

SENATE BILL 142

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2000 Regular Session
(01r1478)

ENROLLED BILL
-- Finance/Economic Matters --

Introduced by **Senators Miller, Bromwell, Middleton, Teitelbaum, and Hogan**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this
____ day of _____ at _____ o'clock, ____ M.

President.

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; specifying that provisions of certain consumer protection laws
5 apply to certain consumer contracts; specifying that provisions of law granting
6 jurisdiction over a person in a cause of action include certain computer
7 information and computer information transactions; establishing certain
8 provisions of law applicable to agreements to create, modify, transfer, or
9 distribute computer software, computer data and databases, Internet and online
10 information, and certain other computer information and products under certain
11 circumstances; establishing certain provisions of law applicable to licensing of
12 computer information under certain circumstances; establishing certain
13 provisions of law applicable to electronic commerce and commercial transactions
14 carried out electronically or over the Internet under certain circumstances;
15 authorizing parties to an agreement within the scope of this Act to expressly
16 agree that certain provisions of this Act do not apply to the agreement;
17 prohibiting parties to an agreement within the scope of this Act from agreeing

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

43 BY repealing and reenacting, with amendments,
44 Article - Commercial Law
45 Section 13-101(c)
46 Annotated Code of Maryland
47 (1990 Replacement Volume and 1999 Supplement)

1 BY adding to
 2 Article - Commercial Law
 3 Section 13-101.1; 21-101 through 21-114, inclusive, to be under the new
 4 subtitle "Subtitle 1. General Provisions; Short Title and Definitions;
 5 General Scope and Terms"; 21-201 through ~~21-215~~ 21-216, inclusive, to be
 6 under the new subtitle "Subtitle 2. Formation and Terms; Formation of a
 7 Contract; Terms of Records; Electronic Contracts: Generally"; 21-301
 8 through 21-309, inclusive, to be under the new subtitle "Subtitle 3.
 9 Construction; General; Interpretation"; 21-401 through 21-409, inclusive,
 10 to be under the new subtitle "Subtitle 4. Warranties"; 21-501 through
 11 21-511, inclusive, to be under the new subtitle "Subtitle 5. Transfer of
 12 Interests and Rights; Ownership and Transfers; Financing Arrangements";
 13 21-601 through 21-618, inclusive, to be under the new subtitle "Subtitle 6.
 14 Performance in Delivery of Copies; Special Types of
 15 Contracts; Loss and Impossibility; Termination"; 21-701 through 21-710,
 16 inclusive, to be under the new subtitle "Subtitle 7. Breach of Contract;
 17 General; Defective Copies; Repudiation and Assurances"; 21-801 through
 18 21-816, inclusive, to be under the new subtitle "Subtitle 8. Remedies;
 19 General; Damages; Remedies Related to Performance" and the new title
 20 "Title 21. Maryland Uniform Computer Information Transactions Act"
 21 Annotated Code of Maryland
 22 (1990 Replacement Volume and 1999 Supplement)

23 *BY repealing and reenacting, with amendments,*
 24 *Article - Courts and Judicial Proceedings*
 25 *Section 6-103*
 26 *Annotated Code of Maryland*
 27 *(1998 Replacement Volume and 1999 Supplement)*

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

30 **Article - Commercial Law**

31 13-101.

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

34 (2) "Consumer" includes:

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

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

1 13-101.1.

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

5 TITLE 21. MARYLAND UNIFORM COMPUTER INFORMATION TRANSACTIONS ACT.

6 SUBTITLE 1. GENERAL PROVISIONS; SHORT TITLE AND DEFINITIONS; GENERAL
7 SCOPE AND TERMS.

8 SHORT TITLE AND DEFINITIONS.

9 21-101. SHORT TITLE.

10 THIS TITLE MAY BE CITED AS THE MARYLAND UNIFORM COMPUTER
11 INFORMATION TRANSACTIONS ACT.

12 21-102. DEFINITIONS.

13 (A) IN THIS TITLE:

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

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

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

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

26 (5) "ATTRIBUTION PROCEDURE" MEANS A PROCEDURE TO VERIFY THAT
27 AN ELECTRONIC AUTHENTICATION, DISPLAY, MESSAGE, RECORD, OR PERFORMANCE
28 IS THAT OF A PARTICULAR PERSON OR TO DETECT CHANGES OR ERRORS IN
29 INFORMATION. THE TERM INCLUDES A PROCEDURE THAT REQUIRES THE USE OF
30 ALGORITHMS OR OTHER CODES, IDENTIFYING WORDS OR NUMBERS, ENCRYPTION,
31 OR CALLBACK OR OTHER ACKNOWLEDGMENT.

32 (6) "AUTHENTICATE" MEANS:

33 (A) TO SIGN; OR

1 (B) WITH THE INTENT TO SIGN A RECORD, OTHERWISE TO
2 EXECUTE OR ADOPT AN ELECTRONIC SYMBOL, SOUND, MESSAGE, OR PROCESS
3 REFERRING TO, ATTACHED TO, INCLUDED IN, OR LOGICALLY ASSOCIATED OR
4 LINKED WITH THAT RECORD.

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

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

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

14 (10) "COMPUTER INFORMATION" MEANS INFORMATION IN ELECTRONIC
15 FORM WHICH IS OBTAINED FROM OR THROUGH THE USE OF A COMPUTER OR WHICH
16 IS IN A FORM CAPABLE OF BEING PROCESSED BY A COMPUTER. THE TERM INCLUDES
17 A COPY OF THE INFORMATION AND ANY DOCUMENTATION OR PACKAGING
18 ASSOCIATED WITH THE COPY.

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

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

30 (13) "CONSEQUENTIAL DAMAGES":

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

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

1 (C) ~~THE TERM~~ DOES NOT INCLUDE DIRECT DAMAGES OR
2 INCIDENTAL DAMAGES.

3 (14) "CONSPICUOUS", WITH REFERENCE TO A TERM, MEANS SO WRITTEN,
4 DISPLAYED, OR PRESENTED THAT A REASONABLE PERSON AGAINST WHICH IT IS TO
5 OPERATE OUGHT TO HAVE NOTICED IT. A TERM IN AN ELECTRONIC RECORD
6 INTENDED TO EVOKE A RESPONSE BY AN ELECTRONIC AGENT IS CONSPICUOUS IF IT
7 IS PRESENTED IN A FORM THAT WOULD ENABLE A REASONABLY CONFIGURED
8 ELECTRONIC AGENT TO TAKE IT INTO ACCOUNT OR REACT TO IT WITHOUT REVIEW
9 OF THE RECORD BY AN INDIVIDUAL. CONSPICUOUS TERMS INCLUDE THE
10 FOLLOWING:

11 (A) WITH RESPECT TO A PERSON:

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

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

19 (III) A TERM PROMINENTLY REFERENCED IN AN ELECTRONIC
20 RECORD OR DISPLAY WHICH IS READILY ACCESSIBLE OR REVIEWABLE FROM THE
21 RECORD OR DISPLAY; AND

22 (B) WITH RESPECT TO A PERSON OR AN ELECTRONIC AGENT, A
23 TERM OR REFERENCE TO A TERM THAT IS SO PLACED IN A RECORD OR DISPLAY THAT
24 THE PERSON OR ELECTRONIC AGENT CANNOT PROCEED WITHOUT TAKING ACTION
25 WITH RESPECT TO THE PARTICULAR TERM OR REFERENCE.

26 (15) "CONSUMER" MEANS AN INDIVIDUAL WHO IS A LICENSEE OF
27 INFORMATION OR INFORMATIONAL RIGHTS THAT THE INDIVIDUAL AT THE TIME OF
28 CONTRACTING INTENDED TO BE USED PRIMARILY FOR PERSONAL, FAMILY, OR
29 HOUSEHOLD PURPOSES. THE TERM DOES NOT INCLUDE AN INDIVIDUAL WHO IS A
30 LICENSEE PRIMARILY FOR PROFESSIONAL OR COMMERCIAL PURPOSES, INCLUDING
31 AGRICULTURE, BUSINESS MANAGEMENT, AND INVESTMENT MANAGEMENT OTHER
32 THAN MANAGEMENT OF THE INDIVIDUAL'S PERSONAL OR FAMILY INVESTMENTS.

33 (16) "CONSUMER CONTRACT" MEANS A CONTRACT BETWEEN A
34 MERCHANT LICENSOR AND A CONSUMER.

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

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

1 (19) "CONTRACTUAL USE TERM" MEANS AN ENFORCEABLE TERM THAT
2 DEFINES OR LIMITS THE USE, DISCLOSURE OF, OR ACCESS TO LICENSED
3 INFORMATION OR INFORMATIONAL RIGHTS, INCLUDING A TERM THAT DEFINES THE
4 SCOPE OF A LICENSE.

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

9 (21) "COURSE OF DEALING" MEANS A SEQUENCE OF PREVIOUS CONDUCT
10 BETWEEN THE PARTIES TO A PARTICULAR TRANSACTION WHICH ESTABLISHES A
11 COMMON BASIS OF UNDERSTANDING FOR INTERPRETING THEIR EXPRESSIONS AND
12 OTHER CONDUCT.

13 (22) "COURSE OF PERFORMANCE" MEANS REPEATED PERFORMANCES,
14 UNDER A CONTRACT THAT INVOLVES REPEATED OCCASIONS FOR PERFORMANCE,
15 WHICH ARE ACCEPTED OR ACQUIESCED IN WITHOUT OBJECTION BY A PARTY
16 HAVING KNOWLEDGE OF THE NATURE OF THE PERFORMANCE AND AN
17 OPPORTUNITY TO OBJECT TO IT.

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

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

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

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

29 (27) "ELECTRONIC AGENT" MEANS A COMPUTER PROGRAM, OR
30 ELECTRONIC OR OTHER AUTOMATED MEANS, USED BY A PERSON TO INITIATE AN
31 ACTION, OR TO RESPOND TO ELECTRONIC MESSAGES OR PERFORMANCES, ON THE
32 PERSON'S BEHALF WITHOUT REVIEW OR ACTION BY AN INDIVIDUAL AT THE TIME OF
33 THE ACTION OR RESPONSE TO THE MESSAGE OR PERFORMANCE.

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

37 (29) "FINANCIAL ACCOMMODATION CONTRACT" MEANS AN AGREEMENT
38 UNDER WHICH A PERSON EXTENDS A FINANCIAL ACCOMMODATION TO A LICENSEE
39 AND WHICH DOES NOT CREATE A SECURITY INTEREST GOVERNED BY TITLE 9 OF

1 THIS ARTICLE. THE AGREEMENT MAY BE IN ANY FORM, INCLUDING A LICENSE OR
2 LEASE.

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

6 (A) A DEPOSIT, LOAN, FUNDS, OR MONETARY VALUE REPRESENTED
7 IN ELECTRONIC FORM AND STORED OR CAPABLE OF STORAGE BY ELECTRONIC
8 MEANS AND RETRIEVABLE AND TRANSFERABLE BY ELECTRONIC MEANS, OR OTHER
9 RIGHT TO PAYMENT TO OR FROM A PERSON;

10 (B) AN INSTRUMENT OR OTHER ITEM;

11 (C) A PAYMENT ORDER, CREDIT CARD TRANSACTION, DEBIT CARD
12 TRANSACTION, FUNDS TRANSFER, AUTOMATED CLEARINGHOUSE TRANSFER, OR
13 SIMILAR WHOLESALE OR RETAIL TRANSFER OF FUNDS;

14 (D) A LETTER OF CREDIT, DOCUMENT OF TITLE, FINANCIAL ASSET,
15 INVESTMENT PROPERTY, OR SIMILAR ASSET HELD IN A FIDUCIARY OR AGENCY
16 CAPACITY; OR

17 (E) RELATED IDENTIFYING, VERIFYING, ACCESS-ENABLING,
18 AUTHORIZING, OR MONITORING INFORMATION.

19 (31) "FINANCIER" MEANS A PERSON THAT PROVIDES A FINANCIAL
20 ACCOMMODATION TO A LICENSEE UNDER A FINANCIAL ACCOMMODATION
21 CONTRACT AND EITHER (I) BECOMES A LICENSEE FOR THE PURPOSE OF
22 TRANSFERRING OR SUBLICENSING THE LICENSE TO THE PARTY TO WHICH THE
23 FINANCIAL ACCOMMODATION IS PROVIDED OR (II) OBTAINS A CONTRACTUAL RIGHT
24 UNDER THE FINANCIAL ACCOMMODATION CONTRACT TO PRECLUDE THE
25 LICENSEE'S USE OF THE INFORMATION OR INFORMATIONAL RIGHTS UNDER A
26 LICENSE IN THE EVENT OF BREACH OF THE FINANCIAL ACCOMMODATION
27 CONTRACT. THE TERM DOES NOT INCLUDE A PERSON THAT SELECTS, CREATES, OR
28 SUPPLIES THE INFORMATION THAT IS THE SUBJECT OF THE LICENSE, OWNS THE
29 INFORMATIONAL RIGHTS IN THE INFORMATION, OR PROVIDES SUPPORT FOR,
30 MODIFICATIONS TO, OR MAINTENANCE OF THE INFORMATION.

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

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

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

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

5 (I) INSPECTION, RECEIPT, TRANSMISSION,
6 TRANSPORTATION, CARE, OR CUSTODY OF IDENTIFIED COPIES OR INFORMATION
7 THAT IS THE SUBJECT OF THE BREACH;

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

9 (III) EFFECTING COVER OR RETRANSFER OF COPIES OR
10 INFORMATION AFTER THE BREACH;

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

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

14 (B) DOES NOT INCLUDE CONSEQUENTIAL DAMAGES OR DIRECT
15 DAMAGES.

16 (35) "INFORMATION" MEANS DATA, TEXT, IMAGES, SOUNDS, MASK
17 WORKS, OR COMPUTER PROGRAMS, INCLUDING COLLECTIONS AND COMPILATIONS
18 OF THEM.

19 (36) "INFORMATION PROCESSING SYSTEM" MEANS AN ELECTRONIC
20 SYSTEM FOR CREATING, GENERATING, SENDING, RECEIVING, STORING, DISPLAYING,
21 OR PROCESSING INFORMATION.

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

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

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

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

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

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

3 2. A TRANSACTION IN WHICH THE INFORMATION IS
4 CUSTOMIZED OR OTHERWISE SPECIALLY PREPARED BY THE LICENSOR FOR THE
5 LICENSEE, OTHER THAN MINOR CUSTOMIZATION USING A CAPABILITY OF THE
6 INFORMATION INTENDED FOR THAT PURPOSE;

7 3. A SITE LICENSE; OR

8 4. AN ACCESS CONTRACT.

9 ~~(45)~~ (46) "MERCHANTABILITY" MEANS A PERSON:

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

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

15 (C) TO WHICH THE KNOWLEDGE OR SKILL PECULIAR TO THE
16 PRACTICES OR INFORMATION INVOLVED IN THE TRANSACTION MAY BE ATTRIBUTED
17 BY THE PERSON'S EMPLOYMENT OF AN AGENT OR BROKER OR OTHER
18 INTERMEDIARY THAT BY ITS OCCUPATION HOLDS ITSELF OUT AS HAVING THE
19 KNOWLEDGE OR SKILL.

20 ~~(46)~~ (47) "NONEXCLUSIVE LICENSE" MEANS A LICENSE THAT DOES NOT
21 PRECLUDE THE LICENSOR FROM TRANSFERRING TO OTHER LICENSEES THE SAME
22 INFORMATION, INFORMATIONAL RIGHTS, OR CONTRACTUAL RIGHTS WITHIN THE
23 SAME SCOPE. THE TERM INCLUDES A CONSIGNMENT OF A COPY.

24 ~~(47)~~ (48) "NOTICE" OF A FACT MEANS KNOWLEDGE OF THE FACT,
25 RECEIPT OF NOTIFICATION OF THE FACT, OR REASON TO KNOW THE FACT EXISTS.

26 ~~(48)~~ (49) "NOTIFY", OR "GIVE NOTICE", MEANS TO TAKE SUCH STEPS AS
27 MAY BE REASONABLY REQUIRED TO INFORM THE OTHER PERSON IN THE ORDINARY
28 COURSE, WHETHER OR NOT THE OTHER PERSON ACTUALLY COMES TO KNOW OF IT.

29 ~~(49)~~ (50) "PARTY" MEANS A PERSON THAT ENGAGES IN A TRANSACTION
30 OR MAKES AN AGREEMENT UNDER THIS TITLE.

31 ~~(50)~~ (51) "PERSON" MEANS AN INDIVIDUAL, CORPORATION, BUSINESS
32 TRUST, ESTATE, TRUST, PARTNERSHIP, LIMITED LIABILITY COMPANY, ASSOCIATION,
33 JOINT VENTURE, GOVERNMENTAL SUBDIVISION, INSTRUMENTALITY, OR AGENCY,
34 PUBLIC CORPORATION, OR ANY OTHER LEGAL OR COMMERCIAL ENTITY.

35 ~~(51)~~ (52) "PUBLISHED INFORMATIONAL CONTENT" MEANS
36 INFORMATIONAL CONTENT PREPARED FOR OR MADE AVAILABLE TO RECIPIENTS

1 GENERALLY, OR TO A CLASS OF RECIPIENTS, IN SUBSTANTIALLY THE SAME FORM.
2 THE TERM DOES NOT INCLUDE INFORMATIONAL CONTENT THAT IS:

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

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

8 ~~(52)~~ (53) "RECEIPT" MEANS:

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

10 (B) WITH RESPECT TO A NOTICE:

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

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

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

19 2. IN THE CASE OF AN ELECTRONIC NOTICE, COMING INTO
20 EXISTENCE IN AN INFORMATION PROCESSING SYSTEM OR AT AN ADDRESS IN THAT
21 SYSTEM IN A FORM CAPABLE OF BEING PROCESSED BY OR PERCEIVED FROM A
22 SYSTEM OF THAT TYPE BY A RECIPIENT, IF THE RECIPIENT USES, OR OTHERWISE
23 HAS DESIGNATED OR HOLDS OUT, THAT PLACE OR SYSTEM FOR RECEIPT OF NOTICES
24 OF THE KIND TO BE GIVEN AND THE SENDER DOES NOT KNOW THAT THE NOTICE
25 CANNOT BE ACCESSED FROM THAT PLACE.

26 ~~(53)~~ (54) "RECEIVE" MEANS TO TAKE RECEIPT.

27 ~~(54)~~ (55) "RECORD" MEANS INFORMATION THAT IS INSCRIBED ON A
28 TANGIBLE MEDIUM OR THAT IS STORED IN AN ELECTRONIC OR OTHER MEDIUM AND
29 IS RETRIEVABLE IN PERCEIVABLE FORM.

30 ~~(55)~~ (56) "RELEASE" MEANS AN AGREEMENT BY A PARTY NOT TO OBJECT
31 TO, OR EXERCISE ANY RIGHTS OR PURSUE ANY REMEDIES TO LIMIT, THE USE OF
32 INFORMATION OR INFORMATIONAL RIGHTS WHICH AGREEMENT DOES NOT REQUIRE
33 AN AFFIRMATIVE ACT BY THE PARTY TO ENABLE OR SUPPORT THE OTHER PARTY'S
34 USE OF THE INFORMATION OR INFORMATIONAL RIGHTS. THE TERM INCLUDES A
35 WAIVER OF INFORMATIONAL RIGHTS.

1 ~~(56)~~ (57) "RETURN", WITH RESPECT TO A RECORD CONTAINING
2 CONTRACTUAL TERMS THAT WERE REJECTED, REFERS ONLY TO THE COMPUTER
3 INFORMATION AND MEANS:

4 (A) IN THE CASE OF A LICENSEE THAT REJECTS A RECORD
5 REGARDING A SINGLE INFORMATION PRODUCT TRANSFERRED FOR A SINGLE
6 CONTRACT FEE, A RIGHT TO REIMBURSEMENT OF THE CONTRACT FEE PAID FROM
7 THE PERSON TO WHICH IT WAS PAID OR FROM ANOTHER PERSON THAT OFFERS TO
8 REIMBURSE THAT FEE, ON:

9 (I) SUBMISSION OF PROOF OF PURCHASE; AND

10 (II) PROPER REDELIVERY OF THE COMPUTER INFORMATION
11 AND ALL COPIES WITHIN A REASONABLE TIME AFTER INITIAL DELIVERY OF THE
12 INFORMATION TO THE LICENSEE;

13 (B) IN THE CASE OF A LICENSEE THAT REJECTS A RECORD
14 REGARDING AN INFORMATION PRODUCT PROVIDED AS PART OF MULTIPLE
15 INFORMATION PRODUCTS INTEGRATED INTO AND TRANSFERRED AS A BUNDLED
16 WHOLE BUT RETAINING THEIR SEPARATE IDENTITY:

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

21 1. REJECTION OF THE RECORD BEFORE OR DURING THE
22 INITIAL USE OF THE BUNDLED PRODUCT;

23 2. PROPER REDELIVERY OF ALL COMPUTER INFORMATION
24 PRODUCTS IN THE BUNDLED WHOLE AND ALL COPIES OF THEM WITHIN A
25 REASONABLE TIME AFTER INITIAL DELIVERY OF THE INFORMATION TO THE
26 LICENSEE; AND

27 3. SUBMISSION OF PROOF OF PURCHASE; OR

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

32 1. SUBMISSION OF PROOF OF PURCHASE; AND

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

36 (C) IN THE CASE OF A LICENSOR THAT REJECTS A RECORD
37 PROPOSED BY THE LICENSEE, A RIGHT TO PROPER REDELIVERY OF THE COMPUTER
38 INFORMATION AND ALL COPIES FROM THE LICENSEE, TO STOP DELIVERY OR ACCESS

1 TO THE INFORMATION BY THE LICENSEE, AND TO REIMBURSEMENT FROM THE
2 LICENSEE OF AMOUNTS PAID BY THE LICENSOR WITH RESPECT TO THE REJECTED
3 RECORD, ON REIMBURSEMENT TO THE LICENSEE OF CONTRACT FEES THAT IT PAID
4 WITH RESPECT TO THE REJECTED RECORD, SUBJECT TO RECOUPMENT AND SETOFF.

5 ~~(57)~~ (58) "SCOPE", WITH RESPECT TO TERMS OF A LICENSE, MEANS:

6 (A) THE LICENSED COPIES, INFORMATION, OR INFORMATIONAL
7 RIGHTS INVOLVED;

8 (B) THE USE OR ACCESS AUTHORIZED, PROHIBITED, OR
9 CONTROLLED;

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

11 (D) THE DURATION OF THE LICENSE.

12 ~~(58)~~ (59) "SEASONABLE", WITH RESPECT TO AN ACT, MEANS TAKEN
13 WITHIN THE TIME AGREED OR, IF NO TIME IS AGREED, WITHIN A REASONABLE TIME.

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

27 ~~(60)~~ (61) "STANDARD FORM" MEANS A RECORD OR A GROUP OF RELATED
28 RECORDS CONTAINING TERMS PREPARED FOR REPEATED USE IN TRANSACTIONS
29 AND SO USED IN A TRANSACTION IN WHICH THERE WAS NO NEGOTIATED CHANGE
30 OF TERMS BY INDIVIDUALS EXCEPT TO SET THE PRICE, QUANTITY, METHOD OF
31 PAYMENT, SELECTION AMONG STANDARD OPTIONS, OR TIME OR METHOD OF
32 DELIVERY.

33 ~~(61)~~ (62) "STATE" MEANS A STATE OF THE UNITED STATES, THE
34 DISTRICT OF COLUMBIA, PUERTO RICO, THE ~~UNITES~~ UNITED STATES VIRGIN
35 ISLANDS, OR ANY TERRITORY OR INSULAR POSSESSION SUBJECT TO THE
36 JURISDICTION OF THE UNITED STATES.

37 ~~(62)~~ (63) "TERM", WITH RESPECT TO AN AGREEMENT, MEANS THAT
38 PORTION OF THE AGREEMENT WHICH RELATES TO A PARTICULAR MATTER.

1 (B) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (D) OF THIS SECTION
2 AND § 21-104 OF THIS SUBTITLE, IF A COMPUTER INFORMATION TRANSACTION
3 INCLUDES SUBJECT MATTER OTHER THAN COMPUTER INFORMATION, THE
4 FOLLOWING RULES APPLY:

5 (1) IF A TRANSACTION INCLUDES COMPUTER INFORMATION AND
6 GOODS, THIS TITLE APPLIES TO THE PART OF THE TRANSACTION INVOLVING
7 COMPUTER INFORMATION, INFORMATIONAL RIGHTS IN IT, AND CREATION OR
8 MODIFICATION OF IT. HOWEVER, IF A COPY OF A COMPUTER PROGRAM IS
9 CONTAINED IN AND SOLD OR LEASED AS PART OF GOODS, THIS TITLE APPLIES TO
10 THE COPY AND THE COMPUTER PROGRAM ONLY IF:

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

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

15 (2) SUBJECT TO SUBSECTION (D)(3)(A) OF THIS SECTION, IF A
16 TRANSACTION INCLUDES AN AGREEMENT FOR CREATING OR FOR OBTAINING
17 RIGHTS TO CREATE COMPUTER INFORMATION AND A MOTION PICTURE, THIS TITLE
18 DOES NOT APPLY TO THE AGREEMENT IF THE DOMINANT CHARACTER OF THE
19 AGREEMENT IS FOR CREATING OR OBTAINING RIGHTS TO CREATE A MOTION
20 PICTURE. IN ALL OTHER SUCH AGREEMENTS, THIS TITLE DOES NOT APPLY TO THE
21 PART OF THE AGREEMENT THAT INVOLVES A MOTION PICTURE EXCLUDED UNDER
22 SUBSECTION (D)(3) OF THIS SECTION, BUT DOES APPLY TO THE COMPUTER
23 INFORMATION.

24 ~~(2) (3) IN ALL OTHER CASES NOT INVOLVING GOODS, THIS TITLE~~
25 ~~APPLIES TO THE ENTIRE TRANSACTION IF THE COMPUTER INFORMATION AND~~
26 ~~INFORMATIONAL RIGHTS, OR ACCESS TO THEM, IS THE PRIMARY SUBJECT MATTER,~~
27 ~~BUT OTHERWISE APPLIES ONLY TO THE PART OF THE TRANSACTION INVOLVING~~
28 ~~COMPUTER INFORMATION, INFORMATIONAL RIGHTS IN IT, AND CREATION OR~~
29 ~~MODIFICATION OF IT, UNLESS THE COMPUTER INFORMATION AND INFORMATIONAL~~
30 ~~RIGHTS, OR ACCESS TO THEM, IS THE PRIMARY SUBJECT MATTER, IN WHICH CASE~~
31 ~~THIS TITLE APPLIES TO THE ENTIRE TRANSACTION.~~

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

34 (D) THIS TITLE DOES NOT APPLY TO:

35 (1) A FINANCIAL SERVICES TRANSACTION;

36 (2) AN INSURANCE SERVICES TRANSACTION;

37 ~~(2) (3) A CONTRACT AN AGREEMENT TO CREATE, PERFORM OR~~
38 ~~PERFORM IN, INCLUDE INFORMATION IN, ACQUIRE, USE, DISTRIBUTE, MODIFY,~~
39 ~~REPRODUCE, HAVE ACCESS TO, ADAPT, MAKE AVAILABLE, TRANSMIT, LICENSE, OR~~
40 ~~DISPLAY:~~

1 (A) AUDIO OR VISUAL PROGRAMMING THAT IS PROVIDED BY
2 BROADCAST, SATELLITE, OR CABLE AS DEFINED OR USED IN THE FEDERAL
3 COMMUNICATIONS ACT AND RELATED REGULATIONS AS THEY EXISTED ON JULY 1,
4 1999, OR BY SIMILAR METHODS OF DELIVERING THAT PROGRAMMING; OR

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

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

12 ~~(3)~~ (4) A COMPULSORY LICENSE;

13 ~~(4)~~ (5) A CONTRACT OF EMPLOYMENT OF AN INDIVIDUAL, OTHER
14 THAN AN INDIVIDUAL HIRED AS AN INDEPENDENT CONTRACTOR TO CREATE OR
15 MODIFY COMPUTER INFORMATION, UNLESS SUCH INDEPENDENT CONTRACTOR IS A
16 FREELANCER IN THE NEWS REPORTING INDUSTRY AS THAT TERM IS COMMONLY
17 UNDERSTOOD IN THAT INDUSTRY;

18 ~~(5)~~ (6) A CONTRACT THAT DOES NOT REQUIRE THAT INFORMATION BE
19 FURNISHED AS COMPUTER INFORMATION OR IN WHICH UNDER THE AGREEMENT
20 THE FORM OF THE INFORMATION AS COMPUTER INFORMATION IS OTHERWISE
21 INSIGNIFICANT WITH RESPECT TO THE PRIMARY SUBJECT MATTER OF THE PART OF
22 THE TRANSACTION PERTAINING TO THE INFORMATION; OR

23 ~~(6)~~ (7) SUBJECT MATTER WITHIN THE SCOPE OF TITLE 3, 4, 4A, 5, 6, 7,
24 OR 8 OF THIS ARTICLE.

25 (E) AS USED IN SUBSECTION ~~(D)(2)(B)~~ (D)(3)(B) OF THIS SECTION, "ENHANCED
26 SOUND RECORDING" MEANS A SEPARATELY IDENTIFIABLE PRODUCT OR SERVICE
27 THE DOMINANT CHARACTER OF WHICH CONSISTS OF RECORDED SOUNDS BUT
28 WHICH INCLUDES (I) STATEMENTS OR INSTRUCTIONS WHOSE PURPOSE IS TO ALLOW
29 OR CONTROL THE PERCEPTION, REPRODUCTION, OR COMMUNICATION OF THOSE
30 SOUNDS OR (II) OTHER INFORMATION SO LONG AS RECORDED SOUNDS CONSTITUTE
31 THE DOMINANT CHARACTER OF THE PRODUCT OR SERVICE DESPITE THE INCLUSION
32 OF THE OTHER INFORMATION.

33 (F) AS USED IN THIS SECTION, "MOTION PICTURE" MEANS "MOTION PICTURE"
34 AS DEFINED IN TITLE 17 OF THE UNITED STATES CODE AS OF JULY 1, 1999, OR A
35 SEPARATELY IDENTIFIABLE PRODUCT OR SERVICE THE DOMINANT CHARACTER OF
36 WHICH CONSISTS OF A LINEAR MOTION PICTURE, BUT WHICH INCLUDES (I)
37 STATEMENTS OR INSTRUCTIONS WHOSE PURPOSE IS TO ALLOW OR CONTROL THE
38 PERCEPTION, REPRODUCTION, OR COMMUNICATION OF THE MOTION PICTURE OR (II)
39 OTHER INFORMATION SO LONG AS THE MOTION PICTURE CONSTITUTES THE
40 DOMINANT CHARACTER OF THE PRODUCT OR SERVICE DESPITE THE INCLUSION OF
41 THE OTHER INFORMATION.

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

6 21-104. MIXED TRANSACTIONS: AGREEMENT TO OPT-IN OR OPT-OUT.

7 THE PARTIES MAY AGREE THAT THIS TITLE, INCLUDING
8 CONTRACT-FORMATION RULES, GOVERNS THE TRANSACTION, IN WHOLE OR PART,
9 OR THAT OTHER LAW GOVERNS THE TRANSACTION AND THIS TITLE DOES NOT
10 APPLY, IF A MATERIAL PART OF THE SUBJECT MATTER TO WHICH THE AGREEMENT
11 APPLIES IS COMPUTER INFORMATION OR INFORMATIONAL RIGHTS IN IT THAT ARE
12 WITHIN THE SCOPE OF THIS TITLE, OR IS SUBJECT MATTER WITHIN THIS TITLE
13 UNDER § 21-103(B) OF THIS SUBTITLE, OR IS SUBJECT MATTER EXCLUDED BY §
14 21-103(D)~~(4)~~ ~~OR (2)~~ (1), (2), OR (3) OF THIS SUBTITLE. HOWEVER, ANY AGREEMENT TO
15 DO SO IS SUBJECT TO THE FOLLOWING RULES:

16 (1) AN AGREEMENT THAT THIS TITLE GOVERNS A TRANSACTION DOES
17 NOT ALTER THE APPLICABILITY OF ANY STATUTE, RULE, REGULATION, OR
18 PROCEDURE THAT MAY NOT BE VARIED BY AGREEMENT OF THE PARTIES OR THAT
19 MAY BE VARIED ONLY IN A MANNER SPECIFIED BY THE STATUTE, RULE,
20 REGULATION, OR PROCEDURE, INCLUDING A CONSUMER PROTECTION STATUTE OR
21 REGULATION. IN ADDITION, IN A MASS-MARKET TRANSACTION, THE AGREEMENT
22 DOES NOT ALTER THE APPLICABILITY OF A LAW APPLICABLE TO A COPY OF
23 INFORMATION IN PRINTED FORM.

24 (2) AN AGREEMENT THAT THIS TITLE DOES NOT GOVERN A
25 TRANSACTION:

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

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

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

35 (4) A COPY OF A COMPUTER PROGRAM CONTAINED IN AND SOLD OR
36 LEASED AS PART OF GOODS AND WHICH IS EXCLUDED FROM THIS TITLE BY §
37 21-103(B)(1) OF THIS SUBTITLE CANNOT PROVIDE THE BASIS FOR AN AGREEMENT
38 UNDER THIS SECTION THAT THIS TITLE GOVERNS THE TRANSACTION.

1 21-105. RELATION TO FEDERAL LAW; FUNDAMENTAL PUBLIC POLICY;
2 TRANSACTIONS SUBJECT TO OTHER STATE LAW.

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

5 (2) A CONTRACT TERM IS UNENFORCEABLE TO THE EXTENT THAT IT
6 WOULD VARY A STATUTE, RULE, REGULATION, OR PROCEDURE THAT MAY NOT BE
7 VARIED BY AGREEMENT UNDER THE FEDERAL COPYRIGHT LAW, INCLUDING
8 PROVISIONS OF THE FEDERAL COPYRIGHT LAW RELATED TO FAIR USE.

9 (B) IF A TERM OF A CONTRACT VIOLATES A FUNDAMENTAL PUBLIC POLICY,
10 THE COURT MAY REFUSE TO ENFORCE THE CONTRACT, ENFORCE THE REMAINDER
11 OF THE CONTRACT WITHOUT THE IMPERMISSIBLE TERM, OR LIMIT THE
12 APPLICATION OF THE IMPERMISSIBLE TERM SO AS TO AVOID A RESULT CONTRARY
13 TO PUBLIC POLICY, IN EACH CASE TO THE EXTENT THAT THE INTEREST IN
14 ENFORCEMENT IS CLEARLY OUTWEIGHED BY A PUBLIC POLICY AGAINST
15 ENFORCEMENT OF THE TERM.

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

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

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

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

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

29 (4) A REQUIREMENT OF CONSENT OR AGREEMENT TO A TERM IS
30 SATISFIED BY A MANIFESTATION OF ASSENT TO THE TERM IN ACCORDANCE WITH
31 THIS TITLE.

32 21-106. RULES OF CONSTRUCTION.

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

35 (1) SUPPORT AND FACILITATE THE REALIZATION OF THE FULL
36 POTENTIAL OF COMPUTER INFORMATION TRANSACTIONS;

1 (2) CLARIFY THE LAW GOVERNING COMPUTER INFORMATION
2 TRANSACTIONS;

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

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

8 (5) PERMIT THE CONTINUED EXPANSION OF COMMERCIAL PRACTICES
9 IN THE EXCLUDED TRANSACTIONS THROUGH CUSTOM, USAGE, AND AGREEMENT OF
10 THE PARTIES.

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

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

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

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

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

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

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

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

35 21-108. PROOF AND EFFECT OF AUTHENTICATION.

36 (A) AUTHENTICATION MAY BE PROVEN IN ANY MANNER, INCLUDING A
37 SHOWING THAT A PARTY MADE USE OF INFORMATION OR ACCESS THAT COULD HAVE

1 BEEN AVAILABLE ONLY IF IT ENGAGED IN CONDUCT OR OPERATIONS THAT
2 AUTHENTICATED THE RECORD OR TERM.

3 (B) COMPLIANCE WITH A COMMERCIALLY REASONABLE ATTRIBUTION
4 PROCEDURE AGREED TO OR ADOPTED BY THE PARTIES OR ESTABLISHED BY LAW
5 FOR AUTHENTICATING A RECORD AUTHENTICATES THE RECORD AS A MATTER OF
6 LAW.

7 21-109. CHOICE OF LAW.

8 (A) THE PARTIES IN THEIR AGREEMENT MAY CHOOSE THE APPLICABLE LAW.
9 ~~HOWEVER, THE CHOICE IS NOT ENFORCEABLE IN A CONSUMER CONTRACT TO THE~~
10 ~~EXTENT IT WOULD VARY A RULE THAT MAY NOT BE VARIED BY AGREEMENT UNDER~~
11 ~~THE LAW OF THE JURISDICTION WHOSE LAW WOULD APPLY UNDER SUBSECTIONS~~
12 ~~(B) AND (C) OF THIS SECTION IN THE ABSENCE OF THE AGREEMENT A CONSUMER~~
13 ~~CONTRACT SHALL BE GOVERNED BY THE LAW OF THE JURISDICTION THAT IS THE~~
14 ~~PRINCIPAL RESIDENCE OF THE CONSUMER.~~

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

18 (1) AN ACCESS CONTRACT OR A CONTRACT PROVIDING FOR
19 ELECTRONIC DELIVERY OF A COPY IS GOVERNED BY THE LAW OF THE JURISDICTION
20 IN WHICH THE LICENSOR WAS LOCATED WHEN THE AGREEMENT WAS ENTERED
21 INTO.

22 (2) ~~A CONSUMER CONTRACT THAT REQUIRES DELIVERY OF A COPY ON A~~
23 ~~TANGIBLE MEDIUM IS GOVERNED BY THE LAW OF THE JURISDICTION IN WHICH THE~~
24 ~~COPY IS OR SHOULD HAVE BEEN DELIVERED TO THE CONSUMER MASS MARKET~~
25 ~~TRANSACTION IS GOVERNED BY THE LAW OF MARYLAND.~~

26 (3) IN ALL OTHER CASES, THE CONTRACT IS GOVERNED BY THE LAW OF
27 THE JURISDICTION HAVING THE MOST SIGNIFICANT RELATIONSHIP TO THE
28 TRANSACTION.

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

35 (D) FOR PURPOSES OF THIS SECTION, A PARTY IS LOCATED AT ITS PLACE OF
36 BUSINESS IF IT HAS ONE PLACE OF BUSINESS, AT ITS CHIEF EXECUTIVE OFFICE IF IT
37 HAS MORE THAN ONE PLACE OF BUSINESS, OR AT ITS PLACE OF INCORPORATION OR
38 PRIMARY REGISTRATION IF IT DOES NOT HAVE A PHYSICAL PLACE OF BUSINESS.
39 OTHERWISE, A PARTY IS LOCATED AT ITS PRIMARY RESIDENCE.

1 21-110. CONTRACTUAL CHOICE OF FORUM.

2 (A) (1) ~~EXCEPT FOR A CONSUMER CONTRACT,~~ THE PARTIES IN THEIR
3 AGREEMENT MAY CHOOSE AN EXCLUSIVE JUDICIAL FORUM UNLESS THE CHOICE IS
4 UNREASONABLE ~~AND~~ OR UNJUST.

5 ~~(2) IN A CONSUMER CONTRACT, THE JUDICIAL FORUM SHALL BE THE~~
6 ~~JURISDICTION OF THE PRINCIPAL RESIDENCE OF THE CONSUMER, EXCEPT THAT A~~
7 ~~CONSUMER MAY FILE AN ACTION IN ANY JUDICIAL FORUM HAVING JURISDICTION.~~

8 (2) IN A MASS MARKET TRANSACTION, THE ENFORCEABILITY OF A
9 CHOICE OF FORUM TERM SHALL BE DECIDED BY A MARYLAND COURT.

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

12 (C) NOTWITHSTANDING THE PROVISIONS OF THIS SECTION OR A CONTRARY
13 TERM IN AN AGREEMENT, A PARTY THE PARTIES TO A COMPUTER INFORMATION
14 TRANSACTION THAT IS FOR THE CREATION OF COMPUTER INFORMATION MAY, BY
15 MUTUAL CONSENT, CHOOSE AN ALTERNATIVE DISPUTE RESOLUTION MECHANISM,
16 INCLUDING MEDIATION, ARBITRATION, OR OTHER NON-JUDICIAL DISPUTE
17 RESOLUTION PROCESS, AS THE MEANS FOR RESOLVING A DISPUTE UNDER THE
18 AGREEMENT.

19 21-111. UNCONSCIONABLE CONTRACT OR TERM.

20 (A) IF A COURT AS A MATTER OF LAW FINDS A CONTRACT OR A TERM
21 THEREOF TO HAVE BEEN UNCONSCIONABLE AT THE TIME IT WAS MADE, THE COURT
22 MAY REFUSE TO ENFORCE THE CONTRACT, ENFORCE THE REMAINDER OF THE
23 CONTRACT WITHOUT THE UNCONSCIONABLE TERM, OR LIMIT THE APPLICATION OF
24 THE UNCONSCIONABLE TERM SO AS TO AVOID AN UNCONSCIONABLE RESULT.

25 (B) IF IT IS CLAIMED OR APPEARS TO THE COURT THAT A CONTRACT OR TERM
26 THEREOF MAY BE UNCONSCIONABLE, THE PARTIES MUST BE AFFORDED A
27 REASONABLE OPPORTUNITY TO PRESENT EVIDENCE AS TO ITS COMMERCIAL
28 SETTING, PURPOSE, AND EFFECT TO AID THE COURT IN MAKING THE
29 DETERMINATION.

30 21-112. MANIFESTING ASSENT; OPPORTUNITY TO REVIEW.

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

34 (1) AUTHENTICATES THE RECORD OR TERM WITH INTENT TO ADOPT OR
35 ACCEPT IT; OR

36 (2) INTENTIONALLY ENGAGES IN CONDUCT OR MAKES STATEMENTS
37 WITH REASON TO KNOW THAT THE OTHER PARTY OR ITS ELECTRONIC AGENT MAY

1 INFER FROM THE CONDUCT OR STATEMENT THAT THE PERSON ASSENTS TO THE
2 RECORD OR TERM.

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

5 (1) AUTHENTICATES THE RECORD OR TERM; OR

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

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

10 (D) CONDUCT OR OPERATIONS MANIFESTING ASSENT MAY BE PROVED IN ANY
11 MANNER, INCLUDING A SHOWING THAT A PERSON OR AN ELECTRONIC AGENT
12 OBTAINED OR USED THE INFORMATION OR INFORMATIONAL RIGHTS AND THAT A
13 PROCEDURE EXISTED BY WHICH A PERSON OR AN ELECTRONIC AGENT MUST HAVE
14 ENGAGED IN THE CONDUCT OR OPERATIONS IN ORDER TO DO SO. PROOF OF
15 COMPLIANCE WITH SUBSECTION (A)(2) OF THIS SECTION IS SUFFICIENT IF THERE IS
16 CONDUCT THAT ASSENTS AND SUBSEQUENT CONDUCT THAT REAFFIRMS ASSENT BY
17 ELECTRONIC MEANS.

18 (E) WITH RESPECT TO AN OPPORTUNITY TO REVIEW, THE FOLLOWING RULES
19 APPLY:

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

23 (2) AN ELECTRONIC AGENT HAS AN OPPORTUNITY TO REVIEW A
24 RECORD OR TERM ONLY IF IT IS MADE AVAILABLE IN MANNER THAT WOULD ENABLE
25 A REASONABLY CONFIGURED ELECTRONIC AGENT TO REACT TO THE RECORD OR
26 TERM.

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

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

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

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

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

6 21-113. VARIATION BY AGREEMENT; COMMERCIAL PRACTICE.

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

10 (1) OBLIGATIONS OF GOOD FAITH, DILIGENCE, REASONABLENESS, AND
11 CARE IMPOSED BY THIS TITLE MAY NOT BE DISCLAIMED BY AGREEMENT, BUT THE
12 PARTIES BY AGREEMENT MAY DETERMINE THE STANDARDS BY WHICH THE
13 PERFORMANCE OF THE OBLIGATION IS TO BE MEASURED IF THE STANDARDS ARE
14 NOT MANIFESTLY UNREASONABLE.

15 (2) THE LIMITATIONS ON ENFORCEABILITY IMPOSED BY
16 UNCONSCIONABILITY UNDER § 21-111 OF THIS SUBTITLE AND FUNDAMENTAL
17 PUBLIC POLICY UNDER § 21-105(B) OF THIS SUBTITLE MAY NOT BE VARIED BY
18 AGREEMENT.

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

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

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

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

27 (D) THE LIMITATIONS ON ENFORCEABILITY IN § 21-201;

28 (E) THE LIMITATIONS ON A MASS-MARKET LICENSE IN § 21-209;

29 (F) THE CONSUMER DEFENSE ARISING FROM AN ELECTRONIC
30 ERROR IN § 21-214;

31 (G) THE REQUIREMENTS FOR AN ENFORCEABLE TERM IN §§
32 21-303(B), 21-307(G), 21-406(B) AND (C), AND 21-804(A);

33 (H) THE LIMITATIONS ON A FINANCIER IN §§ 21-507 THROUGH
34 21-511;

35 (I) THE RESTRICTIONS ON ALTERING THE PERIOD OF
36 LIMITATIONS IN § 21-805(A) AND (B); AND

1 (J) THE LIMITATIONS ON SELF-HELP REPOSSESSION IN §§
2 21-815(B) AND 21-816.

3 (B) ANY USAGE OF TRADE OF WHICH THE PARTIES ARE OR SHOULD BE AWARE
4 AND ANY COURSE OF DEALING OR COURSE OF PERFORMANCE BETWEEN THE
5 PARTIES ARE RELEVANT TO DETERMINING THE EXISTENCE OR MEANING OF AN
6 AGREEMENT.

7 21-114. SUPPLEMENTAL PRINCIPLES; GOOD FAITH; DECISION FOR COURT;
8 REASONABLE TIME; REASON TO KNOW.

9 (A) UNLESS DISPLACED BY THIS TITLE, PRINCIPLES OF LAW AND EQUITY,
10 INCLUDING THE LAW MERCHANT AND THE COMMON LAW OF THIS STATE RELATIVE
11 TO CAPACITY TO CONTRACT, PRINCIPAL AND AGENT, ESTOPPEL, FRAUD,
12 MISREPRESENTATION, DURESS, COERCION, MISTAKE, AND OTHER VALIDATING OR
13 INVALIDATING CAUSE, SUPPLEMENT THIS TITLE. AMONG THE LAWS
14 SUPPLEMENTING AND NOT DISPLACED BY THIS TITLE ARE TRADE SECRET LAWS AND
15 UNFAIR COMPETITION LAWS.

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

18 (C) WHETHER A TERM IS CONSPICUOUS OR IS UNENFORCEABLE UNDER §
19 21-105(A) OR (B), § 21-111, OR § 21-209(A) OF THIS TITLE AND WHETHER AN
20 ATTRIBUTION PROCEDURE IS COMMERCIALY REASONABLE OR EFFECTIVE UNDER §
21 21-108, § 21-212, OR § 21-213 OF THIS TITLE ARE QUESTIONS TO BE DETERMINED BY
22 THE COURT.

23 (D) WHETHER AN AGREEMENT HAS LEGAL CONSEQUENCES IS DETERMINED
24 BY THIS TITLE.

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

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

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

31 (F) A PERSON HAS REASON TO KNOW A FACT IF THE PERSON HAS
32 KNOWLEDGE OF THE FACT OR, FROM ALL THE FACTS AND CIRCUMSTANCES KNOWN
33 TO THE PERSON WITHOUT INVESTIGATION, THE PERSON SHOULD BE AWARE THAT
34 THE FACT EXISTS.

35 SUBTITLE 2. FORMATION AND TERMS; FORMATION OF A CONTRACT; TERMS OF
36 RECORDS; ELECTRONIC CONTRACTS: GENERALLY.

37 FORMATION OF A CONTRACT.

1 21-201. FORMAL REQUIREMENTS.

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

5 (1) THE PARTY AGAINST WHICH ENFORCEMENT IS SOUGHT
6 AUTHENTICATED A RECORD SUFFICIENT TO INDICATE THAT A CONTRACT HAS BEEN
7 FORMED AND WHICH REASONABLY IDENTIFIES THE COPY OR SUBJECT MATTER TO
8 WHICH THE CONTRACT REFERS; OR

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

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

16 (C) A CONTRACT THAT DOES NOT SATISFY THE REQUIREMENTS OF
17 SUBSECTION (A) OF THIS SECTION IS NEVERTHELESS ENFORCEABLE UNDER THAT
18 SUBSECTION IF:

19 (1) A PERFORMANCE WAS TENDERED OR THE INFORMATION WAS MADE
20 AVAILABLE BY ONE PARTY AND THE TENDER WAS ACCEPTED OR THE INFORMATION
21 ACCESSED BY THE OTHER; OR

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

27 (D) BETWEEN MERCHANTS, IF, WITHIN A REASONABLE TIME, A RECORD IN
28 CONFIRMATION OF THE CONTRACT AND SUFFICIENT AGAINST THE SENDER IS
29 RECEIVED AND THE PARTY RECEIVING IT HAS REASON TO KNOW ITS CONTENTS, THE
30 RECORD SATISFIES SUBSECTION (A) OF THIS SECTION AGAINST THE PARTY
31 RECEIVING IT UNLESS NOTICE OF OBJECTION TO ITS CONTENTS IS GIVEN IN A
32 RECORD WITHIN ~~40 DAYS~~ A REASONABLE TIME AFTER THE CONFIRMING RECORD IS
33 RECEIVED.

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

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

1 21-202. FORMATION IN GENERAL.

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

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

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

15 (D) IN THE ABSENCE OF CONDUCT OR PERFORMANCE BY BOTH PARTIES TO
16 THE CONTRARY, A CONTRACT IS NOT FORMED IF THERE IS A MATERIAL
17 DISAGREEMENT ABOUT A MATERIAL TERM, INCLUDING A TERM CONCERNING
18 SCOPE.

19 (E) IF A TERM IS TO BE ADOPTED BY LATER AGREEMENT AND THE PARTIES
20 INTEND NOT TO BE BOUND UNLESS THE TERM IS SO ADOPTED, A CONTRACT IS NOT
21 FORMED IF THE PARTIES DO NOT AGREE TO THE TERM. IN THAT CASE, EACH PARTY
22 SHALL DELIVER TO THE OTHER PARTY, OR WITH THE CONSENT OF THE OTHER
23 PARTY DESTROY, ALL COPIES OF INFORMATION, ACCESS MATERIALS, AND OTHER
24 MATERIALS RECEIVED OR MADE, AND EACH PARTY IS ENTITLED TO A RETURN WITH
25 RESPECT TO ANY CONTRACT FEE PAID FOR WHICH PERFORMANCE HAS NOT BEEN
26 RECEIVED, HAS NOT BEEN ACCEPTED, OR HAS BEEN REDELIVERED WITHOUT ANY
27 BENEFIT BEING RETAINED. THE PARTIES REMAIN BOUND BY ANY CONTRACTUAL
28 USE TERM ONLY WITH RESPECT TO INFORMATION OR COPIES RECEIVED OR MADE
29 FROM COPIES RECEIVED PURSUANT TO THE AGREEMENT ~~AND NOT DELIVERED OR~~
30 ~~DELIVERABLE TO THE OTHER PARTY, BUT THE CONTRACTUAL USE TERM DOES NOT~~
31 APPLY TO INFORMATION OR COPIES PROPERLY RECEIVED OR OBTAINED FROM
32 ANOTHER SOURCE.

33 21-203. OFFER AND ACCEPTANCE IN GENERAL.

34 UNLESS OTHERWISE UNAMBIGUOUSLY INDICATED BY THE LANGUAGE OR THE
35 CIRCUMSTANCES:

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

38 (2) AN ORDER OR OTHER OFFER TO ACQUIRE A COPY FOR PROMPT OR
39 CURRENT DELIVERY INVITES ACCEPTANCE BY EITHER A PROMPT PROMISE TO SHIP
40 OR A PROMPT OR CURRENT SHIPMENT OF A CONFORMING OR NONCONFORMING
41 COPY. HOWEVER, A SHIPMENT OF A NONCONFORMING COPY IS NOT AN ACCEPTANCE

1 IF THE LICENSOR SEASONABLY NOTIFIES THE LICENSEE THAT THE SHIPMENT IS
2 OFFERED ONLY AS AN ACCOMMODATION TO THE LICENSEE.

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

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

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

10 (B) IF THE RESPONSE CONSISTS OF BEGINNING PERFORMANCE,
11 FULL PERFORMANCE, OR GIVING ACCESS TO INFORMATION, WHEN THE
12 PERFORMANCE IS RECEIVED OR THE ACCESS IS ENABLED AND NECESSARY ACCESS
13 MATERIALS ARE RECEIVED.

14 21-204. ACCEPTANCE WITH VARYING TERMS.

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

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

22 (C) IF AN ACCEPTANCE MATERIALLY ALTERS THE OFFER, THE FOLLOWING
23 RULES APPLY:

24 (1) A CONTRACT IS NOT FORMED UNLESS:

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

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

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

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

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

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

6 21-205. CONDITIONAL OFFER OR ACCEPTANCE.

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

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

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

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

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

26 21-206. OFFER AND ACCEPTANCE: ELECTRONIC AGENTS.

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

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

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

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

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

8 21-207. FORMATION: RELEASES OF INFORMATIONAL RIGHTS.

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

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

13 (2) ENFORCEABLE UNDER ESTOPPEL, IMPLIED LICENSE, OR OTHER
14 LAW.

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

18 (1) THE PARTY GRANTING THE RELEASE; OR

19 (2) THE PARTY RECEIVING THE RELEASE, EXCEPT FOR RELATIVELY
20 INSIGNIFICANT ACTS.

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

23 TERMS OF RECORDS.

24 21-208. ADOPTING TERMS OF RECORDS.

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

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

30 (2) THE TERMS OF A RECORD MAY BE ADOPTED PURSUANT TO
31 PARAGRAPH (1) OF THIS SECTION AFTER BEGINNING PERFORMANCE OR USE IF THE
32 PARTIES HAD REASON TO KNOW THAT THEIR AGREEMENT WOULD BE REPRESENTED
33 IN WHOLE OR PART BY A LATER RECORD TO BE AGREED ON AND THERE WOULD NOT
34 BE AN OPPORTUNITY TO REVIEW THE RECORD OR A COPY OF IT BEFORE
35 PERFORMANCE OR USE BEGINS. IF THE PARTIES FAIL TO AGREE TO THE LATER

1 TERMS AND DID NOT INTEND TO FORM A CONTRACT UNLESS THEY SO AGREED, §
2 21-202(E) OF THIS SUBTITLE APPLIES.

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

8 21-209. MASS-MARKET LICENSE.

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

14 (1) THE TERM IS UNCONSCIONABLE ~~OR~~;

15 (2) THE TERM IS UNENFORCEABLE, AFTER WEIGHING FUNDAMENTAL
16 PUBLIC POLICIES, INCLUDING FUNDAMENTAL PUBLIC POLICIES CONCERNING
17 COMPETITION OR INNOVATION, UNDER § 21-105(A) OR (B) OF THIS TITLE; OR

18 ~~(2)~~ (3) SUBJECT TO § 21-301 OF THIS TITLE, THE TERM CONFLICTS
19 WITH A TERM TO WHICH THE PARTIES TO THE LICENSE HAVE EXPRESSLY AGREED;
20 OR

21 (4) THE TERM IS NOT AVAILABLE FOR VIEWING BEFORE AND AFTER
22 ASSENT:

23 (I) IN A PRINTED LICENSE OR; OR

24 (II) IN ELECTRONIC FORM THAT:

25 1. CAN BE PRINTED OR STORED FOR ARCHIVAL AND REVIEW
26 PURPOSES BY THE LICENSEE; OR

27 2. IS MADE AVAILABLE BY A LICENSOR TO A LICENSEE, AT
28 NO COST TO THE LICENSEE, IN A PRINTED FORM ON THE REQUEST OF A LICENSEE
29 THAT IS UNABLE TO PRINT OR STORE THE LICENSE FOR ARCHIVAL AND REVIEW
30 PURPOSES.

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:

1 (1) REIMBURSEMENT OF ANY REASONABLE EXPENSES INCURRED IN
2 COMPLYING WITH THE LICENSOR'S INSTRUCTIONS FOR RETURNING OR DESTROYING
3 THE COMPUTER INFORMATION OR, IN THE ABSENCE OF INSTRUCTIONS, EXPENSES
4 INCURRED FOR RETURN POSTAGE OR SIMILAR REASONABLE EXPENSE IN
5 RETURNING THE COMPUTER INFORMATION; AND

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

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

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

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

20 (D) A TERM IN A MASS-MARKET LICENSE THAT LIMITS THE DURATION OF THE
21 LICENSE SHALL BE CONSPICUOUS.

22 21-210. TERMS OF CONTRACT FORMED BY CONDUCT.

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

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

36 21-211. PRETRANSACTION DISCLOSURES IN INTERNET-TYPE TRANSACTIONS.

37 THIS SECTION APPLIES TO A LICENSOR THAT MAKES ITS COMPUTER
38 INFORMATION AVAILABLE TO A LICENSEE BY ELECTRONIC MEANS FROM ITS
39 INTERNET OR SIMILAR ELECTRONIC SITE. IN SUCH A CASE, THE LICENSOR AFFORDS
40 AN OPPORTUNITY TO REVIEW THE TERMS OF A STANDARD FORM LICENSE WHICH

1 OPPORTUNITY SATISFIES § 21-112(E) OF THIS TITLE WITH RESPECT TO A LICENSEE
2 THAT ACQUIRES THE INFORMATION FROM THAT SITE, IF THE LICENSOR:

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

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

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

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

18 ELECTRONIC CONTRACTS: GENERALLY.

19 21-212. EFFICACY AND COMMERCIAL REASONABLENESS OF ATTRIBUTION
20 PROCEDURE.

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

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

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

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

33 21-213. DETERMINING ATTRIBUTION.

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

1 AUTHENTICATION, DISPLAY, MESSAGE, RECORD, OR PERFORMANCE TO ANOTHER
2 PERSON HAS THE BURDEN OF ESTABLISHING ATTRIBUTION.

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

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

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

19 21-214. ELECTRONIC ERROR: CONSUMER DEFENSES.

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

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

27 (1) PROMPTLY ON LEARNING OF THE ERROR:

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

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

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

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

1 21-215. ELECTRONIC MESSAGE: WHEN EFFECTIVE; EFFECT OF ACKNOWLEDGMENT.

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

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

8 21-216. IDEA OR INFORMATION SUBMISSION.

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

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

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

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

21 (A) THE SUBMISSION IS MADE AND ACCEPTED PURSUANT TO THAT
22 PROCEDURE; OR

23 (B) THE RECIPIENT EXPRESSLY AGREES TO TERMS CONCERNING
24 THE SUBMISSION.

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

29 SUBTITLE 3. CONSTRUCTION; GENERAL; INTERPRETATION.

30 GENERAL.

31 21-301. PAROL OR EXTRINSIC EVIDENCE.

32 TERMS WITH RESPECT TO WHICH CONFIRMATORY RECORDS OF THE PARTIES
33 AGREE OR WHICH ARE OTHERWISE SET FORTH IN A RECORD INTENDED BY THE
34 PARTIES AS A FINAL EXPRESSION OF THEIR AGREEMENT WITH RESPECT TO TERMS
35 INCLUDED THEREIN MAY NOT BE CONTRADICTED BY EVIDENCE OF ANY PREVIOUS

1 AGREEMENT OR OF A CONTEMPORANEOUS ORAL AGREEMENT BUT MAY BE
2 EXPLAINED OR SUPPLEMENTED BY:

3 (1) COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF
4 TRADE; AND

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

8 21-302. PRACTICAL CONSTRUCTION.

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

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

15 (2) COURSE OF PERFORMANCE PREVAILS OVER COURSE OF DEALING
16 AND USAGE OF TRADE; AND

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

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

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

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

28 21-303. MODIFICATION AND RESCISSION.

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

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

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

4 (D) AN ATTEMPT AT MODIFICATION OR RESCISSION WHICH DOES NOT
5 SATISFY SUBSECTION (B) OR (C) OF THIS SECTION MAY OPERATE AS A WAIVER IF §
6 21-702 OF THIS TITLE IS SATISFIED.

7 21-304. CONTINUING CONTRACTUAL TERMS.

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

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

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

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

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

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

28 21-305. TERMS TO BE SPECIFIED.

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

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

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

1 (A) IS EXCUSED FOR ANY RESULTING DELAY IN ITS
2 PERFORMANCE; AND

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

5 21-306. PERFORMANCE UNDER OPEN TERMS.

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

10 INTERPRETATION.

11 21-307. INTERPRETATION AND REQUIREMENTS FOR A GRANT.

12 (A) A LICENSE GRANTS:

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

14 (2) A CONTRACTUAL RIGHT TO USE ANY INFORMATIONAL RIGHTS
15 WITHIN THE LICENSOR'S CONTROL AT THE TIME OF CONTRACTING WHICH ARE
16 NECESSARY IN THE ORDINARY COURSE TO EXERCISE THE EXPRESSLY DESCRIBED
17 RIGHTS.

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

26 (C) AN AGREEMENT THAT DOES NOT SPECIFY THE NUMBER OF PERMITTED
27 USERS PERMITS A NUMBER OF USERS WHICH IS REASONABLE IN LIGHT OF THE
28 INFORMATIONAL RIGHTS INVOLVED AND THE COMMERCIAL CIRCUMSTANCES
29 EXISTING AT THE TIME OF THE AGREEMENT.

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

36 (E) UNLESS OTHERWISE AGREED, NEITHER PARTY IS ENTITLED TO RECEIVE
37 COPIES OF SOURCE CODE, SCHEMATICS, MASTER COPY, DESIGN MATERIAL, OR

1 OTHER INFORMATION USED BY THE OTHER PARTY IN CREATING, DEVELOPING, OR
2 IMPLEMENTING THE INFORMATION.

3 (F) TERMS CONCERNING SCOPE MUST BE CONSTRUED UNDER ORDINARY
4 PRINCIPLES OF CONTRACT INTERPRETATION IN LIGHT OF THE INFORMATIONAL
5 RIGHTS AND THE COMMERCIAL CONTEXT. IN ADDITION, THE FOLLOWING RULES
6 APPLY:

7 (1) A GRANT OF "ALL POSSIBLE RIGHTS AND FOR ALL MEDIA" OR "ALL
8 RIGHTS AND FOR ALL MEDIA NOW KNOWN OR LATER DEVELOPED", OR A GRANT IN
9 SIMILAR TERMS, INCLUDES ALL RIGHTS THEN EXISTING OR LATER CREATED BY LAW
10 AND ALL USES, MEDIA, AND METHODS OF DISTRIBUTION OR EXHIBITION, WHETHER
11 THEN EXISTING OR DEVELOPED IN THE FUTURE AND WHETHER OR NOT
12 ANTICIPATED AT THE TIME OF THE GRANT.

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

15 (A) FOR THE DURATION OF THE LICENSE, THE LICENSOR WILL NOT
16 EXERCISE, AND WILL NOT GRANT TO ANY OTHER PERSON, RIGHTS IN THE SAME
17 INFORMATION OR INFORMATIONAL RIGHTS WITHIN THE SCOPE OF THE EXCLUSIVE
18 GRANT; AND

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

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

24 (1) AUTHENTICATED BY THE PARTY AGAINST WHICH ENFORCEMENT IS
25 SOUGHT; OR

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

28 21-308. DURATION OF CONTRACT.

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

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

36 (2) THE DURATION OF CONTRACTUAL RIGHTS TO USE LICENSED
37 SUBJECT MATTER IS A TIME REASONABLE IN LIGHT OF THE LICENSED
38 INFORMATIONAL RIGHTS AND THE COMMERCIAL CIRCUMSTANCES. HOWEVER,

1 SUBJECT TO CANCELLATION FOR BREACH OF CONTRACT, THE DURATION OF THE
2 LICENSE IS PERPETUAL AS TO THE CONTRACTUAL RIGHTS AND CONTRACTUAL USE
3 TERMS IF:

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

6 (I) TRANSFERS OWNERSHIP OF A COPY; OR

7 (II) DELIVERS A COPY FOR A CONTRACT FEE THE TOTAL
8 AMOUNT OF WHICH IS FIXED AT OR BEFORE THE TIME OF DELIVERY OF THE COPY;
9 OR

10 (B) THE LICENSE EXPRESSLY GRANTS THE RIGHT TO
11 INCORPORATE OR USE THE LICENSED INFORMATION OR INFORMATIONAL RIGHTS
12 WITH INFORMATION OR INFORMATIONAL RIGHTS FROM OTHER SOURCES IN A
13 COMBINED WORK FOR PUBLIC DISTRIBUTION OR PUBLIC PERFORMANCE.

14 21-309. AGREEMENT FOR PERFORMANCE TO A PARTY'S SATISFACTION.

15 (A) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (B) OF THIS SECTION,
16 AN AGREEMENT THAT PROVIDES THAT THE PERFORMANCE OF ONE PARTY IS TO BE
17 TO THE SATISFACTION OR APPROVAL OF THE OTHER PARTY REQUIRES
18 PERFORMANCE SUFFICIENT TO SATISFY A REASONABLE PERSON IN THE POSITION
19 OF THE PARTY THAT MUST BE SATISFIED.

20 (B) PERFORMANCE MUST BE TO THE SUBJECTIVE SATISFACTION OF THE
21 OTHER PARTY IF:

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

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

28 SUBTITLE 4. WARRANTIES.

29 21-401. WARRANTY AND OBLIGATIONS CONCERNING NONINTERFERENCE AND
30 NONINFRINGEMENT.

31 (A) A LICENSOR OF INFORMATION THAT IS A MERCHANT REGULARLY
32 DEALING IN INFORMATION OF THE KIND WARRANTS THAT THE INFORMATION WILL
33 BE DELIVERED FREE OF THE RIGHTFUL CLAIM OF ANY THIRD PERSON BY WAY OF
34 INFRINGEMENT OR MISAPPROPRIATION, BUT A LICENSEE THAT FURNISHES
35 DETAILED SPECIFICATIONS TO THE LICENSOR AND THE METHOD REQUIRED FOR
36 MEETING THE SPECIFICATIONS HOLDS THE LICENSOR HARMLESS AGAINST ANY
37 SUCH CLAIM THAT ARISES OUT OF COMPLIANCE WITH EITHER THE REQUIRED
38 SPECIFICATION OR THE REQUIRED METHOD EXCEPT FOR A CLAIM THAT RESULTS

1 FROM THE FAILURE OF THE LICENSOR TO ADOPT, OR NOTIFY THE LICENSEE OF, A
2 NONINFRINGEMENT ALTERNATIVE OF WHICH THE LICENSOR HAD REASON TO KNOW.

3 (B) A LICENSOR WARRANTS:

4 (1) FOR THE DURATION OF THE LICENSE, THAT NO PERSON HOLDS A
5 RIGHTFUL CLAIM TO, OR INTEREST IN, THE INFORMATION WHICH AROSE FROM AN
6 ACT OR OMISSION OF THE LICENSOR, OTHER THAN A CLAIM BY WAY OF
7 INFRINGEMENT OR MISAPPROPRIATION, WHICH WILL INTERFERE WITH THE
8 LICENSEE'S ENJOYMENT OF ITS INTEREST; AND

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

11 (A) TO THE KNOWLEDGE OF THE LICENSOR, ANY LICENSED
12 PATENT RIGHTS ARE VALID AND EXCLUSIVE TO THE EXTENT EXCLUSIVITY AND
13 VALIDITY ARE RECOGNIZED BY THE LAW UNDER WHICH THE PATENT RIGHTS WERE
14 CREATED; AND

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

19 (C) THE WARRANTIES IN THIS SECTION ARE SUBJECT TO THE FOLLOWING
20 RULES:

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

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

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

1 (D) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (E) OF THIS SECTION, A
2 WARRANTY UNDER THIS SECTION MAY BE DISCLAIMED OR MODIFIED ONLY BY
3 SPECIFIC LANGUAGE OR BY CIRCUMSTANCES THAT GIVE THE LICENSEE REASON TO
4 KNOW THAT THE LICENSOR DOES NOT WARRANT THAT COMPETING CLAIMS DO NOT
5 EXIST OR THAT THE LICENSOR PURPORTS TO GRANT ONLY THE RIGHTS IT MAY
6 HAVE. IN AN AUTOMATED TRANSACTION, LANGUAGE IS SUFFICIENT IF IT IS
7 CONSPICUOUS. OTHERWISE, LANGUAGE IN A RECORD IS SUFFICIENT IF IT STATES
8 "THERE IS NO WARRANTY AGAINST INTERFERENCE WITH YOUR ENJOYMENT OF THE
9 INFORMATION OR AGAINST INFRINGEMENT", OR WORDS OF SIMILAR IMPORT.

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

14 21-402. EXPRESS WARRANTY.

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

17 (1) AN AFFIRMATION OF FACT OR PROMISE MADE BY THE LICENSOR TO
18 ITS LICENSEE, INCLUDING BY ADVERTISING, WHICH RELATES TO THE INFORMATION
19 AND BECOMES PART OF THE BASIS OF THE BARGAIN CREATES AN EXPRESS
20 WARRANTY THAT THE INFORMATION TO BE FURNISHED UNDER THE AGREEMENT
21 WILL CONFORM TO THE AFFIRMATION OR PROMISE.

22 (2) ANY DESCRIPTION OF THE INFORMATION WHICH IS MADE PART OF
23 THE BASIS OF THE BARGAIN CREATES AN EXPRESS WARRANTY THAT THE
24 INFORMATION WILL CONFORM TO THE DESCRIPTION.

25 (3) ANY SAMPLE, MODEL, OR DEMONSTRATION OF A FINAL PRODUCT
26 WHICH IS MADE PART OF THE BASIS OF THE BARGAIN CREATES AN EXPRESS
27 WARRANTY THAT THE PERFORMANCE OF THE INFORMATION WILL REASONABLY
28 CONFORM TO THE PERFORMANCE OF THE SAMPLE, MODEL, OR DEMONSTRATION,
29 TAKING INTO ACCOUNT DIFFERENCES THAT WOULD APPEAR TO A REASONABLE
30 PERSON IN THE POSITION OF THE LICENSEE BETWEEN THE SAMPLE, MODEL, OR
31 DEMONSTRATION AND THE INFORMATION AS IT WILL BE USED.

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

36 (1) AN AFFIRMATION OR PREDICTION MERELY OF THE VALUE OF THE
37 INFORMATION OR INFORMATIONAL RIGHTS;

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

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

3 (C) AN EXPRESS WARRANTY OR SIMILAR EXPRESS CONTRACTUAL
4 OBLIGATION, IF ANY, EXISTS WITH RESPECT TO PUBLISHED INFORMATIONAL
5 CONTENT COVERED BY THIS TITLE TO THE SAME EXTENT THAT IT WOULD EXIST IF
6 THE PUBLISHED INFORMATIONAL CONTENT HAD BEEN PUBLISHED IN A FORM THAT
7 PLACED IT OUTSIDE THIS TITLE. HOWEVER, IF THE WARRANTY OR SIMILAR EXPRESS
8 CONTRACTUAL OBLIGATION IS BREACHED, THE REMEDIES OF THE AGGRIEVED
9 PARTY ARE THOSE UNDER THIS TITLE AND THE AGREEMENT.

10 21-403. IMPLIED WARRANTY: MERCHANTABILITY OF A COMPUTER PROGRAM.

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

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

15 (2) TO THE DISTRIBUTOR THAT:

16 (A) THE PROGRAM IS ADEQUATELY PACKAGED AND LABELED AS
17 THE AGREEMENT REQUIRES; AND

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

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

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

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

29 21-404. IMPLIED WARRANTY: INFORMATIONAL CONTENT.

30 (A) UNLESS THE WARRANTY IS DISCLAIMED OR MODIFIED, A MERCHANT
31 THAT, IN A SPECIAL RELATIONSHIP OF RELIANCE WITH A LICENSEE, COLLECTS,
32 COMPILES, PROCESSES, PROVIDES, OR TRANSMITS INFORMATIONAL CONTENT
33 WARRANTS TO THAT LICENSEE THAT THERE IS NO INACCURACY IN THE
34 INFORMATIONAL CONTENT CAUSED BY THE MERCHANT'S FAILURE TO PERFORM
35 WITH REASONABLE CARE.

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

1 (1) PUBLISHED INFORMATIONAL CONTENT; OR

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

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

9 21-405. IMPLIED WARRANTY: LICENSEE'S PURPOSE; SYSTEM INTEGRATION.

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

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

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

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

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

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

31 (C) IF AN AGREEMENT REQUIRES A LICENSOR TO PROVIDE OR SELECT A
32 SYSTEM CONSISTING OF COMPUTER PROGRAMS AND GOODS, AND THE LICENSOR
33 HAS REASON TO KNOW THAT THE LICENSEE IS RELYING ON THE SKILL OR
34 JUDGMENT OF THE LICENSOR TO SELECT THE COMPONENTS OF THE SYSTEM,
35 THERE IS AN IMPLIED WARRANTY THAT THE COMPONENTS PROVIDED OR SELECTED
36 WILL FUNCTION TOGETHER AS A SYSTEM.

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

1 21-406. DISCLAIMER OR MODIFICATION OF WARRANTY.

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

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

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

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

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

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

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

32 (4) A DISCLAIMER OR MODIFICATION SUFFICIENT UNDER TITLE 2 OR
33 TITLE 2A OF THIS ARTICLE TO DISCLAIM OR MODIFY AN IMPLIED WARRANTY OF
34 MERCHANTABILITY IS SUFFICIENT TO DISCLAIM OR MODIFY THE WARRANTIES
35 UNDER §§ 21-403 AND 21-404 OF THIS SUBTITLE. A DISCLAIMER OR MODIFICATION
36 SUFFICIENT UNDER TITLE 2 OR TITLE 2A OF THIS ARTICLE TO DISCLAIM OR MODIFY
37 AN IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE IS SUFFICIENT TO
38 DISCLAIM OR MODIFY THE WARRANTIES UNDER § 21-405 OF THIS SUBTITLE.

39 (C) UNLESS THE CIRCUMSTANCES INDICATE OTHERWISE, ALL IMPLIED
40 WARRANTIES, BUT NOT THE WARRANTY UNDER § 21-401 OF THIS SUBTITLE, ARE
41 DISCLAIMED BY EXPRESSIONS LIKE "AS IS" OR "WITH ALL FAULTS" OR OTHER

1 LANGUAGE THAT IN COMMON UNDERSTANDING CALLS THE LICENSEE'S ATTENTION
2 TO THE DISCLAIMER OF WARRANTIES AND MAKES PLAIN THAT THERE ARE NO
3 IMPLIED WARRANTIES.

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

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

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

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

18 (H) THE PROVISIONS OF SUBSECTIONS (A) THROUGH (G) OF THIS SECTION DO
19 NOT APPLY TO A CONSUMER CONTRACT.

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

26 (2) A MERCHANT MAY RECOVER FROM A MANUFACTURER OR A
27 LICENSOR THAT CAUSED THE BREACH ANY DAMAGES RESULTING FROM THE
28 BREACH OF IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A
29 PARTICULAR PURPOSE THAT COULD NOT BE DISCLAIMED OR MODIFIED UNDER THIS
30 SECTION.

31 (J) ANY ORAL OR WRITTEN LANGUAGE USED IN A CONSUMER CONTRACT
32 WHICH ATTEMPTS TO LIMIT OR MODIFY A CONSUMER'S REMEDIES FOR BREACH OF A
33 MERCHANT'S, LICENSOR'S, OR MANUFACTURER'S EXPRESS WARRANTIES IS
34 UNENFORCEABLE UNLESS THE MERCHANT, LICENSOR, OR MANUFACTURER
35 PROVIDES REASONABLE AND EXPEDITIOUS MEANS OF PERFORMING THE WARRANTY
36 OBLIGATIONS.

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

39 (1) AN INFORMATION/COMPUTER PROGRAM PROVIDED FOR NO FEE,
40 UNLESS THE INFORMATION/COMPUTER PROGRAM IS PROVIDED IN CONJUNCTION

1 WITH THE SALE OR LEASE OF GOODS, SERVICES, OR ANOTHER
2 INFORMATION/COMPUTER PROGRAM; OR

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

5 21-407. MODIFICATION OF A COMPUTER PROGRAM.

6 A LICENSEE THAT MODIFIES A COMPUTER PROGRAM, OTHER THAN BY USING A
7 CAPABILITY OF THE PROGRAM INTENDED FOR THAT PURPOSE IN THE ORDINARY
8 COURSE, DOES NOT INVALIDATE ANY WARRANTY REGARDING PERFORMANCE OF AN
9 UNMODIFIED COPY BUT DOES INVALIDATE ANY WARRANTIES, EXPRESS OR IMPLIED,
10 REGARDING PERFORMANCE OF THE MODIFIED COPY. A MODIFICATION OCCURS IF A
11 LICENSEE ALTERS CODE IN, DELETES CODE FROM, OR ADDS CODE TO THE
12 COMPUTER PROGRAM.

13 21-408. CULMINATION AND CONFLICT OF WARRANTIES.

14 WARRANTIES, WHETHER EXPRESS OR IMPLIED, MUST BE CONSTRUED AS
15 CONSISTENT WITH EACH OTHER AND AS CUMULATIVE, BUT IF THAT CONSTRUCTION
16 IS UNREASONABLE, THE INTENTION OF THE PARTIES DETERMINES WHICH
17 WARRANTY IS DOMINANT. IN ASCERTAINING THAT INTENTION, THE FOLLOWING
18 RULES APPLY:

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

21 (2) A SAMPLE DISPLACES INCONSISTENT GENERAL LANGUAGE OF
22 DESCRIPTION.

23 (3) EXPRESS WARRANTIES DISPLACE INCONSISTENT IMPLIED
24 WARRANTIES OTHER THAN AN IMPLIED WARRANTY UNDER § 21-405(A) OF THIS
25 SUBTITLE.

26 21-409. THIRD-PARTY BENEFICIARIES OF WARRANTY.

27 (A) EXCEPT FOR PUBLISHED INFORMATIONAL CONTENT, A WARRANTY TO A
28 LICENSEE EXTENDS TO PERSONS FOR WHOSE BENEFIT THE LICENSOR INTENDS TO
29 SUPPLY THE INFORMATION OR INFORMATIONAL RIGHTS AND WHICH RIGHTFULLY
30 USE THE INFORMATION IN A TRANSACTION OR APPLICATION OF A KIND IN WHICH
31 THE LICENSOR INTENDS THE INFORMATION TO BE USED.

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

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

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

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

6 OWNERSHIP AND TRANSFERS.

7 21-501. OWNERSHIP OF INFORMATIONAL RIGHTS.

8 (A) IF AN AGREEMENT PROVIDES FOR CONVEYANCE OF OWNERSHIP OF
9 INFORMATIONAL RIGHTS IN A COMPUTER PROGRAM, OWNERSHIP PASSES AT THE
10 TIME AND PLACE SPECIFIED BY THE AGREEMENT BUT DOES NOT PASS UNTIL THE
11 PROGRAM IS IN EXISTENCE AND IDENTIFIED TO THE CONTRACT. IF THE AGREEMENT
12 DOES NOT SPECIFY A DIFFERENT TIME, OWNERSHIP PASSES WHEN THE PROGRAM
13 AND THE INFORMATIONAL RIGHTS ARE IN EXISTENCE AND IDENTIFIED TO THE
14 CONTRACT.

15 (B) TRANSFER OF A COPY DOES NOT TRANSFER OWNERSHIP OF
16 INFORMATIONAL RIGHTS.

17 21-502. TITLE TO COPY.

18 (A) IN A LICENSE:

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

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

23 (3) IF A LICENSOR RESERVES TITLE TO A COPY, THE LICENSOR RETAINS
24 TITLE TO THAT COPY AND ANY COPIES MADE OF IT, UNLESS THE LICENSE GRANTS
25 THE LICENSEE A RIGHT TO MAKE AND SELL COPIES TO OTHERS, IN WHICH CASE THE
26 RESERVATION OF TITLE APPLIES ONLY TO COPIES DELIVERED TO THE LICENSEE BY
27 THE LICENSOR.

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

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

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

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

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

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

8 21-503. TRANSFER OF CONTRACTUAL INTEREST.

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

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

12 (A) IS PROHIBITED BY OTHER LAW; OR

13 (B) EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (3) OF THIS
14 SUBSECTION, WOULD MATERIALLY CHANGE THE DUTY OF THE OTHER PARTY,
15 MATERIALLY INCREASE THE BURDEN OR RISK IMPOSED ON THE OTHER PARTY, OR
16 MATERIALLY IMPAIR THE OTHER PARTY'S PROPERTY OR ITS LIKELIHOOD OR
17 EXPECTATION OF OBTAINING RETURN PERFORMANCE.

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

24 (A) THE CONTRACT IS A LICENSE FOR INCORPORATION OR USE OF
25 THE LICENSED INFORMATION OR INFORMATIONAL RIGHTS WITH INFORMATION OR
26 INFORMATIONAL RIGHTS FROM OTHER SOURCES IN A COMBINED WORK FOR PUBLIC
27 DISTRIBUTION OR PUBLIC PERFORMANCE AND THE TRANSFER IS OF THE
28 COMPLETED, COMBINED WORK; OR

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

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

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

1 21-504. EFFECT OF TRANSFER OF CONTRACTUAL INTEREST.

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

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

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

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

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

15 (4) THE TRANSFER DOES NOT RELIEVE THE TRANSFEROR OF ANY DUTY
16 TO PERFORM, OR OF LIABILITY FOR BREACH OF CONTRACT, UNLESS THE OTHER
17 PARTY TO THE ORIGINAL CONTRACT AGREES THAT THE TRANSFER HAS THAT
18 EFFECT.

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

24 21-505. PERFORMANCE BY DELEGATE; SUBCONTRACT.

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

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

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

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

32 (C) AN ATTEMPTED DELEGATION THAT VIOLATES A TERM PROHIBITING
33 DELEGATION IS NOT EFFECTIVE.

34 21-506. TRANSFER BY LICENSEE.

35 (A) IF ALL OR ANY PART OF A LICENSEE'S INTEREST IN A LICENSE IS
36 TRANSFERRED, VOLUNTARILY OR INVOLUNTARILY, THE TRANSFEREE DOES NOT

1 ACQUIRE AN INTEREST IN INFORMATION, COPIES, OR THE CONTRACTUAL OR
2 INFORMATIONAL RIGHTS OF THE LICENSEE UNLESS THE TRANSFER IS EFFECTIVE
3 UNDER § 21-503 OR § 21-508(A)(1)(B) OF THIS SUBTITLE. IF THE TRANSFER IS
4 EFFECTIVE, THE TRANSFEREE TAKES SUBJECT TO THE TERMS OF THE LICENSE.

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

8 FINANCING ARRANGEMENTS.

9 21-507. FINANCING IF FINANCIER DOES NOT BECOME LICENSEE.

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

12 (1) THE FINANCIER DOES NOT RECEIVE THE BENEFITS OR BURDENS OF
13 THE LICENSE.

14 (2) THE LICENSEE'S RIGHTS AND OBLIGATIONS WITH RESPECT TO THE
15 INFORMATION AND INFORMATIONAL RIGHTS ARE 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, ANY FINANCIAL ACCOMMODATION CONTRACT
20 BETWEEN THE FINANCIER AND THE LICENSEE, WHICH MAY ADD ADDITIONAL
21 CONDITIONS TO THE LICENSEE'S RIGHT TO USE THE LICENSED INFORMATION OR
22 INFORMATIONAL RIGHTS.

23 21-508. FINANCE LICENSES.

24 (A) IF A FINANCIER BECOMES A LICENSEE IN CONNECTION WITH ITS
25 FINANCIAL ACCOMMODATION CONTRACT AND THEN TRANSFERS ITS CONTRACTUAL
26 INTEREST UNDER THE LICENSE, OR SUBLICENSES THE LICENSED COMPUTER
27 INFORMATION OR INFORMATIONAL RIGHTS, TO A LICENSEE RECEIVING THE
28 FINANCIAL ACCOMMODATION, THE FOLLOWING RULES APPLY:

29 (1) THE TRANSFER OR SUBLICENSE TO THE ACCOMMODATED LICENSEE
30 IS NOT EFFECTIVE UNLESS:

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

33 (B) THE FOLLOWING CONDITIONS ARE FULFILLED:

34 (I) BEFORE THE LICENSOR DELIVERED THE INFORMATION
35 OR GRANTED THE LICENSE TO THE FINANCIER, THE LICENSOR RECEIVED NOTICE IN

1 A RECORD FROM THE FINANCIER GIVING THE NAME AND LOCATION OF THE
2 ACCOMMODATED LICENSEE AND CLEARLY INDICATING THAT THE LICENSE WAS
3 BEING OBTAINED IN ORDER TO TRANSFER THE CONTRACTUAL INTEREST OR
4 SUBLICENSE THE LICENSED INFORMATION OR INFORMATIONAL RIGHTS TO THE
5 ACCOMMODATED LICENSEE;

6 (II) THE FINANCIER BECAME A LICENSEE SOLELY TO MAKE
7 THE FINANCIAL ACCOMMODATION; AND

8 (III) THE ACCOMMODATED LICENSEE ADOPTS THE TERMS OF
9 THE LICENSE, WHICH TERMS MAY BE SUPPLEMENTED BY THE FINANCIAL
10 ACCOMMODATION CONTRACT, TO THE EXTENT THE TERMS OF THE FINANCIAL
11 ACCOMMODATION CONTRACT ARE NOT INCONSISTENT WITH THE LICENSE AND ANY
12 RIGHTS OF THE LICENSOR UNDER OTHER LAW.

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

17 (B) IF A FINANCIER MAKES AN EFFECTIVE TRANSFER OF ITS CONTRACTUAL
18 INTEREST IN A LICENSE, OR AN EFFECTIVE SUBLICENSE OF THE LICENSED
19 INFORMATION OR INFORMATIONAL RIGHTS, TO AN ACCOMMODATED LICENSEE, THE
20 FOLLOWING RULES APPLY:

21 (1) THE ACCOMMODATED LICENSEE'S RIGHTS AND OBLIGATIONS ARE
22 GOVERNED BY:

23 (A) THE LICENSE;

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

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

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

33 21-509. FINANCING ARRANGEMENTS: OBLIGATIONS IRREVOCABLE.

34 UNLESS THE ACCOMMODATED LICENSEE IS A CONSUMER, A TERM IN A
35 FINANCIAL ACCOMMODATION CONTRACT PROVIDING THAT THE ACCOMMODATED
36 LICENSEE'S OBLIGATIONS TO THE FINANCIER ARE IRREVOCABLE AND
37 INDEPENDENT IS ENFORCEABLE. THE OBLIGATIONS BECOME IRREVOCABLE AND
38 INDEPENDENT UPON THE LICENSEE'S ACCEPTANCE OF THE LICENSE OR THE
39 FINANCIER'S GIVING OF VALUE, WHICHEVER OCCURS FIRST.

1 21-510. FINANCING ARRANGEMENTS: REMEDIES OR ENFORCEMENT.

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

5 (1) THE FINANCIER MAY CANCEL THE FINANCIAL ACCOMMODATION
6 CONTRACT.

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

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

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

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

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

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

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

39 (2) THE FINANCIER MAY NOT OTHERWISE EXERCISE CONTROL OVER,
40 HAVE ACCESS TO, OR SELL, TRANSFER, OR OTHERWISE USE THE INFORMATION OR

1 COPIES WITHOUT THE CONSENT OF THE LICENSOR UNLESS THE FINANCIER OR
2 TRANSFEREE IS SUBJECT TO THE TERMS OF THE LICENSE AND:

3 (A) THE LICENSEE OWNS THE LICENSED COPY, THE LICENSE DOES
4 NOT PRECLUDE TRANSFER OF THE LICENSEE'S CONTRACTUAL RIGHTS, AND THE
5 TRANSFER COMPLIES WITH FEDERAL COPYRIGHT LAW FOR THE OWNER OF A COPY
6 TO MAKE THE TRANSFER; OR

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

10 (3) THE FINANCIER'S REMEDIES UNDER THE FINANCIAL
11 ACCOMMODATION CONTRACT ARE SUBJECT TO THE LICENSOR'S RIGHTS AND THE
12 TERMS OF THE LICENSE.

13 21-511. FINANCING ARRANGEMENTS: EFFECT ON LICENSOR'S RIGHTS.

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

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

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

21 GENERAL.

22 21-601. PERFORMANCE OF CONTRACT IN GENERAL.

23 (A) A PARTY SHALL PERFORM IN A MANNER THAT CONFORMS TO THE
24 CONTRACT.

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

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

34 (2) THE AGGRIEVED PARTY MAY CANCEL THE CONTRACT ONLY IF THE
35 BREACH IS A MATERIAL BREACH OF THE WHOLE CONTRACT OR THE AGREEMENT SO
36 PROVIDES.

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

4 (1) A TENDER OF PERFORMANCE OCCURS WHEN THE PARTY, WITH
5 MANIFEST PRESENT ABILITY AND WILLINGNESS TO PERFORM, OFFERS TO
6 COMPLETE THE PERFORMANCE.

7 (2) IF A PERFORMANCE BY THE OTHER PARTY IS DUE AT THE TIME OF
8 THE TENDERED PERFORMANCE, TENDER OF THE OTHER PARTY'S PERFORMANCE IS
9 A CONDITION TO THE TENDERING PARTY'S OBLIGATION TO COMPLETE THE
10 TENDERED PERFORMANCE.

11 (3) A PARTY SHALL PAY OR RENDER THE CONSIDERATION REQUIRED BY
12 THE AGREEMENT FOR A PERFORMANCE IT ACCEPTS. A PARTY THAT ACCEPTS A
13 PERFORMANCE HAS THE BURDEN OF ESTABLISHING A BREACH OF CONTRACT WITH
14 RESPECT TO THE ACCEPTED PERFORMANCE.

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

19 21-602. LICENSOR'S OBLIGATION TO ENABLE USE.

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

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

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

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

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

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

36 (5) IF THE AGREEMENT REQUIRES A TRANSFER OF OWNERSHIP OF
37 INFORMATIONAL RIGHTS AND A FILING OR RECORDING IS ALLOWED BY LAW TO
38 ESTABLISH PRIORITY OF THE TRANSFERRED OWNERSHIP, ON REQUEST BY THE

1 LICENSEE, THE LICENSOR SHALL EXECUTE AND TENDER A RECORD APPROPRIATE
2 FOR THAT PURPOSE.

3 21-603. SUBMISSIONS OF INFORMATION TO SATISFACTION OF A PARTY.

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

6 (1) §§ 21-606 THROUGH 21-610 AND §§ 21-704 THROUGH 21-707 OF THIS
7 TITLE DO NOT APPLY TO THE SUBMISSION.

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

13 (3) EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (4), NEITHER
14 REFUSAL NOR ACCEPTANCE OCCURS UNLESS THE RECIPIENT EXPRESSLY REFUSES
15 OR ACCEPTS THE SUBMITTED INFORMATION, BUT THE RECIPIENT MAY NOT USE THE
16 SUBMITTED INFORMATION BEFORE ACCEPTANCE.

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

23 21-604. IMMEDIATELY COMPLETED PERFORMANCE.

24 IF A PERFORMANCE INVOLVES DELIVERY OF INFORMATION OR SERVICES
25 WHICH, BECAUSE OF THEIR NATURE, MAY PROVIDE A LICENSEE, IMMEDIATELY ON
26 PERFORMANCE OR DELIVERY, WITH SUBSTANTIALLY ALL THE BENEFIT OF THE
27 PERFORMANCE OR WITH OTHER SIGNIFICANT BENEFIT THAT CANNOT BE
28 RETURNED, THE FOLLOWING RULES APPLY:

29 (1) §§ 21-607 THROUGH 21-610 AND §§ 21-704 THROUGH 21-707 OF THIS
30 TITLE DO NOT APPLY.

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

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

1 21-605. ELECTRONIC REGULATION OF PERFORMANCE.

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

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

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

10 (2) THE RESTRAINT PREVENTS A USE THAT IS INCONSISTENT WITH THE
11 AGREEMENT;

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

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

18 (C) THIS SECTION DOES NOT AUTHORIZE AN AUTOMATIC RESTRAINT THAT
19 AFFIRMATIVELY PREVENTS OR MAKES IMPRACTICABLE A LICENSEE'S ACCESS TO ITS
20 OWN INFORMATION OR INFORMATION OF A THIRD PARTY, OTHER THAN THE
21 LICENSOR, IF THAT INFORMATION IS IN THE POSSESSION OF THE LICENSEE OR A
22 THIRD PARTY AND ACCESSED WITHOUT USE OF THE LICENSOR'S INFORMATION OR
23 INFORMATIONAL RIGHTS.

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

27 (E) THIS SECTION DOES NOT PRECLUDE ELECTRONIC REPLACEMENT OR
28 DISABLING OF AN EARLIER COPY OF INFORMATION BY THE LICENSOR IN
29 CONNECTION WITH DELIVERY OF A NEW COPY OR VERSION UNDER AN AGREEMENT
30 TO REPLACE OR DISABLE THE EARLIER COPY BY ELECTRONIC MEANS WITH AN
31 UPGRADE OR OTHER NEW INFORMATION.

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

PERFORMANCE IN DELIVERY OF COPIES.

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

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

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

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

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

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

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

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

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

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

(3) IF THE TENDERING PARTY IS REQUIRED TO DELIVER A COPY AT A PARTICULAR DESTINATION, THE TENDERING PARTY SHALL MAKE A COPY

1 AVAILABLE AT THAT DESTINATION AND BEAR THE EXPENSES OF TRANSPORTATION
2 OR TRANSMISSION.

3 21-607. COPY: PERFORMANCE RELATED TO DELIVERY; PAYMENT.

4 (A) IF PERFORMANCE REQUIRES DELIVERY OF A COPY, THE FOLLOWING
5 RULES APPLY:

6 (1) THE PARTY REQUIRED TO DELIVER NEED NOT COMPLETE A
7 TENDERED DELIVERY UNTIL THE RECEIVING PARTY TENDERS ANY PERFORMANCE
8 THEN DUE.

9 (2) TENDER OF DELIVERY IS A CONDITION OF THE OTHER PARTY'S DUTY
10 TO ACCEPT THE COPY AND ENTITLES THE TENDERING PARTY TO ACCEPTANCE OF
11 THE COPY.

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

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

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

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

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

26 21-608. COPY: RIGHT TO INSPECT; PAYMENT BEFORE INSPECTION.

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

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

34 (2) THE PARTY MAKING THE INSPECTION SHALL BEAR THE EXPENSES
35 OF INSPECTION.

1 (3) A PLACE OR METHOD OF INSPECTION OR AN ACCEPTANCE
2 STANDARD FIXED BY THE PARTIES IS PRESUMED TO BE EXCLUSIVE. HOWEVER, THE
3 FIXING OF A PLACE, METHOD, OR STANDARD DOES NOT POSTPONE IDENTIFICATION
4 TO THE CONTRACT OR SHIFT THE PLACE FOR DELIVERY, PASSAGE OF TITLE, OR RISK
5 OF LOSS. IF COMPLIANCE WITH THE PLACE OR METHOD BECOMES IMPOSSIBLE,
6 INSPECTION MUST BE MADE AS PROVIDED IN THIS SECTION UNLESS THE PLACE OR
7 METHOD FIXED BY THE PARTIES WAS AN INDISPENSABLE CONDITION THE FAILURE
8 OF WHICH AVOIDS THE CONTRACT.

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

11 (B) IF A RIGHT TO INSPECT EXISTS UNDER SUBSECTION (A) OF THIS SECTION
12 BUT THE AGREEMENT IS INCONSISTENT WITH AN OPPORTUNITY TO INSPECT
13 BEFORE PAYMENT, THE PARTY DOES NOT HAVE A RIGHT TO INSPECT BEFORE
14 PAYMENT.

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

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

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

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

26 21-609. COPY: WHEN ACCEPTANCE OCCURS.

27 (A) ACCEPTANCE OF A COPY OCCURS WHEN THE PARTY TO WHICH THE COPY
28 IS TENDERED:

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

32 (2) DOES NOT MAKE AN EFFECTIVE REFUSAL;

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

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

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

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

9 (C) IF AN AGREEMENT REQUIRES DELIVERY IN STAGES INVOLVING
10 SEPARATE PORTIONS THAT TAKEN TOGETHER COMPRISE THE WHOLE OF THE
11 INFORMATION, ACCEPTANCE OF ANY STAGE IS CONDITIONAL UNTIL ACCEPTANCE
12 OF THE WHOLE.

13 21-610. COPY: EFFECT OF ACCEPTANCE; BURDEN OF ESTABLISHING; NOTICE OF
14 CLAIMS.

15 (A) A PARTY ACCEPTING A COPY SHALL PAY OR RENDER THE CONSIDERATION
16 REQUIRED BY THE AGREEMENT FOR THE COPY IT ACCEPTS. ACCEPTANCE OF A COPY
17 PRECLUDES REFUSAL AND, IF MADE WITH KNOWLEDGE OF A NONCONFORMITY IN A
18 TENDER, MAY NOT BE REVOKED BECAUSE OF THE NONCONFORMITY UNLESS
19 ACCEPTANCE WAS ON THE REASONABLE ASSUMPTION THAT THE NONCONFORMITY
20 WOULD BE SEASONABLY CURED. ACCEPTANCE BY ITSELF DOES NOT IMPAIR ANY
21 OTHER REMEDY FOR NONCONFORMITY.

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

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

25 (1) EXCEPT WITH RESPECT TO CLAIMS OF A TYPE DESCRIBED IN §
26 21-805(D)(1) OF THIS TITLE, WITHIN A REASONABLE TIME AFTER IT DISCOVERS OR
27 SHOULD HAVE DISCOVERED A BREACH OF CONTRACT, NOTIFY THE OTHER PARTY OF
28 THE BREACH OR BE BARRED FROM ANY REMEDY FOR THE BREACH; AND

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

34 SPECIAL TYPES OF CONTRACTS.

35 21-611. ACCESS CONTRACTS.

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

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

4 (2) A CHANGE IN THE CONTENT OF THE INFORMATION IS A BREACH OF
5 CONTRACT ONLY IF THE CHANGE CONFLICTS WITH AN EXPRESS TERM OF THE
6 AGREEMENT.

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

11 (4) ACCESS MUST BE AVAILABLE:

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

14 (B) TO THE EXTENT NOT EXPRESSLY STATED IN THE AGREEMENT,
15 AT TIMES AND IN A MANNER REASONABLE FOR THE PARTICULAR TYPE OF
16 CONTRACT IN LIGHT OF THE ORDINARY STANDARDS OF THE BUSINESS, TRADE, OR
17 INDUSTRY.

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

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

24 (2) CAUSED BY:

25 (A) SCHEDULED DOWNTIME;

26 (B) REASONABLE NEEDS FOR MAINTENANCE;

27 (C) REASONABLE PERIODS OF FAILURE OF EQUIPMENT,
28 COMPUTER PROGRAMS, OR COMMUNICATIONS; OR

29 (D) EVENTS REASONABLY BEYOND THE LICENSOR'S CONTROL,
30 AND THE LICENSOR EXERCISES SUCH COMMERCIALY REASONABLE EFFORTS AS
31 THE CIRCUMSTANCES REQUIRE.

32 21-612. CORRECTION AND SUPPORT CONTRACTS.

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

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

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

6 (A) SHALL PERFORM AT A TIME AND PLACE AND IN A MANNER
7 CONSISTENT WITH THE EXPRESS TERMS OF THE AGREEMENT AND, TO THE EXTENT
8 NOT STATED IN THE EXPRESS TERMS, AT A TIME AND PLACE AND IN A MANNER THAT
9 IS REASONABLE IN LIGHT OF ORDINARY STANDARDS OF THE BUSINESS, TRADE, OR
10 INDUSTRY; AND

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

13 (B) UNLESS REQUIRED TO DO SO BY AN EXPRESS OR IMPLIED WARRANTY, A
14 LICENSOR IS NOT REQUIRED TO PROVIDE INSTRUCTION OR OTHER SUPPORT FOR
15 THE LICENSEE'S USE OF INFORMATION OR ACCESS. A PERSON THAT AGREES TO
16 PROVIDE SUPPORT SHALL MAKE THE SUPPORT AVAILABLE IN A MANNER AND WITH
17 A QUALITY CONSISTENT WITH EXPRESS TERMS OF THE SUPPORT AGREEMENT AND,
18 TO THE EXTENT NOT STATED IN THE EXPRESS TERMS, AT A TIME AND PLACE AND IN
19 A MANNER THAT IS REASONABLE IN LIGHT OF ORDINARY STANDARDS OF THE
20 BUSINESS, TRADE, OR INDUSTRY.

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

22 (A) IN THIS SECTION:

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

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

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

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

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

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

5 (3) THE DEALER IS NOT BOUND BY THE TERMS, AND DOES NOT RECEIVE
6 THE BENEFITS, OF AN AGREEMENT BETWEEN THE PUBLISHER AND THE END USER
7 UNLESS THE DEALER AND END USER ADOPT THOSE TERMS AS PART OF THE
8 AGREEMENT.

9 (C) IF AN AGREEMENT PROVIDES FOR DISTRIBUTION OF COPIES ON A
10 TANGIBLE MEDIUM OR IN PACKAGING PROVIDED BY THE PUBLISHER OR AN
11 AUTHORIZED THIRD PARTY, A DEALER MAY DISTRIBUTE THOSE COPIES AND
12 DOCUMENTATION ONLY:

13 (1) IN THE FORM AS RECEIVED; AND

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

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

18 LOSS AND IMPOSSIBILITY.

19 21-614. RISK OF LOSS OF COPY.

20 (A) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, THE RISK OF LOSS AS
21 TO A COPY THAT IS TO BE DELIVERED TO A LICENSEE, INCLUDING A COPY
22 DELIVERED BY ELECTRONIC MEANS, PASSES TO THE LICENSEE UPON ITS RECEIPT
23 OF THE COPY.

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

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

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

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

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

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

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

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

12 21-615. EXCUSE BY FAILURE OF PRESUPPOSED CONDITIONS.

13 (A) UNLESS A PARTY HAS ASSUMED A DIFFERENT OBLIGATION, DELAY IN
14 PERFORMANCE BY A PARTY, OR NONPERFORMANCE IN WHOLE OR PART BY A PARTY,
15 OTHER THAN OF AN OBLIGATION TO MAKE PAYMENTS OR TO CONFORM TO
16 CONTRACTUAL USE TERMS, IS NOT A BREACH OF CONTRACT IF THE DELAY OR
17 NONPERFORMANCE IS OF A PERFORMANCE THAT HAS BEEN MADE IMPRACTICABLE
18 BY:

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

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

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

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

34 (D) A PARTY THAT RECEIVES NOTICE PURSUANT TO SUBSECTION (B) OF THIS
35 SECTION OF A MATERIAL OR INDEFINITE DELAY IN DELIVERY OF COPIES OR OF AN
36 ALLOCATION UNDER SUBSECTION (C) OF THIS SECTION, BY NOTICE IN A RECORD,
37 MAY:

38 (1) TERMINATE AND THEREBY DISCHARGE ANY EXECUTORY PORTION
39 OF THE CONTRACT; OR

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

2 21-617. NOTICE OF TERMINATION.

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

7 (B) AN ACCESS CONTRACT MAY BE TERMINATED WITHOUT GIVING NOTICE.
8 HOWEVER, EXCEPT ON THE HAPPENING OF AN AGREED EVENT, TERMINATION
9 REQUIRES GIVING REASONABLE NOTICE TO THE LICENSEE IF THE ACCESS
10 CONTRACT PERTAINS TO INFORMATION OWNED AND PROVIDED BY THE LICENSEE
11 TO THE LICENSOR.

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

16 21-618. TERMINATION: ENFORCEMENT.

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

24 (B) TERMINATION OF A LICENSE ENDS ALL RIGHT UNDER THE LICENSE FOR
25 THE LICENSEE TO USE OR ACCESS THE LICENSED INFORMATION, INFORMATIONAL
26 RIGHTS, OR COPIES. CONTINUED USE OF THE LICENSED COPIES OR EXERCISE OF
27 TERMINATED RIGHTS IS A BREACH OF CONTRACT UNLESS AUTHORIZED BY A TERM
28 THAT SURVIVES TERMINATION.

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

35 (1) DELIVER OR TAKE POSSESSION OF THEM;

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

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

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

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

8 SUBTITLE 7. BREACH OF CONTRACT; GENERAL; DEFECTIVE COPIES; REPUDIATION
9 AND ASSURANCES.

10 GENERAL.

11 21-701. BREACH OF CONTRACT; MATERIAL BREACH.

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

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

22 (1) THE CONTRACT SO PROVIDES;

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

25 (3) THE CIRCUMSTANCES, INCLUDING THE LANGUAGE OF THE
26 AGREEMENT, THE REASONABLE EXPECTATIONS OF THE PARTIES, THE STANDARDS
27 AND PRACTICES OF THE BUSINESS, TRADE, OR INDUSTRY, AND THE CHARACTER OF
28 THE BREACH, INDICATE THAT:

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

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

34 (C) THE CUMULATIVE EFFECT OF NONMATERIAL BREACHES MAY BE
35 MATERIAL.

1 21-702. WAIVER OF REMEDY FOR BREACH OF CONTRACT.

2 (A) A CLAIM OR RIGHT ARISING OUT OF A BREACH OF CONTRACT MAY BE
3 DISCHARGED IN WHOLE OR PART WITHOUT CONSIDERATION BY A WAIVER IN A
4 RECORD TO WHICH THE PARTY MAKING THE WAIVER AGREES AFTER BREACH, SUCH
5 AS BY MANIFESTING ASSENT, OR WHICH THE PARTY MAKING THE WAIVER
6 AUTHENTICATES AND DELIVERS TO THE OTHER PARTY.

7 (B) A PARTY THAT ACCEPTS A PERFORMANCE WITH KNOWLEDGE THAT THE
8 PERFORMANCE CONSTITUTES A BREACH OF CONTRACT AND, WITHIN A REASONABLE
9 TIME AFTER ACCEPTANCE, DOES NOT NOTIFY THE OTHER PARTY OF THE BREACH
10 WAIVES ALL REMEDIES FOR THE BREACH, UNLESS ACCEPTANCE WAS MADE ON THE
11 REASONABLE ASSUMPTION THAT THE BREACH WOULD BE CURED AND IT HAS NOT
12 BEEN SEASONABLY CURED. HOWEVER, A PARTY THAT SEASONABLY NOTIFIES THE
13 OTHER PARTY OF A RESERVATION OF RIGHTS DOES NOT WAIVE THE RIGHTS
14 RESERVED.

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

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

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

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

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

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

34 21-703. CURE OF BREACH OF CONTRACT.

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

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

1 (1) IT IS MADE BEFORE ACCEPTANCE;

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

4 (3) THE REFUSING PARTY SEASONABLY NOTIFIES THE TENDERING
5 PARTY OF THE REFUSAL.

6 (D) EXCEPT IN A CASE GOVERNED BY SUBSECTION (B) OF THIS SECTION, A
7 PARTY THAT RIGHTFULLY REFUSES TENDER OF A COPY MAY CANCEL THE
8 CONTRACT ONLY IF THE TENDER WAS A MATERIAL BREACH OF THE WHOLE
9 CONTRACT OR THE AGREEMENT SO PROVIDES.

10 21-705. COPY: CONTRACT WITH PREVIOUS VESTED GRANT OF RIGHTS.

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

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

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

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

24 21-706. COPY: DUTIES UPON RIGHTFUL REFUSAL.

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

28 (1) IF THE REFUSING PARTY RIGHTFULLY CANCELS THE CONTRACT, §
29 21-802 OF THIS TITLE APPLIES AND ALL CONTRACTUAL USE TERMS CONTINUE.

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

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

35 (1) ANY USE, SALE, DISPLAY, PERFORMANCE, OR TRANSFER OF THE
36 COPY OR INFORMATION IT CONTAINS, OR ANY FAILURE TO COMPLY WITH A

1 CONTRACTUAL USE TERM, IS A BREACH OF CONTRACT. THE LICENSEE SHALL PAY
2 THE LICENSOR THE REASONABLE VALUE OF ANY USE. HOWEVER, USE FOR A
3 LIMITED TIME WITHIN CONTRACTUAL USE TERMS IS NOT A BREACH, AND IS NOT AN
4 ACCEPTANCE UNDER § 21-609(A)(5) OF THIS TITLE, IF IT:

5 (A) OCCURS AFTER THE TENDERING PARTY IS SEASONABLY
6 NOTIFIED OF REFUSAL;

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

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

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

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

16 (B) FOLLOW REASONABLE INSTRUCTIONS OF THE TENDERING
17 PARTY FOR RETURNING OR DELIVERING COPIES, ACCESS MATERIAL, AND
18 DOCUMENTATION, BUT INSTRUCTIONS ARE NOT REASONABLE IF THE TENDERING
19 PARTY DOES NOT ARRANGE FOR PAYMENT OF OR REIMBURSEMENT FOR
20 REASONABLE EXPENSES OF COMPLYING WITH THE INSTRUCTIONS.

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

27 (4) BOTH PARTIES REMAIN BOUND BY ALL CONTRACTUAL USE TERMS
28 THAT WOULD HAVE BEEN ENFORCEABLE HAD THE PERFORMANCE NOT BEEN
29 REFUSED.

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

34 21-707. COPY: REVOCATION OF ACCEPTANCE.

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

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

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

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

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

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

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

14 (2) IT OCCURS AFTER A SUBSTANTIAL CHANGE IN CONDITION NOT
15 CAUSED BY DEFECTS IN THE INFORMATION, SUCH AS AFTER THE PARTY
16 COMMINGLES THE INFORMATION IN A MANNER THAT MAKES ITS RETURN
17 IMPOSSIBLE; OR

18 (3) THE PARTY ATTEMPTING TO REVOKE RECEIVED A SUBSTANTIAL
19 BENEFIT OR VALUE FROM THE INFORMATION, AND THE BENEFIT OR VALUE CANNOT
20 BE RETURNED.

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

24 REPUDIATION AND ASSURANCES.

25 21-708. ADEQUATE ASSURANCE OF PERFORMANCE.

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

30 (1) DEMAND IN A RECORD ADEQUATE ASSURANCE OF DUE
31 PERFORMANCE; AND

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

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

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

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

12 21-709. ANTICIPATORY REPUDIATION.

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

16 (1) AWAIT PERFORMANCE BY THE REPUDIATING PARTY FOR A
17 COMMERCIALLY REASONABLE TIME OR RESORT TO ANY REMEDY FOR BREACH OF
18 CONTRACT, EVEN IF IT HAS URGED THE REPUDIATING PARTY TO RETRACT THE
19 REPUDIATION OR HAS NOTIFIED THE REPUDIATING PARTY THAT IT WOULD AWAIT
20 ITS PERFORMANCE; AND

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

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

27 21-710. RETRACTION OF ANTICIPATORY REPUDIATION.

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

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

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

1 AT THAT PARTY'S INSTRUCTIONS. THE PARTY IN BREACH OF CONTRACT SHALL
2 FOLLOW ANY REASONABLE INSTRUCTIONS RECEIVED FROM THE OTHER PARTY.

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

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

7 (A) ANY RIGHT BASED ON PREVIOUS BREACH OR PERFORMANCE;
8 AND

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

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

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

18 (A) IS WITHIN CONTRACTUAL USE TERMS;

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

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

23 (5) THE LICENSEE SHALL PAY THE LICENSOR THE REASONABLE VALUE
24 OF ANY USE AFTER CANCELLATION PERMITTED UNDER PARAGRAPH (4) OF THIS
25 SUBSECTION.

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

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

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

1 21-803. CONTRACTUAL MODIFICATION OF REMEDY.

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

4 (1) AN AGREEMENT MAY PROVIDE FOR REMEDIES IN ADDITION TO OR IN
5 SUBSTITUTION FOR THOSE PROVIDED IN THIS TITLE AND MAY LIMIT OR ALTER THE
6 MEASURE OF DAMAGES RECOVERABLE UNDER THIS TITLE OR A PARTY'S OTHER
7 REMEDIES UNDER THIS TITLE, SUCH AS BY PRECLUDING A PARTY'S RIGHT TO
8 CANCEL FOR BREACH OF CONTRACT, LIMITING REMEDIES TO RETURNING OR
9 DELIVERING COPIES AND REPAYMENT OF THE CONTRACT FEE, OR LIMITING
10 REMEDIES TO REPAIR OR REPLACEMENT OF THE NONCONFORMING COPIES; AND

11 (2) RESORT TO A CONTRACTUAL REMEDY IS OPTIONAL UNLESS THE
12 REMEDY IS EXPRESSLY AGREED TO BE EXCLUSIVE, IN WHICH CASE IT IS THE SOLE
13 REMEDY.

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

18 (C) FAILURE OR UNCONSCIONABILITY OF AN AGREED EXCLUSIVE OR
19 LIMITED REMEDY MAKES A TERM DISCLAIMING OR LIMITING CONSEQUENTIAL OR
20 INCIDENTAL DAMAGES UNENFORCEABLE UNLESS THE AGREEMENT EXPRESSLY
21 MAKES THE DISCLAIMER OR LIMITATION INDEPENDENT OF THE AGREED REMEDY.

22 (D) CONSEQUENTIAL DAMAGES AND INCIDENTAL DAMAGES MAY BE
23 EXCLUDED OR LIMITED BY AGREEMENT UNLESS THE EXCLUSION OR LIMITATION IS
24 UNCONSCIONABLE. EXCLUSION OR LIMITATION OF CONSEQUENTIAL DAMAGES FOR
25 PERSONAL INJURY IN A CONSUMER CONTRACT FOR A COMPUTER PROGRAM THAT IS
26 SUBJECT TO THIS TITLE AND IS CONTAINED IN CONSUMER GOODS IS PRIMA FACIE
27 UNCONSCIONABLE, BUT EXCLUSION OR LIMITATION OF DAMAGES FOR A
28 COMMERCIAL LOSS IS NOT UNCONSCIONABLE.

29 21-804. LIQUIDATION OF DAMAGES.

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

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

33 (2) THE ACTUAL LOSS; OR

34 (3) THE ACTUAL OR ANTICIPATED DIFFICULTIES OF PROVING LOSS IN
35 THE EVENT OF BREACH.

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

1 (C) IF A PARTY JUSTIFIABLY WITHHOLDS DELIVERY OF COPIES BECAUSE OF
2 THE OTHER PARTY'S BREACH OF CONTRACT, THE PARTY IN BREACH IS ENTITLED TO
3 RESTITUTION FOR ANY AMOUNT BY WHICH THE SUM OF THE PAYMENTS IT MADE
4 FOR THE COPIES EXCEEDS THE AMOUNT OF THE LIQUIDATED DAMAGES PAYABLE TO
5 THE AGGRIEVED PARTY IN ACCORDANCE WITH SUBSECTION (A) OF THIS SECTION.
6 THE RIGHT TO RESTITUTION IS SUBJECT TO OFFSET TO THE EXTENT THAT THE
7 AGGRIEVED PARTY ESTABLISHES:

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

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

12 (D) A TERM THAT DOES NOT LIQUIDATE DAMAGES, BUT THAT LIMITS
13 DAMAGES AVAILABLE TO THE AGGRIEVED PARTY, MUST BE EVALUATED UNDER §
14 21-803 OF THIS SUBTITLE.

15 21-805. LIMITATION OF ACTIONS.

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

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

23 (1) THE PARTIES MAY REDUCE THE PERIOD OF LIMITATION TO NOT
24 LESS THAN ONE YEAR AFTER THE RIGHT OF ACTION ACCRUES BUT MAY NOT
25 EXTEND IT.

26 (2) IN A ~~CONSUMER CONTRACT~~ MASS-MARKET TRANSACTION, THE
27 PERIOD OF LIMITATION MAY NOT BE REDUCED.

28 (C) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (D) OF THIS SECTION, A
29 RIGHT OF ACTION ACCRUES WHEN THE ACT OR OMISSION CONSTITUTING A BREACH
30 OF CONTRACT OCCURS, EVEN IF THE AGGRIEVED PARTY DID NOT KNOW OF THE
31 BREACH. A RIGHT OF ACTION FOR BREACH OF WARRANTY ACCRUES WHEN TENDER
32 OF DELIVERY OF A COPY PURSUANT TO § 21-606 OF THIS TITLE, OR ACCESS TO THE
33 INFORMATION, OCCURS. HOWEVER, IF THE WARRANTY EXPRESSLY EXTENDS TO
34 FUTURE PERFORMANCE OF THE INFORMATION OR A COPY, THE RIGHT OF ACTION
35 ACCRUES WHEN THE PERFORMANCE FAILS TO CONFORM TO THE WARRANTY, BUT
36 NOT LATER THAN THE DATE THE WARRANTY EXPIRES.

37 (D) IN THE FOLLOWING CASES, A RIGHT OF ACTION ACCRUES ON THE LATER
38 OF THE DATE THE ACT OR OMISSION CONSTITUTING THE BREACH OF CONTRACT
39 OCCURRED OR THE DATE ON WHICH IT WAS OR SHOULD HAVE BEEN DISCOVERED BY

1 THE AGGRIEVED PARTY, BUT NOT EARLIER THAN THE DATE FOR DELIVERY OF A
2 COPY IF THE CLAIM RELATES TO INFORMATION IN THE COPY:

3 (1) A BREACH OF WARRANTY AGAINST THIRD-PARTY CLAIMS FOR:

4 (A) INFRINGEMENT OR MISAPPROPRIATION; OR

5 (B) LIBEL, SLANDER, OR THE LIKE;

6 (2) A BREACH OF CONTRACT INVOLVING A PARTY'S DISCLOSURE OR
7 MISUSE OF CONFIDENTIAL INFORMATION; OR

8 (3) A FAILURE TO PROVIDE AN INDEMNITY OR TO PERFORM ANOTHER
9 OBLIGATION TO PROTECT OR DEFEND AGAINST A THIRD-PARTY CLAIM.

10 (E) IF AN ACTION COMMENCED WITHIN THE PERIOD OF LIMITATION IS SO
11 CONCLUDED AS TO LEAVE AVAILABLE A REMEDY BY ANOTHER ACTION FOR THE
12 SAME BREACH OF CONTRACT, THE OTHER ACTION MAY BE COMMENCED AFTER
13 EXPIRATION OF THE PERIOD OF LIMITATION IF THE ACTION IS COMMENCED WITHIN
14 SIX MONTHS AFTER CONCLUSION OF THE FIRST ACTION, UNLESS THE ACTION WAS
15 CONCLUDED AS A RESULT OF VOLUNTARY DISCONTINUANCE OR DISMISSAL FOR
16 FAILURE OR NEGLIGENCE TO PROSECUTE.

17 (F) THIS SECTION DOES NOT ALTER THE LAW ON TOLLING OF THE STATUTE
18 OF LIMITATIONS AND DOES NOT APPLY TO A RIGHT OF ACTION THAT ACCRUED
19 BEFORE THE EFFECTIVE DATE OF THIS TITLE.

20 21-806. REMEDIES FOR FRAUD.

21 REMEDIES FOR MATERIAL MISREPRESENTATION OR FRAUD INCLUDE ALL
22 REMEDIES AVAILABLE UNDER THIS TITLE FOR NONFRAUDULENT BREACH OF
23 CONTRACT.

24 DAMAGES.

25 21-807. MEASUREMENT OF DAMAGES IN GENERAL.

26 (A) EXCEPT AS OTHERWISE PROVIDED IN THE CONTRACT, AN AGGRIEVED
27 PARTY MAY NOT RECOVER COMPENSATION FOR THAT PART OF A LOSS WHICH COULD
28 HAVE BEEN AVOIDED BY TAKING MEASURES REASONABLE UNDER THE
29 CIRCUMSTANCES TO AVOID OR REDUCE LOSS. THE BURDEN OF ESTABLISHING A
30 FAILURE OF THE AGGRIEVED PARTY TO TAKE MEASURES REASONABLE UNDER THE
31 CIRCUMSTANCES IS ON THE PARTY IN BREACH OF CONTRACT.

32 (B) A PARTY MAY NOT RECOVER:

33 (1) CONSEQUENTIAL DAMAGES FOR LOSSES RESULTING FROM THE
34 CONTENT OF PUBLISHED INFORMATIONAL CONTENT UNLESS THE AGREEMENT
35 EXPRESSLY SO PROVIDES; OR

1 (2) DAMAGES THAT ARE SPECULATIVE.

2 (C) THE REMEDY FOR BREACH OF CONTRACT FOR DISCLOSURE OR MISUSE OF
3 INFORMATION THAT IS A TRADE SECRET OR IN WHICH THE AGGRIEVED PARTY HAS A
4 RIGHT OF CONFIDENTIALITY INCLUDES AS CONSEQUENTIAL DAMAGES
5 COMPENSATION FOR THE BENEFIT OBTAINED AS A RESULT OF THE BREACH.

6 (D) FOR PURPOSES OF THIS TITLE, MARKET VALUE IS DETERMINED AS OF
7 THE DATE OF BREACH OF CONTRACT AND THE PLACE FOR PERFORMANCE.

8 (E) DAMAGES OR EXPENSES THAT RELATE TO EVENTS AFTER THE DATE OF
9 ENTRY OF JUDGMENT MUST BE REDUCED TO THEIR PRESENT VALUE AS OF THAT
10 DATE. IN THIS SUBSECTION, "PRESENT VALUE" MEANS THE AMOUNT, AS OF A DATE
11 CERTAIN, OF ONE OR MORE SUMS PAYABLE IN THE FUTURE OR THE VALUE OF ONE
12 OR MORE PERFORMANCES DUE IN THE FUTURE, DISCOUNTED TO THE DATE
13 CERTAIN. THE DISCOUNT IS DETERMINED BY THE INTEREST RATE SPECIFIED BY
14 THE PARTIES IN THEIR AGREEMENT UNLESS THAT RATE WAS MANIFESTLY
15 UNREASONABLE WHEN THE AGREEMENT WAS ENTERED INTO. OTHERWISE, THE
16 DISCOUNT IS DETERMINED BY A COMMERCIALY REASONABLE RATE THAT TAKES
17 INTO ACCOUNT THE CIRCUMSTANCES OF EACH CASE WHEN THE AGREEMENT WAS
18 ENTERED INTO.

19 21-808. LICENSOR'S DAMAGES.

20 (A) IN THIS SECTION, "SUBSTITUTE TRANSACTION" MEANS A TRANSACTION
21 BY THE LICENSOR WHICH WOULD NOT HAVE BEEN POSSIBLE EXCEPT FOR THE
22 LICENSEE'S BREACH AND WHICH TRANSACTION IS FOR THE SAME INFORMATION OR
23 INFORMATIONAL RIGHTS WITH THE SAME CONTRACTUAL USE TERMS AS THE
24 TRANSACTION TO WHICH THE LICENSEE'S BREACH APPLIES.

25 (B) EXCEPT AS OTHERWISE PROVIDED IN § 21-807 OF THIS SUBTITLE, A
26 BREACH OF CONTRACT BY A LICENSEE ENTITLES THE LICENSOR TO RECOVER THE
27 FOLLOWING COMPENSATION FOR LOSSES RESULTING IN THE ORDINARY COURSE
28 FROM THE BREACH, LESS EXPENSES AVOIDED AS A RESULT OF THE BREACH, TO THE
29 EXTENT NOT OTHERWISE ACCOUNTED FOR UNDER THIS SUBSECTION:

30 (1) DAMAGES MEASURED IN ANY COMBINATION OF THE FOLLOWING
31 WAYS BUT NOT TO EXCEED THE CONTRACT FEE AND THE MARKET VALUE OF OTHER
32 CONSIDERATION REQUIRED UNDER THE CONTRACT FOR THE PERFORMANCE THAT
33 WAS THE SUBJECT OF THE BREACH:

34 (A) THE AMOUNT OF ACCRUED AND UNPAID CONTRACT FEES AND
35 THE MARKET VALUE OF OTHER CONSIDERATION EARNED BUT NOT RECEIVED FOR:

36 (I) ANY PERFORMANCE ACCEPTED BY THE LICENSEE; AND

37 (II) ANY PERFORMANCE TO WHICH § 21-604 OF THIS TITLE
38 APPLIES;

1 (B) FOR PERFORMANCES NOT GOVERNED BY SUBPARAGRAPH (A)
2 OF THIS PARAGRAPH, IF THE LICENSEE REPUDIATED OR WRONGFULLY REFUSED
3 THE PERFORMANCE OR THE LICENSOR RIGHTFULLY CANCELED AND THE BREACH
4 MAKES POSSIBLE A SUBSTITUTE TRANSACTION, THE AMOUNT OF LOSS AS
5 DETERMINED BY CONTRACT FEES AND THE MARKET VALUE OF OTHER
6 CONSIDERATION REQUIRED UNDER THE CONTRACT FOR THE PERFORMANCE LESS:

7 (I) THE CONTRACT FEES AND MARKET VALUE OF OTHER
8 CONSIDERATION RECEIVED FROM AN ACTUAL AND COMMERCIALY REASONABLE
9 SUBSTITUTE TRANSACTION ENTERED INTO BY THE LICENSOR IN GOOD FAITH AND
10 WITHOUT UNREASONABLE DELAY; OR

11 (II) THE MARKET VALUE OF A COMMERCIALY REASONABLE
12 HYPOTHETICAL SUBSTITUTE TRANSACTION;

13 (C) FOR PERFORMANCES NOT GOVERNED BY SUBPARAGRAPH (A)
14 OF THIS PARAGRAPH, IF THE BREACH DOES NOT MAKE POSSIBLE A SUBSTITUTE
15 TRANSACTION, LOST PROFIT, INCLUDING REASONABLE OVERHEAD, THAT THE
16 LICENSOR WOULD HAVE REALIZED ON ACCEPTANCE AND FULL PAYMENT FOR
17 PERFORMANCE THAT WAS NOT DELIVERED TO THE LICENSEE BECAUSE OF THE
18 LICENSEE'S BREACH; OR

19 (D) DAMAGES CALCULATED IN ANY REASONABLE MANNER; AND

20 (2) CONSEQUENTIAL AND INCIDENTAL DAMAGES.

21 21-809. LICENSEE'S DAMAGES.

22 (A) SUBJECT TO SUBSECTION (B) OF THIS SECTION AND EXCEPT AS
23 OTHERWISE PROVIDED IN § 21-807 OF THIS SUBTITLE, A BREACH OF CONTRACT BY A
24 LICENSOR ENTITLES THE LICENSEE TO RECOVER THE FOLLOWING COMPENSATION
25 FOR LOSSES RESULTING IN THE ORDINARY COURSE FROM THE BREACH OR, IF
26 APPROPRIATE, AS TO THE WHOLE CONTRACT, LESS EXPENSES AVOIDED AS A RESULT
27 OF THE BREACH TO THE EXTENT NOT OTHERWISE ACCOUNTED FOR UNDER THIS
28 SECTION:

29 (1) DAMAGES MEASURED IN ANY COMBINATION OF THE FOLLOWING
30 WAYS, BUT NOT TO EXCEED THE MARKET VALUE OF THE PERFORMANCE THAT WAS
31 THE SUBJECT OF THE BREACH PLUS RESTITUTION OF ANY AMOUNTS PAID FOR
32 PERFORMANCE NOT RECEIVED AND NOT ACCOUNTED FOR WITHIN THE INDICATED
33 RECOVERY:

34 (A) WITH RESPECT TO PERFORMANCE THAT HAS BEEN ACCEPTED
35 AND THE ACCEPTANCE NOT RIGHTFULLY REVOKED, THE VALUE OF THE
36 PERFORMANCE REQUIRED LESS THE VALUE OF THE PERFORMANCE ACCEPTED AS
37 OF THE TIME AND PLACE OF ACCEPTANCE;

38 (B) WITH RESPECT TO PERFORMANCE THAT HAS NOT BEEN
39 RENDERED OR THAT WAS RIGHTFULLY REFUSED OR ACCEPTANCE OF WHICH WAS
40 RIGHTFULLY REVOKED:

1 (I) THE AMOUNT OF ANY PAYMENTS MADE AND THE VALUE
2 OF OTHER CONSIDERATION GIVEN TO THE LICENSOR WITH RESPECT TO THAT
3 PERFORMANCE AND NOT PREVIOUSLY RETURNED TO THE LICENSEE;

4 (II) THE MARKET VALUE OF THE PERFORMANCE LESS THE
5 CONTRACT FEE FOR THAT PERFORMANCE; OR

6 (III) THE COST OF A COMMERCIALY REASONABLE
7 SUBSTITUTE TRANSACTION LESS THE CONTRACT FEE UNDER THE BREACHED
8 CONTRACT, IF THE SUBSTITUTE TRANSACTION WAS ENTERED INTO BY THE
9 LICENSEE IN GOOD FAITH AND WITHOUT UNREASONABLE DELAY FOR
10 SUBSTANTIALLY SIMILAR INFORMATION WITH THE SAME CONTRACTUAL USE
11 TERMS; OR

12 (C) DAMAGES CALCULATED IN ANY REASONABLE MANNER; AND

13 (2) INCIDENTAL AND CONSEQUENTIAL DAMAGES.

14 (B) THE AMOUNT OF DAMAGES MUST BE REDUCED BY ANY UNPAID
15 CONTRACT FEES FOR PERFORMANCE BY THE LICENSOR WHICH HAS BEEN
16 ACCEPTED BY THE LICENSEE AND AS TO WHICH THE ACCEPTANCE HAS NOT BEEN
17 RIGHTFULLY REVOKED.

18 21-810. RECOUPMENT.

19 (A) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (B) OF THIS SECTION,
20 AN AGGRIEVED PARTY, UPON NOTIFYING THE PARTY IN BREACH OF CONTRACT OF
21 ITS INTENTION TO DO SO, MAY DEDUCT ALL OR ANY PART OF THE DAMAGES
22 RESULTING FROM THE BREACH FROM ANY PAYMENTS STILL DUE UNDER THE SAME
23 CONTRACT.

24 (B) IF A BREACH OF CONTRACT IS NOT MATERIAL WITH REFERENCE TO THE
25 PARTICULAR PERFORMANCE, AN AGGRIEVED PARTY MAY EXERCISE ITS RIGHTS
26 UNDER SUBSECTION (A) OF THIS SECTION ONLY IF THE AGREEMENT DOES NOT
27 REQUIRE FURTHER AFFIRMATIVE PERFORMANCE BY THE OTHER PARTY AND THE
28 AMOUNT OF DAMAGES DEDUCTED CAN BE READILY LIQUIDATED UNDER THE
29 AGREEMENT.

30 REMEDIES RELATED TO PERFORMANCE.

31 21-811. SPECIFIC PERFORMANCE.

32 (A) SPECIFIC PERFORMANCE MAY BE ORDERED:

33 (1) IF THE AGREEMENT PROVIDES FOR THAT REMEDY, OTHER THAN AN
34 OBLIGATION FOR THE PAYMENT OF MONEY;

35 (2) IF THE CONTRACT WAS NOT FOR PERSONAL SERVICES AND THE
36 AGREED PERFORMANCE IS UNIQUE; OR

1 (3) IN OTHER PROPER CIRCUMSTANCES.

2 (B) AN ORDER FOR SPECIFIC PERFORMANCE MAY CONTAIN ANY CONDITIONS
3 CONSIDERED JUST AND MUST PROVIDE ADEQUATE SAFEGUARDS CONSISTENT WITH
4 THE CONTRACT TO PROTECT THE CONFIDENTIALITY OF INFORMATION,
5 INFORMATION, AND INFORMATIONAL RIGHTS OF BOTH PARTIES.

6 21-812. COMPLETING PERFORMANCE.

7 (A) ON BREACH OF CONTRACT BY A LICENSEE, THE LICENSOR MAY:

8 (1) IDENTIFY TO THE CONTRACT ANY CONFORMING COPY NOT ALREADY
9 IDENTIFIED IF, AT THE TIME THE LICENSOR LEARNED OF THE BREACH, THE COPY
10 WAS IN ITS POSSESSION;

11 (2) IN THE EXERCISE OF REASONABLE COMMERCIAL JUDGMENT FOR
12 PURPOSES OF AVOIDING LOSS AND EFFECTIVE REALIZATION ON EFFORT OR
13 INVESTMENT, COMPLETE THE INFORMATION AND IDENTIFY IT TO THE CONTRACT,
14 CEASE WORK ON IT, RELICENSE OR DISPOSE OF IT, OR PROCEED IN ANY OTHER
15 COMMERCIALY REASONABLE MANNER; AND

16 (3) PURSUE ANY REMEDY FOR BREACH THAT HAS NOT BEEN WAIVED.

17 (B) ON BREACH BY A LICENSEE, BOTH PARTIES REMAIN BOUND BY ALL
18 CONTRACTUAL USE TERMS, BUT THE CONTRACTUAL USE TERMS DO NOT APPLY TO
19 INFORMATION OR COPIES PROPERLY RECEIVED OR OBTAINED FROM ANOTHER
20 SOURCE.

21 21-813. CONTINUING USE.

22 ON BREACH OF CONTRACT BY A LICENSOR, THE FOLLOWING RULES APPLY:

23 (1) A LICENSEE THAT HAS NOT CANCELED THE CONTRACT MAY
24 CONTINUE TO USE THE INFORMATION AND INFORMATIONAL RIGHTS UNDER THE
25 CONTRACT. IF THE LICENSEE CONTINUES TO USE THE INFORMATION OR
26 INFORMATIONAL RIGHTS, THE LICENSEE IS BOUND BY ALL TERMS OF THE
27 CONTRACT, INCLUDING CONTRACTUAL USE TERMS, OBLIGATIONS NOT TO COMPETE,
28 AND OBLIGATIONS TO PAY CONTRACT FEES.

29 (2) THE LICENSEE MAY PURSUE ANY REMEDY FOR BREACH WHICH HAS
30 NOT BEEN WAIVED.

31 (3) THE LICENSOR'S RIGHTS REMAIN IN EFFECT BUT ARE SUBJECT TO
32 THE LICENSEE'S REMEDY FOR BREACH, INCLUDING ANY RIGHT OF RECOUPMENT OR
33 SETOFF.

34 21-814. DISCONTINUING ACCESS.

35 (A) ON SUBJECT TO SUBSECTION (B) OF THIS SECTION, ON MATERIAL BREACH
36 OF AN ACCESS CONTRACT OR IF THE AGREEMENT SO PROVIDES, A PARTY MAY

1 DISCONTINUE ALL CONTRACTUAL RIGHTS OF ACCESS OF THE PARTY IN BREACH AND
2 DIRECT ANY PERSON THAT IS ASSISTING THE PERFORMANCE OF THE CONTRACT TO
3 DISCONTINUE ITS PERFORMANCE.

4 ~~(B) IN AN ACCESS CONTRACT THAT REQUIRES PERIODIC PAYMENTS OVER~~
5 ~~TIME, BEFORE OR AT THE TIME OF DISCONTINUATION OF ALL CONTRACTUAL~~
6 ~~RIGHTS OF ACCESS, A PARTY SHALL NOTIFY THE PARTY IN BREACH IN A RECORD OF:~~

7 ~~(1) THE DISCONTINUATION OF ALL CONTRACTUAL RIGHTS OF ACCESS~~
8 ~~IN THE ACCESS CONTRACT;~~

9 (B) EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION, BEFORE
10 DISCONTINUING ALL CONTRACTUAL RIGHTS OF ACCESS IN AN ACCESS CONTRACT, A
11 PARTY SHALL GIVE NOTICE IN A RECORD TO THE PARTY IN BREACH STATING:

12 (1) THAT THE PARTY INTENDS TO DISCONTINUE ALL CONTRACTUAL
13 RIGHTS OF ACCESS IN THE ACCESS CONTRACT ON OR AFTER 3 DAYS FOLLOWING
14 THE DATE NOTICE IS GIVEN;

15 (2) THE NATURE OF THE CLAIMED BREACH THAT ENTITLES THE PARTY
16 TO DISCONTINUE ALL CONTRACTUAL RIGHTS OF ACCESS IN THE ACCESS CONTRACT;

17 (3) THE OPPORTUNITY TO CURE AS PROVIDED UNDER § 21-703 OF THIS
18 TITLE; AND

19 (4) INFORMATION TO ALLOW FOR COMMUNICATION CONCERNING THE
20 CLAIMED BREACH, INCLUDING THE PARTY'S:

21 (I) ADDRESS AND TELEPHONE NUMBER; AND

22 (II) 1. FACSIMILE NUMBER; OR

23 2. E-MAIL ADDRESS.

24 (C) THE NOTICE REQUIRED IN SUBSECTION (B) OF THIS SECTION IS NOT
25 REQUIRED FOR A DISCONTINUATION TO MEET A STATUTORY OR LEGAL
26 REQUIREMENT OR DUE TO A MATERIAL BREACH OF A CONTRACTUAL USE TERM.

27 21-815. RIGHT TO POSSESSION AND PREVENT USE.

28 (A) ON CANCELLATION OF A LICENSE, THE LICENSOR HAS THE RIGHT:

29 (1) TO POSSESSION OF ALL COPIES OF THE LICENSED INFORMATION IN
30 THE POSSESSION OR CONTROL OF THE LICENSEE AND ANY OTHER MATERIALS
31 PERTAINING TO THAT INFORMATION WHICH BY CONTRACT ARE TO BE RETURNED OR
32 DELIVERED BY THE LICENSEE TO THE LICENSOR; AND

33 (2) TO PREVENT THE CONTINUED EXERCISE OF CONTRACTUAL AND
34 INFORMATIONAL RIGHTS IN THE LICENSED INFORMATION UNDER THE LICENSE.

1 (B) EXCEPT AS OTHERWISE PROVIDED IN § 21-814 OF THIS SUBTITLE, A
2 LICENSOR MAY EXERCISE ITS RIGHTS UNDER SUBSECTION (A) OF THIS SECTION
3 WITHOUT JUDICIAL PROCESS ONLY IF THIS CAN BE DONE:

4 (1) WITHOUT A BREACH OF THE PEACE;

5 (2) WITHOUT A FORESEEABLE RISK OF PERSONAL INJURY OR
6 SIGNIFICANT PHYSICAL DAMAGE TO INFORMATION OR PROPERTY OTHER THAN THE
7 LICENSED INFORMATION; AND

8 (3) IN ACCORDANCE WITH § 21-816 OF THIS SUBTITLE.

9 (C) IN A JUDICIAL PROCEEDING, THE COURT MAY ENJOIN A LICENSEE IN
10 BREACH OF CONTRACT FROM CONTINUED USE OF THE INFORMATION AND
11 INFORMATIONAL RIGHTS AND MAY ORDER THE LICENSOR OR A JUDICIAL OFFICER
12 TO TAKE THE STEPS DESCRIBED IN § 21-618 OF THIS TITLE.

13 (D) A PARTY HAS A RIGHT TO AN EXPEDITED JUDICIAL HEARING ON A
14 REQUEST FOR PREJUDGMENT RELIEF TO ENFORCE OR PROTECT ITS RIGHTS UNDER
15 THIS SECTION.

16 (E) THE RIGHT TO POSSESSION UNDER THIS SECTION IS NOT AVAILABLE TO
17 THE EXTENT THAT THE INFORMATION, BEFORE BREACH OF THE LICENSE AND IN
18 THE ORDINARY COURSE OF PERFORMANCE UNDER THE LICENSE, WAS SO ALTERED
19 OR COMMINGLED THAT THE INFORMATION IS NO LONGER IDENTIFIABLE OR
20 SEPARABLE.

21 (F) A LICENSEE THAT PROVIDES INFORMATION TO A LICENSOR SUBJECT TO
22 CONTRACTUAL USE TERMS HAS THE RIGHTS AND IS SUBJECT TO THE LIMITATIONS
23 OF A LICENSOR UNDER THIS SECTION WITH RESPECT TO THE INFORMATION IT
24 PROVIDES.

25 21-816. LIMITATIONS ON ELECTRONIC SELF-HELP.

26 (A) IN THIS SECTION, "ELECTRONIC SELF-HELP" MEANS THE USE OF
27 ELECTRONIC MEANS TO EXERCISE A LICENSOR'S RIGHTS UNDER § 21-815(B) OF THIS
28 SUBTITLE.

29 (B) NOTWITHSTANDING THE PROVISIONS OF THIS SECTION, ELECTRONIC
30 SELF-HELP IS PROHIBITED IN MASS-MARKET TRANSACTIONS.

31 (C) PRIOR TO CANCELLATION OF A LICENSE IN WHICH THE PARTIES HAVE
32 AGREED TO PERMIT THE USE OF ELECTRONIC SELF-HELP, THE LICENSOR SHALL
33 PROVIDE A LICENSEE WITH THE OPPORTUNITY TO CURE THE CLAIMED BREACH
34 GIVING RISE TO THE CANCELLATION AS PROVIDED IN § 21-703 OF THIS TITLE.

35 ~~(B)~~ (D) ON CANCELLATION OF A LICENSE, ELECTRONIC SELF-HELP IS NOT
36 PERMITTED, EXCEPT AS PROVIDED IN THIS SECTION.

1 ~~(C)~~ (E) IF THE PARTIES AGREE TO PERMIT ELECTRONIC SELF-HELP, A
 2 LICENSEE SHALL SEPARATELY MANIFEST ASSENT TO A TERM AUTHORIZING USE OF
 3 ELECTRONIC SELF-HELP. THE TERM MUST:

4 (1) PROVIDE FOR NOTICE OF EXERCISE AS PROVIDED IN SUBSECTION
 5 ~~(D)~~ (F) OF THIS SECTION;

6 (2) STATE THE NAME OF THE PERSON DESIGNATED BY THE LICENSEE
 7 TO WHICH NOTICE OF EXERCISE MUST BE GIVEN AND THE MANNER IN WHICH
 8 NOTICE MUST BE GIVEN AND PLACE TO WHICH NOTICE MUST BE SENT TO THAT
 9 PERSON; AND

10 (3) PROVIDE A SIMPLE PROCEDURE FOR THE LICENSEE TO CHANGE THE
 11 DESIGNATED PERSON OR PLACE.

12 ~~(D)~~ (F) BEFORE RESORTING TO ELECTRONIC SELF-HELP AUTHORIZED BY A
 13 TERM OF THE LICENSE, THE LICENSOR SHALL GIVE NOTICE IN A RECORD TO THE
 14 PERSON DESIGNATED BY THE LICENSEE STATING:

15 (1) THAT THE LICENSOR INTENDS TO RESORT TO ELECTRONIC
 16 SELF-HELP AS A REMEDY ON OR AFTER ~~45~~ 30 DAYS FOLLOWING RECEIPT BY THE
 17 LICENSEE OF THE NOTICE;

18 (2) THE NATURE OF THE CLAIMED BREACH THAT ENTITLES THE
 19 LICENSOR TO RESORT TO SELF-HELP; AND

20 (3) THE NAME, TITLE, AND ADDRESS, INCLUDING DIRECT TELEPHONE
 21 NUMBER, FACSIMILE NUMBER, OR E-MAIL ADDRESS, TO WHICH THE LICENSEE MAY
 22 COMMUNICATE CONCERNING THE CLAIMED BREACH.

23 ~~(E)~~ (G) A LICENSEE MAY RECOVER DIRECT AND INCIDENTAL DAMAGES
 24 CAUSED BY WRONGFUL USE OF ELECTRONIC SELF-HELP. THE LICENSEE MAY ALSO
 25 RECOVER CONSEQUENTIAL DAMAGES FOR WRONGFUL USE OF ELECTRONIC
 26 SELF-HELP, WHETHER OR NOT THOSE DAMAGES ARE EXCLUDED BY THE TERMS OF
 27 THE LICENSE, IF:

28 (1) WITHIN THE PERIOD SPECIFIED IN SUBSECTION ~~(D)(4)~~ (F)(1) OF THIS
 29 SECTION, THE LICENSEE GIVES NOTICE TO THE LICENSOR'S DESIGNATED PERSON
 30 DESCRIBING IN GOOD FAITH THE GENERAL NATURE AND MAGNITUDE OF DAMAGES;

31 (2) THE LICENSOR HAS REASON TO KNOW THE DAMAGES OF THE TYPE
 32 DESCRIBED IN SUBSECTION ~~(F)~~ (H) OF THIS SECTION MAY RESULT FROM THE
 33 WRONGFUL USE OF ELECTRONIC SELF-HELP; OR

34 (3) THE LICENSOR DOES NOT PROVIDE THE NOTICE REQUIRED IN
 35 SUBSECTION ~~(D)~~ (F) OF THIS SECTION.

36 ~~(F)~~ (H) EVEN IF THE LICENSOR COMPLIES WITH SUBSECTIONS ~~(C)~~ (E) AND
 37 ~~(D)~~ (F) OF THIS SECTION, ELECTRONIC SELF-HELP MAY NOT BE USED IF THE
 38 LICENSOR HAS REASON TO KNOW THAT ITS USE WILL RESULT IN SUBSTANTIAL

1 INJURY OR HARM TO THE PUBLIC HEALTH OR SAFETY OR GRAVE HARM TO THE
 2 PUBLIC INTEREST SUBSTANTIALLY AFFECTING THIRD PERSONS NOT INVOLVED IN
 3 THE DISPUTE.

4 ~~(G)~~ (I) A COURT OF COMPETENT JURISDICTION OF THIS STATE SHALL GIVE
 5 PROMPT CONSIDERATION TO A PETITION FOR INJUNCTIVE RELIEF AND MAY ENJOIN,
 6 TEMPORARILY OR PERMANENTLY, THE LICENSOR FROM EXERCISING ELECTRONIC
 7 SELF-HELP EVEN IF AUTHORIZED BY A LICENSE TERM OR ENJOIN THE LICENSEE
 8 FROM MISAPPROPRIATION OR MISUSE OF COMPUTER INFORMATION, AS MAY BE
 9 APPROPRIATE, UPON CONSIDERATION OF THE FOLLOWING:

10 (1) GRAVE HARM OF THE KINDS STATED IN SUBSECTION ~~(F)~~ (H) OF THIS
 11 SECTION, OR THE THREAT THEREOF, WHETHER OR NOT THE LICENSOR HAS REASON
 12 TO KNOW OF THOSE CIRCUMSTANCES;

13 (2) IRREPARABLE HARM OR THREAT OF IRREPARABLE HARM TO THE
 14 LICENSEE OR LICENSOR;

15 (3) THAT THE PARTY SEEKING THE RELIEF IS MORE LIKELY THAN NOT
 16 TO SUCCEED UNDER ITS CLAIM WHEN IT IS FINALLY ADJUDICATED;

17 (4) THAT ALL OF THE CONDITIONS TO ENTITLE A PERSON TO THE
 18 RELIEF UNDER THE LAWS OF THIS STATE HAVE BEEN FULFILLED; AND

19 (5) THAT THE PARTY THAT MAY BE ADVERSELY AFFECTED IS
 20 ADEQUATELY PROTECTED AGAINST LOSS, INCLUDING A LOSS BECAUSE OF
 21 MISAPPROPRIATION OR MISUSE OF COMPUTER INFORMATION, THAT IT MAY SUFFER
 22 BECAUSE THE RELIEF IS GRANTED UNDER THIS TITLE.

23 ~~(H)~~ (J) BEFORE BREACH OF CONTRACT, RIGHTS OR OBLIGATIONS UNDER
 24 THIS SECTION MAY NOT BE WAIVED OR VARIED BY AN AGREEMENT, ~~BUT EXCEPT~~
 25 THAT THE PARTIES MAY PROHIBIT USE OF ELECTRONIC SELF-HELP AND THE
 26 PARTIES, IN THE TERM REFERRED TO IN SUBSECTION ~~(G)~~ (E) OF THIS SECTION, MAY
 27 SPECIFY ADDITIONAL PROVISIONS MORE FAVORABLE TO THE LICENSEE.

28 ~~(I)~~ (K) THIS SECTION DOES NOT APPLY IF THE LICENSOR OBTAINS
 29 POSSESSION OF A COPY WITHOUT A BREACH OF THE PEACE AND THE ELECTRONIC
 30 SELF-HELP IS USED SOLELY WITH RESPECT TO THAT COPY.

31 ~~(L)~~ THIRD PERSONS HARMED BY THE WRONGFUL USE OF ELECTRONIC
 32 SELF-HELP UNDER THIS SECTION MAY RECOVER DAMAGES FROM THE LICENSOR TO
 33 THE SAME EXTENT AS RECOVERABLE BY THE LICENSEE.

34 *Article - Courts and Judicial Proceedings*

35 6-103.

36 (a) *If jurisdiction over a person is based solely upon this section, he may be*
 37 *sued only on a cause of action arising from any act enumerated in this section.*

1 **(b)** A court may exercise personal jurisdiction over a person, who directly or by
 2 an agent:

3 **(1)** Transacts any business or performs any character of work or service in
 4 the State;

5 **(2)** Contracts to supply goods, food, services, or manufactured products in
 6 the State;

7 **(3)** Causes tortious injury in the State by an act or omission in the State;

8 **(4)** Causes tortious injury in the State or outside of the State by an act or
 9 omission outside the State if he regularly does or solicits business, engages in any other
 10 persistent course of conduct in the State or derives substantial revenue from goods,
 11 food, services, or manufactured products used or consumed in the State;

12 **(5)** Has an interest in, uses, or possesses real property in the State; or

13 **(6)** Contracts to insure or act as surety for, or on, any person, property,
 14 risk, contract, obligation, or agreement located, executed, or to be performed within the
 15 State at the time the contract is made, unless the parties otherwise provide in writing.

16 **(C)** **(1)** **(I)** IN THIS SUBSECTION THE FOLLOWING TERMS HAVE THE
 17 MEANINGS INDICATED.

18 **(II)** "COMPUTER INFORMATION" HAS THE MEANING STATED IN §
 19 21-102 OF THE COMMERCIAL LAW ARTICLE.

20 **(III)** "COMPUTER PROGRAM" HAS THE MEANING STATED IN § 21-102
 21 OF THE COMMERCIAL LAW ARTICLE.

22 **(2)** THE PROVISIONS OF THIS SECTION APPLY TO COMPUTER
 23 INFORMATION AND COMPUTER PROGRAMS IN THE SAME MANNER AS THEY APPLY
 24 TO GOODS AND SERVICES.

25 SECTION 2. AND BE IT FURTHER ENACTED, That this Act does not affect
 26 the digital signature requirements of the digital signature pilot program established
 27 under § 8-504 of the State Government Article.

28 SECTION 3. AND BE IT FURTHER ENACTED, That if any provision of this
 29 Act or the application thereof to any person or circumstance is held invalid for any
 30 reason in a court of competent jurisdiction, the invalidity does not affect other
 31 provisions or any other application of this Act which can be given effect without the
 32 invalid provision or application, and for this purpose the provisions of this Act are
 33 declared severable.

34 SECTION 4. AND BE IT FURTHER ENACTED, That a presently existing
 35 obligation or contract right may not be impaired in any way by this Act.

1 SECTION 5. AND BE IT FURTHER ENACTED, That this Act shall be
2 construed only prospectively and may not be applied or interpreted to have any effect
3 on or application to any right of action that accrues before the effective date of this
4 Act.

5 SECTION 6. AND BE IT FURTHER ENACTED, That:

6 (a) There is a Joint Technology Oversight Committee.

7 (b) The Committee consists of the following ten members:

8 (1) five members of the Senate of Maryland, appointed by the President
9 of the Senate; and

10 (2) five members of the House of Delegates, appointed by the Speaker.

11 (c) The members of the Committee serve at the pleasure of the presiding
12 officer who appointed them.

13 (d) The President and the Speaker shall jointly appoint a Senator and a
14 Delegate to serve as co-chairmen who shall alternate in serving as the presiding
15 chairman of the Committee each year.

16 (e) (1) The Committee shall:

17 (i) review the implementation of the Maryland Uniform Computer
18 Information Transactions Act in this State; and

19 (ii) recommend to the Governor and the General Assembly any
20 appropriate changes in State law based on the findings of the Committee.

21 (2) The Committee may examine and evaluate additional technology
22 related issues as designated by the co-chairmen of the Committee.

23 (f) The Committee shall report its findings and recommendations to the
24 Governor, the Legislative Policy Committee, the Senate Finance Committee, and the
25 House Economic Matters Committee on or before December 1 of each year.

26 SECTION 7. AND BE IT FURTHER ENACTED, That Section 6 of this Act shall
27 take effect July 1, 2000. It shall remain effective for a period of 5 years and, at the end
28 of June 30, 2005, with no further action required by the General Assembly, Section 6
29 of this Act shall be abrogated and of no further force and effect.

30 ~~SECTION 6. 8.~~ AND BE IT FURTHER ENACTED, That this Act shall take
31 effect October 1, 2000.

