECTION, THE LICENSEE GIVES NOTICE TO THE LICENSOR'S DESIGNATED PERSON
16 DESCRIBING IN GOOD FAITH THE GENERAL NATURE AND MAGNITUDE OF DAMAGES;

17 (2) THE LICENSOR HAS REASON TO KNOW THE DAMAGES OF THE TYPE
18 DESCRIBED IN SUBSECTION ~~(F)~~ (H) OF THIS SECTION MAY RESULT FROM THE
19 WRONGFUL USE OF ELECTRONIC SELF-HELP; OR

20 (3) THE LICENSOR DOES NOT PROVIDE THE NOTICE REQUIRED IN
21 SUBSECTION ~~(D)~~ (F) OF THIS SECTION.

22 ~~(F)~~ (H) EVEN IF THE LICENSOR COMPLIES WITH SUBSECTIONS ~~(C)~~ (E) AND
23 ~~(D)~~ (F) OF THIS SECTION, ELECTRONIC SELF-HELP MAY NOT BE USED IF THE
24 LICENSOR HAS REASON TO KNOW THAT ITS USE WILL RESULT IN SUBSTANTIAL
25 INJURY OR HARM TO THE PUBLIC HEALTH OR SAFETY OR GRAVE HARM TO THE
26 PUBLIC INTEREST SUBSTANTIALLY AFFECTING THIRD PERSONS NOT INVOLVED IN
27 THE DISPUTE.

28 ~~(G)~~ (I) A COURT OF COMPETENT JURISDICTION OF THIS STATE SHALL GIVE
29 PROMPT CONSIDERATION TO A PETITION FOR INJUNCTIVE RELIEF AND MAY ENJOIN,
30 TEMPORARILY OR PERMANENTLY, THE LICENSOR FROM EXERCISING ELECTRONIC
31 SELF-HELP EVEN IF AUTHORIZED BY A LICENSE TERM OR ENJOIN THE LICENSEE
32 FROM MISAPPROPRIATION OR MISUSE OF COMPUTER INFORMATION, AS MAY BE
33 APPROPRIATE, UPON CONSIDERATION OF THE FOLLOWING:

34 (1) GRAVE HARM OF THE KINDS STATED IN SUBSECTION ~~(F)~~ (H) OF THIS
35 SECTION, OR THE THREAT THEREOF, WHETHER OR NOT THE LICENSOR HAS REASON
36 TO KNOW OF THOSE CIRCUMSTANCES;

37 (2) IRREPARABLE HARM OR THREAT OF IRREPARABLE HARM TO THE
38 LICENSEE OR LICENSOR;

1 (3) THAT THE PARTY SEEKING THE RELIEF IS MORE LIKELY THAN NOT
2 TO SUCCEED UNDER ITS CLAIM WHEN IT IS FINALLY ADJUDICATED;

3 (4) THAT ALL OF THE CONDITIONS TO ENTITLE A PERSON TO THE
4 RELIEF UNDER THE LAWS OF THIS STATE HAVE BEEN FULFILLED; AND

5 (5) THAT THE PARTY THAT MAY BE ADVERSELY AFFECTED IS
6 ADEQUATELY PROTECTED AGAINST LOSS, INCLUDING A LOSS BECAUSE OF
7 MISAPPROPRIATION OR MISUSE OF COMPUTER INFORMATION, THAT IT MAY SUFFER
8 BECAUSE THE RELIEF IS GRANTED UNDER THIS TITLE.

9 ~~(H)~~ (J) BEFORE BREACH OF CONTRACT, RIGHTS OR OBLIGATIONS UNDER
10 THIS SECTION MAY NOT BE WAIVED OR VARIED BY AN AGREEMENT, ~~BT~~ EXCEPT
11 THAT THE PARTIES MAY PROHIBIT USE OF ELECTRONIC SELF-HELP AND THE
12 PARTIES, IN THE TERM REFERRED TO IN SUBSECTION ~~(C)~~ (E) OF THIS SECTION, MAY
13 SPECIFY ADDITIONAL PROVISIONS MORE FAVORABLE TO THE LICENSEE.

14 ~~(H)~~ (K) THIS SECTION DOES NOT APPLY IF THE LICENSOR OBTAINS
15 POSSESSION OF A COPY WITHOUT A BREACH OF THE PEACE AND THE ELECTRONIC
16 SELF-HELP IS USED SOLELY WITH RESPECT TO THAT COPY.

17 SECTION 2. AND BE IT FURTHER ENACTED, That this Act does not affect
18 the digital signature requirements of the digital signature pilot program established
19 under § 8-504 of the State Government Article.

20 SECTION 3. AND BE IT FURTHER ENACTED, That if any provision of this
21 Act or the application thereof to any person or circumstance is held invalid for any
22 reason in a court of competent jurisdiction, the invalidity does not affect other
23 provisions or any other application of this Act which can be given effect without the
24 invalid provision or application, and for this purpose the provisions of this Act are
25 declared severable.

26 SECTION 4. AND BE IT FURTHER ENACTED, That a presently existing
27 obligation or contract right may not be impaired in any way by this Act.

28 SECTION 5. AND BE IT FURTHER ENACTED, That this Act shall be
29 construed only prospectively and may not be applied or interpreted to have any effect
30 on or application to any right of action that accrues before the effective date of this
31 Act.

32 SECTION 6. AND BE IT FURTHER ENACTED, That this Act shall take effect
33 October 1, 2000.