
By: **Senators Miller, Bromwell, Middleton, Teitelbaum, and Hogan**
Introduced and read first time: January 18, 2000
Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Uniform Computer Information Transactions Act**

3 FOR the purpose of adopting the Maryland Uniform Computer Information
4 Transactions Act; establishing certain provisions of law applicable to
5 agreements to create, modify, transfer, or distribute computer software,
6 computer data and databases, Internet and online information, and certain
7 other computer information and products under certain circumstances;
8 establishing certain provisions of law applicable to licensing of computer
9 information under certain circumstances; establishing certain provisions of law
10 applicable to electronic commerce and commercial transactions carried out
11 electronically or over the Internet under certain circumstances; authorizing
12 parties to an agreement within the scope of this Act to expressly agree that
13 certain provisions of this Act do not apply to the agreement; prohibiting parties
14 to an agreement within the scope of this Act from agreeing that certain
15 provisions of this Act do not apply to the agreement; providing that certain
16 federal and State laws override the provisions of this Act; providing that this Act
17 overrides certain provisions of State law; establishing certain choice of law and
18 choice of forum provisions for legal disputes within the scope of this Act under
19 certain circumstances; establishing certain provisions of law recognizing the
20 legal existence of and the actions of computers programmed by individuals to act
21 as electronic agents; establishing certain provisions of law governing the
22 formation of an agreement within the scope of this Act; establishing certain
23 provisions of law that a court is required to use in interpreting an agreement or
24 a term contained in an agreement; establishing certain provisions of law that a
25 court is required to use in interpreting whether a valid agreement or valid term
26 contained in an agreement exists within the scope of this Act; creating certain
27 warranties that are applicable to agreements to create, modify, transfer,
28 distribute, or license computer software, computer data and databases, Internet
29 and online information, and certain other computer information and products
30 under certain circumstances; making the warranties created under this Act
31 available to an individual who is a party to an agreement within the scope of
32 this Act and to certain other individuals; establishing provisions for the
33 disclaimer or modification of certain warranties created by this Act under
34 certain circumstances; establishing provisions of law applicable to the
35 ownership and transfer rights of parties to an agreement to sell or license

1 computer information within the scope of this Act; establishing provisions of law
2 applicable to financing the sale or license of computer information within the
3 scope of this Act; establishing provisions of law applicable to the parties'
4 performance of obligations under an agreement within the scope of this Act;
5 specifying certain circumstances excusing or terminating the parties'
6 performance of obligations under an agreement within the scope of this Act;
7 establishing provisions of law applicable to actions by a party sufficient to
8 constitute a breach or material breach of an agreement within the scope of this
9 Act; specifying the remedies available to an aggrieved party as the result of the
10 breach or material breach of an agreement within the scope of this Act; defining
11 certain terms; providing that this Act does not affect certain requirements of the
12 digital signature pilot program; making provisions of this Act severable;
13 providing that this Act does not impair any existing obligation or contract right;
14 providing for the prospective application of this Act; and generally relating to
15 agreements created electronically or through the Internet, agreements to create,
16 modify, transfer, distribute, and license computer information, and certain other
17 matters within the scope of the Maryland Uniform Computer Information
18 Transactions Act.

19 BY adding to

20 Article - Commercial Law

21 Section 21-101 through 21-114, inclusive, to be under the new subtitle "Subtitle
22 1. General Provisions; Short Title and Definitions; General Scope and
23 Terms"; 21-201 through 21-215, inclusive, to be under the new subtitle
24 "Subtitle 2. Formation and Terms; Formation of a Contract; Terms of
25 Records; Electronic Contracts: Generally"; 21-301 through 21-309,
26 inclusive, to be under the new subtitle "Subtitle 3. Construction; General;
27 Interpretation"; 21-401 through 21-409, inclusive, to be under the new
28 subtitle "Subtitle 4. Warranties"; 21-501 through 21-511, inclusive, to be
29 under the new subtitle "Subtitle 5. Transfer of Interests and Rights;
30 Ownership and Transfers; Financing Arrangements"; 21-601 through
31 21-618, inclusive, to be under the new subtitle "Subtitle 6. Performance;
32 General; Performance in Delivery of Copies; Special Types of Contracts;
33 Loss and Impossibility; Termination"; 21-701 through 21-710, inclusive, to
34 be under the new subtitle "Subtitle 7. Breach of Contract; General;
35 Defective Copies; Repudiation and Assurances"; 21-801 through 21-816,
36 inclusive, to be under the new subtitle "Subtitle 8. Remedies; General;
37 Damages; Remedies Related to Performance" and the new title "Title 21.
38 Maryland Uniform Computer Information Transactions Act"
39 Annotated Code of Maryland
40 (1990 Replacement Volume and 1999 Supplement)

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

Article - Commercial Law

TITLE 21. MARYLAND UNIFORM COMPUTER INFORMATION TRANSACTIONS ACT.

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

SHORT TITLE AND DEFINITIONS.

21-101. SHORT TITLE.

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

21-102. DEFINITIONS.

(A) IN THIS TITLE:

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

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

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

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

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

(6) "AUTHENTICATE" MEANS:

(A) TO SIGN; OR

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

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

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

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

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

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

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

26 (13) "CONSEQUENTIAL DAMAGES" RESULTING FROM BREACH OF
27 CONTRACT INCLUDES (I) ANY LOSS RESULTING FROM GENERAL OR PARTICULAR
28 REQUIREMENTS AND NEEDS OF WHICH THE BREACHING PARTY AT THE TIME OF
29 CONTRACTING HAD REASON TO KNOW AND WHICH COULD NOT REASONABLY BE
30 PREVENTED AND (II) ANY INJURY TO AN INDIVIDUAL OR DAMAGE TO PROPERTY
31 OTHER THAN THE SUBJECT MATTER OF THE TRANSACTION PROXIMATELY
32 RESULTING FROM BREACH OF WARRANTY. THE TERM DOES NOT INCLUDE DIRECT
33 DAMAGES OR INCIDENTAL DAMAGES.

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

42 (A) WITH RESPECT TO A PERSON:

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

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

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

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

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

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

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

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

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

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

37 (21) "COURSE OF DEALING" MEANS A SEQUENCE OF PREVIOUS CONDUCT
38 BETWEEN THE PARTIES TO A PARTICULAR TRANSACTION WHICH ESTABLISHES A
39 COMMON BASIS OF UNDERSTANDING FOR INTERPRETING THEIR EXPRESSIONS AND
40 OTHER CONDUCT.

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

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

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

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

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

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

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

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

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

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

37 (B) AN INSTRUMENT OR OTHER ITEM;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 (39) "KNOWLEDGE", WITH RESPECT TO A FACT, MEANS ACTUAL
22 KNOWLEDGE OF THE FACT.

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

32 (41) "LICENSEE" MEANS A PERSON ENTITLED BY AGREEMENT TO
33 ACQUIRE OR EXERCISE RIGHTS IN, OR TO HAVE ACCESS TO OR USE OF, COMPUTER
34 INFORMATION UNDER AN AGREEMENT TO WHICH THIS TITLE APPLIES. A LICENSOR
35 IS NOT A LICENSEE WITH RESPECT TO RIGHTS RESERVED TO IT UNDER THE
36 AGREEMENT.

37 (42) "LICENSOR" MEANS A PERSON OBLIGATED BY AGREEMENT TO
38 TRANSFER OR CREATE RIGHTS IN, OR TO GIVE ACCESS TO OR USE OF, COMPUTER
39 INFORMATION OR INFORMATIONAL RIGHTS IN IT UNDER AN AGREEMENT TO WHICH
40 THIS TITLE APPLIES. BETWEEN THE PROVIDER OF ACCESS AND A PROVIDER OF THE

1 INFORMATIONAL CONTENT TO BE ACCESSED, THE PROVIDER OF CONTENT IS THE
2 LICENSOR. IN AN EXCHANGE OF INFORMATION OR INFORMATIONAL RIGHTS, EACH
3 PARTY IS A LICENSOR WITH RESPECT TO THE INFORMATION, INFORMATIONAL
4 RIGHTS, OR ACCESS IT GIVES.

5 (43) "MASS-MARKET LICENSE" MEANS A STANDARD FORM USED IN A
6 MASS-MARKET TRANSACTION.

7 (44) "MASS-MARKET TRANSACTION" MEANS A TRANSACTION THAT IS:

8 (A) A CONSUMER CONTRACT; OR

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

10 (I) THE TRANSACTION IS FOR INFORMATION OR
11 INFORMATIONAL RIGHTS DIRECTED TO THE GENERAL PUBLIC AS A WHOLE,
12 INCLUDING CONSUMERS, UNDER SUBSTANTIALLY THE SAME TERMS FOR THE SAME
13 INFORMATION;

14 (II) THE LICENSEE ACQUIRES THE INFORMATION OR
15 INFORMATIONAL RIGHTS IN A RETAIL TRANSACTION UNDER TERMS AND IN A
16 QUANTITY CONSISTENT WITH AN ORDINARY TRANSACTION IN A RETAIL MARKET;
17 AND

18 (III) THE TRANSACTION IS NOT:

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

21 2. A TRANSACTION IN WHICH THE INFORMATION IS
22 CUSTOMIZED OR OTHERWISE SPECIALLY PREPARED BY THE LICENSOR FOR THE
23 LICENSEE, OTHER THAN MINOR CUSTOMIZATION USING A CAPABILITY OF THE
24 INFORMATION INTENDED FOR THAT PURPOSE;

25 3. A SITE LICENSE; OR

26 4. AN ACCESS CONTRACT.

27 (45) "MERCHANT" MEANS A PERSON:

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

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

33 (C) TO WHICH THE KNOWLEDGE OR SKILL PECULIAR TO THE
34 PRACTICES OR INFORMATION INVOLVED IN THE TRANSACTION MAY BE ATTRIBUTED
35 BY THE PERSON'S EMPLOYMENT OF AN AGENT OR BROKER OR OTHER

1 INTERMEDIARY THAT BY ITS OCCUPATION HOLDS ITSELF OUT AS HAVING THE
2 KNOWLEDGE OR SKILL.

3 (46) "NONEXCLUSIVE LICENSE" MEANS A LICENSE THAT DOES NOT
4 PRECLUDE THE LICENSOR FROM TRANSFERRING TO OTHER LICENSEES THE SAME
5 INFORMATION, INFORMATIONAL RIGHTS, OR CONTRACTUAL RIGHTS WITHIN THE
6 SAME SCOPE. THE TERM INCLUDES A CONSIGNMENT OF A COPY.

7 (47) "NOTICE" OF A FACT MEANS KNOWLEDGE OF THE FACT, RECEIPT OF
8 NOTIFICATION OF THE FACT, OR REASON TO KNOW THE FACT EXISTS.

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

12 (49) "PARTY" MEANS A PERSON THAT ENGAGES IN A TRANSACTION OR
13 MAKES AN AGREEMENT UNDER THIS TITLE.

14 (50) "PERSON" MEANS AN INDIVIDUAL, CORPORATION, BUSINESS TRUST,
15 ESTATE, TRUST, PARTNERSHIP, LIMITED LIABILITY COMPANY, ASSOCIATION, JOINT
16 VENTURE, GOVERNMENTAL SUBDIVISION, INSTRUMENTALITY, OR AGENCY, PUBLIC
17 CORPORATION, OR ANY OTHER LEGAL OR COMMERCIAL ENTITY.

18 (51) "PUBLISHED INFORMATIONAL CONTENT" MEANS INFORMATIONAL
19 CONTENT PREPARED FOR OR MADE AVAILABLE TO RECIPIENTS GENERALLY, OR TO A
20 CLASS OF RECIPIENTS, IN SUBSTANTIALLY THE SAME FORM. THE TERM DOES NOT
21 INCLUDE INFORMATIONAL CONTENT THAT IS:

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

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

27 (52) "RECEIPT" MEANS:

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

29 (B) WITH RESPECT TO A NOTICE:

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

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

34 1. BEING DELIVERED AT THE PERSON'S RESIDENCE, OR THE
35 PERSON'S PLACE OF BUSINESS THROUGH WHICH THE CONTRACT WAS MADE, OR AT

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

3 2. PROPER REDELIVERY OF ALL COMPUTER INFORMATION
4 PRODUCTS IN THE BUNDLED WHOLE AND ALL COPIES OF THEM WITHIN A
5 REASONABLE TIME AFTER INITIAL DELIVERY OF THE INFORMATION TO THE
6 LICENSEE; AND

7 3. SUBMISSION OF PROOF OF PURCHASE; OR

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

12 1. SUBMISSION OF PROOF OF PURCHASE; AND

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

16 (C) IN THE CASE OF A LICENSOR THAT REJECTS A RECORD
17 PROPOSED BY THE LICENSEE, A RIGHT TO PROPER REDELIVERY OF THE COMPUTER
18 INFORMATION AND ALL COPIES FROM THE LICENSEE, TO STOP DELIVERY OR ACCESS
19 TO THE INFORMATION BY THE LICENSEE, AND TO REIMBURSEMENT FROM THE
20 LICENSEE OF AMOUNTS PAID BY THE LICENSOR WITH RESPECT TO THE REJECTED
21 RECORD, ON REIMBURSEMENT TO THE LICENSEE OF CONTRACT FEES THAT IT PAID
22 WITH RESPECT TO THE REJECTED RECORD, SUBJECT TO RECOUPMENT AND SETOFF.

23 (57) "SCOPE", WITH RESPECT TO TERMS OF A LICENSE, MEANS:

24 (A) THE LICENSED COPIES, INFORMATION, OR INFORMATIONAL
25 RIGHTS INVOLVED;

26 (B) THE USE OR ACCESS AUTHORIZED, PROHIBITED, OR
27 CONTROLLED;

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

29 (D) THE DURATION OF THE LICENSE.

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

32 (59) "SEND" MEANS, WITH ANY COSTS PROVIDED FOR AND PROPERLY
33 ADDRESSED OR DIRECTED AS REASONABLE UNDER THE CIRCUMSTANCES OR AS
34 OTHERWISE AGREED, TO DEPOSIT A RECORD IN THE MAIL OR WITH A
35 COMMERCIALY REASONABLE CARRIER, TO DELIVER A RECORD FOR TRANSMISSION
36 TO OR RE-CREATION IN ANOTHER LOCATION OR INFORMATION PROCESSING
37 SYSTEM, OR TO TAKE THE STEPS NECESSARY TO INITIATE TRANSMISSION TO OR

1 RE-CREATION OF A RECORD IN ANOTHER LOCATION OR INFORMATION PROCESSING
2 SYSTEM. IN ADDITION, WITH RESPECT TO AN ELECTRONIC MESSAGE, THE MESSAGE
3 MUST BE IN A FORM CAPABLE OF BEING PROCESSED BY OR PERCEIVED FROM A
4 SYSTEM OF THE TYPE THE RECIPIENT USES OR OTHERWISE HAS DESIGNATED OR
5 HELD OUT AS A PLACE FOR THE RECEIPT OF COMMUNICATIONS OF THE KIND SENT.
6 RECEIPT WITHIN THE TIME IN WHICH IT WOULD HAVE ARRIVED IF PROPERLY SENT,
7 HAS THE EFFECT OF A PROPER SENDING.

8 (60) "STANDARD FORM" MEANS A RECORD OR A GROUP OF RELATED
9 RECORDS CONTAINING TERMS PREPARED FOR REPEATED USE IN TRANSACTIONS
10 AND SO USED IN A TRANSACTION IN WHICH THERE WAS NO NEGOTIATED CHANGE
11 OF TERMS BY INDIVIDUALS EXCEPT TO SET THE PRICE, QUANTITY, METHOD OF
12 PAYMENT, SELECTION AMONG STANDARD OPTIONS, OR TIME OR METHOD OF
13 DELIVERY.

14 (61) "STATE" MEANS A STATE OF THE UNITED STATES, THE DISTRICT OF
15 COLUMBIA, PUERTO RICO, THE UNITES STATES VIRGIN ISLANDS, OR ANY TERRITORY
16 OR INSULAR POSSESSION SUBJECT TO THE JURISDICTION OF THE UNITED STATES.

17 (62) "TERM", WITH RESPECT TO AN AGREEMENT, MEANS THAT PORTION
18 OF THE AGREEMENT WHICH RELATES TO A PARTICULAR MATTER.

19 (63) "TERMINATION" MEANS THE ENDING OF A CONTRACT BY A PARTY
20 PURSUANT TO A POWER CREATED BY AGREEMENT OR LAW OTHERWISE THAN
21 BECAUSE OF BREACH OF CONTRACT.

22 (64) "TRANSFER":

23 (A) WITH RESPECT TO A CONTRACTUAL INTEREST, INCLUDES AN
24 ASSIGNMENT OF THE CONTRACT, BUT DOES NOT INCLUDE AN AGREEMENT MERELY
25 TO PERFORM A CONTRACTUAL OBLIGATION OR TO EXERCISE CONTRACTUAL RIGHTS
26 THROUGH A DELEGATE OR SUBLICENSEE; AND

27 (B) WITH RESPECT TO COMPUTER INFORMATION, INCLUDES A
28 SALE, LICENSE, OR LEASE OF A COPY OF THE COMPUTER INFORMATION AND A
29 LICENSE OR ASSIGNMENT OF INFORMATIONAL RIGHTS IN COMPUTER
30 INFORMATION.

31 (65) "USAGE OF TRADE" MEANS ANY PRACTICE OR METHOD OF DEALING
32 THAT HAS SUCH REGULARITY OF OBSERVANCE IN A PLACE, VOCATION, OR TRADE AS
33 TO JUSTIFY AN EXPECTATION THAT IT WILL BE OBSERVED WITH RESPECT TO THE
34 TRANSACTION IN QUESTION.

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

36 (1) "BURDEN OF ESTABLISHING" § 1-201.

37 (2) "DOCUMENT OF TITLE" § 1-201.

38 (3) "FINANCIAL ASSET" § 8-102(A)(9).

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

9 GENERAL SCOPE AND TERMS.

10 21-103. SCOPE; EXCLUSIONS.

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

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

16 (1) IF A TRANSACTION INCLUDES COMPUTER INFORMATION AND
17 GOODS, THIS TITLE APPLIES TO THE PART OF THE TRANSACTION INVOLVING
18 COMPUTER INFORMATION, INFORMATIONAL RIGHTS IN IT, AND CREATION OR
19 MODIFICATION OF IT. HOWEVER, IF A COPY OF A COMPUTER PROGRAM IS
20 CONTAINED IN AND SOLD OR LEASED AS PART OF GOODS, THIS TITLE APPLIES TO
21 THE COPY AND THE COMPUTER PROGRAM ONLY IF:

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

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

26 (2) IN ALL CASES NOT INVOLVING GOODS, THIS TITLE APPLIES ONLY TO
27 THE PART OF THE TRANSACTION INVOLVING COMPUTER INFORMATION,
28 INFORMATIONAL RIGHTS IN IT, AND CREATION OR MODIFICATION OF IT, UNLESS
29 THE COMPUTER INFORMATION AND INFORMATIONAL RIGHTS, OR ACCESS TO THEM,
30 IS THE PRIMARY SUBJECT MATTER, IN WHICH CASE THIS TITLE APPLIES TO THE
31 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:

1 (1) A FINANCIAL SERVICES TRANSACTION;

2 (2) A CONTRACT TO CREATE, PERFORM OR PERFORM IN, INCLUDE
3 INFORMATION IN, ACQUIRE, USE, DISTRIBUTE, MODIFY, REPRODUCE, HAVE ACCESS
4 TO, ADAPT, MAKE AVAILABLE, TRANSMIT, LICENSE, OR DISPLAY:

5 (A) AUDIO OR VISUAL PROGRAMMING THAT IS PROVIDED BY
6 BROADCAST, SATELLITE, OR CABLE AS DEFINED OR USED IN THE FEDERAL
7 COMMUNICATIONS ACT AND RELATED REGULATIONS AS THEY EXISTED ON JULY 1,
8 1999, OR BY SIMILAR METHODS OF DELIVERING THAT PROGRAMMING; 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) A COMPULSORY LICENSE;

13 (4) A CONTRACT OF EMPLOYMENT OF AN INDIVIDUAL, OTHER THAN AN
14 INDIVIDUAL HIRED AS AN INDEPENDENT CONTRACTOR TO CREATE OR MODIFY
15 COMPUTER INFORMATION;

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

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

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

31 21-104. MIXED TRANSACTIONS: AGREEMENT TO OPT-IN OR OPT-OUT.

32 THE PARTIES MAY AGREE THAT THIS TITLE, INCLUDING
33 CONTRACT-FORMATION RULES, GOVERNS THE TRANSACTION, IN WHOLE OR PART,
34 OR THAT OTHER LAW GOVERNS THE TRANSACTION AND THIS TITLE DOES NOT
35 APPLY, IF A MATERIAL PART OF THE SUBJECT MATTER TO WHICH THE AGREEMENT
36 APPLIES IS COMPUTER INFORMATION OR INFORMATIONAL RIGHTS IN IT THAT ARE
37 WITHIN THE SCOPE OF THIS TITLE, OR IS SUBJECT MATTER WITHIN THIS TITLE
38 UNDER § 21-103(B) OF THIS SUBTITLE, OR IS SUBJECT MATTER EXCLUDED BY §
39 21-103(D)(1) OR (2) OF THIS SUBTITLE. HOWEVER, ANY AGREEMENT TO DO SO IS
40 SUBJECT TO THE FOLLOWING RULES:

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

9 (2) AN AGREEMENT THAT THIS TITLE DOES NOT GOVERN A
10 TRANSACTION:

11 (A) DOES NOT ALTER THE APPLICABILITY OF § 21-214 OR § 21-816
12 OF THIS TITLE; AND

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

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

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

23 21-105. RELATION TO FEDERAL LAW; FUNDAMENTAL PUBLIC POLICY;
24 TRANSACTIONS SUBJECT TO OTHER STATE LAW.

25 (A) A PROVISION OF THIS TITLE WHICH IS PREEMPTED BY FEDERAL LAW IS
26 UNENFORCEABLE TO THE EXTENT OF THE PREEMPTION.

27 (B) IF A TERM OF A CONTRACT VIOLATES A FUNDAMENTAL PUBLIC POLICY,
28 THE COURT MAY REFUSE TO ENFORCE THE CONTRACT, ENFORCE THE REMAINDER
29 OF THE CONTRACT WITHOUT THE IMPERMISSIBLE TERM, OR LIMIT THE
30 APPLICATION OF THE IMPERMISSIBLE TERM SO AS TO AVOID A RESULT CONTRARY
31 TO PUBLIC POLICY, IN EACH CASE TO THE EXTENT THAT THE INTEREST IN
32 ENFORCEMENT IS CLEARLY OUTWEIGHED BY A PUBLIC POLICY AGAINST
33 ENFORCEMENT OF THE TERM.

34 (C) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (D) OF THIS SECTION,
35 IF THIS TITLE OR A TERM OF A CONTRACT UNDER THIS TITLE CONFLICTS WITH A
36 CONSUMER PROTECTION STATUTE OR REGULATION, THE CONSUMER PROTECTION
37 STATUTE OR REGULATION GOVERNS.

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

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

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

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

7 (4) A REQUIREMENT OF CONSENT OR AGREEMENT TO A TERM IS
8 SATISFIED BY A MANIFESTATION OF ASSENT TO THE TERM IN ACCORDANCE WITH
9 THIS TITLE.

10 21-106. RULES OF CONSTRUCTION.

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

13 (1) SUPPORT AND FACILITATE THE REALIZATION OF THE FULL
14 POTENTIAL OF COMPUTER INFORMATION TRANSACTIONS;

15 (2) CLARIFY THE LAW GOVERNING COMPUTER INFORMATION
16 TRANSACTIONS;

17 (3) ENABLE EXPANDING COMMERCIAL PRACTICE IN COMPUTER
18 INFORMATION TRANSACTIONS BY COMMERCIAL USAGE AND AGREEMENT OF THE
19 PARTIES; AND

20 (4) PROMOTE UNIFORMITY OF THE LAW WITH RESPECT TO THE
21 SUBJECT MATTER OF THIS TITLE AMONG STATES THAT ENACT IT.

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

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

29 (D) TO BE ENFORCEABLE, A TERM NEED NOT BE CONSPICUOUS, NEGOTIATED,
30 OR EXPRESSLY ASSENTED OR AGREED TO, UNLESS THIS TITLE EXPRESSLY SO
31 REQUIRES.

32 21-107. LEGAL RECOGNITION OF ELECTRONIC RECORD AND AUTHENTICATION; USE
33 OF ELECTRONIC AGENTS.

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

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

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

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

11 21-108. PROOF AND EFFECT OF AUTHENTICATION.

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

16 (B) COMPLIANCE WITH A COMMERCIALY REASONABLE ATTRIBUTION
17 PROCEDURE AGREED TO OR ADOPTED BY THE PARTIES OR ESTABLISHED BY LAW
18 FOR AUTHENTICATING A RECORD AUTHENTICATES THE RECORD AS A MATTER OF
19 LAW.

20 21-109. CHOICE OF LAW.

21 (A) THE PARTIES IN THEIR AGREEMENT MAY CHOOSE THE APPLICABLE LAW.
22 HOWEVER, THE CHOICE IS NOT ENFORCEABLE IN A CONSUMER CONTRACT TO THE
23 EXTENT IT WOULD VARY A RULE THAT MAY NOT BE VARIED BY AGREEMENT UNDER
24 THE LAW OF THE JURISDICTION WHOSE LAW WOULD APPLY UNDER SUBSECTIONS
25 (B) AND (C) OF THIS SECTION IN THE ABSENCE OF THE AGREEMENT.

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

29 (1) AN ACCESS CONTRACT OR A CONTRACT PROVIDING FOR
30 ELECTRONIC DELIVERY OF A COPY IS GOVERNED BY THE LAW OF THE JURISDICTION
31 IN WHICH THE LICENSOR WAS LOCATED WHEN THE AGREEMENT WAS ENTERED
32 INTO.

33 (2) A CONSUMER CONTRACT THAT REQUIRES DELIVERY OF A COPY ON A
34 TANGIBLE MEDIUM IS GOVERNED BY THE LAW OF THE JURISDICTION IN WHICH THE
35 COPY IS OR SHOULD HAVE BEEN DELIVERED TO THE CONSUMER.

36 (3) IN ALL OTHER CASES, THE CONTRACT IS GOVERNED BY THE LAW OF
37 THE JURISDICTION HAVING THE MOST SIGNIFICANT RELATIONSHIP TO THE
38 TRANSACTION.

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

7 (D) FOR PURPOSES OF THIS SECTION, A PARTY IS LOCATED AT ITS PLACE OF
8 BUSINESS IF IT HAS ONE PLACE OF BUSINESS, AT ITS CHIEF EXECUTIVE OFFICE IF IT
9 HAS MORE THAN ONE PLACE OF BUSINESS, OR AT ITS PLACE OF INCORPORATION OR
10 PRIMARY REGISTRATION IF IT DOES NOT HAVE A PHYSICAL PLACE OF BUSINESS.
11 OTHERWISE, A PARTY IS LOCATED AT ITS PRIMARY RESIDENCE.

12 21-110. CONTRACTUAL CHOICE OF FORUM.

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

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

17 21-111. UNCONSCIONABLE CONTRACT OR TERM.

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

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

28 21-112. MANIFESTING ASSENT; OPPORTUNITY TO REVIEW.

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

32 (1) AUTHENTICATES THE RECORD OR TERM WITH INTENT TO ADOPT OR
33 ACCEPT IT; OR

34 (2) INTENTIONALLY ENGAGES IN CONDUCT OR MAKES STATEMENTS
35 WITH REASON TO KNOW THAT THE OTHER PARTY OR ITS ELECTRONIC AGENT MAY
36 INFER FROM THE CONDUCT OR STATEMENT THAT THE PERSON ASSENTS TO THE
37 RECORD OR TERM.

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

3 (1) AUTHENTICATES THE RECORD OR TERM; OR

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

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

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

16 (E) WITH RESPECT TO AN OPPORTUNITY TO REVIEW, THE FOLLOWING RULES
17 APPLY:

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

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

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

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

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

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

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

4 21-113. VARIATION BY AGREEMENT; COMMERCIAL PRACTICE.

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

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

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

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

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

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

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

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

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

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

29 (G) THE REQUIREMENTS FOR AN ENFORCEABLE TERM IN §§
30 21-303(B), 21-307(G), 21-406(B) AND (C), AND 21-804(A);

31 (H) THE LIMITATIONS ON A FINANCIER IN §§ 21-507 THROUGH
32 21-511;

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

35 (J) THE LIMITATIONS ON SELF-HELP REPOSSESSION IN §§
36 21-815(B) AND 21-816.

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

5 21-114. SUPPLEMENTAL PRINCIPLES; GOOD FAITH; DECISION FOR COURT;
6 REASONABLE TIME; REASON TO KNOW.

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

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

16 (C) WHETHER A TERM IS CONSPICUOUS OR IS UNENFORCEABLE UNDER §
17 21-105(A) OR (B), § 21-111, OR § 21-209(A) OF THIS TITLE AND WHETHER AN
18 ATTRIBUTION PROCEDURE IS COMMERCIALY REASONABLE OR EFFECTIVE UNDER §
19 21-108, § 21-212, OR § 21-213 OF THIS TITLE ARE QUESTIONS TO BE DETERMINED BY
20 THE COURT.

21 (D) WHETHER AN AGREEMENT HAS LEGAL CONSEQUENCES IS DETERMINED
22 BY THIS TITLE.

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

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

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

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

33 SUBTITLE 2. FORMATION AND TERMS; FORMATION OF A CONTRACT; TERMS OF
34 RECORDS; ELECTRONIC CONTRACTS: GENERALLY.

35 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 10 DAYS AFTER THE CONFIRMING RECORD IS RECEIVED.

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

37 (F) A TRANSACTION WITHIN THE SCOPE OF THIS TITLE IS NOT SUBJECT TO A
38 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 WITH RESPECT TO INFORMATION OR COPIES RECEIVED OR MADE FROM
29 COPIES RECEIVED PURSUANT TO THE AGREEMENT AND NOT DELIVERED OR
30 DELIVERABLE TO THE OTHER PARTY.

31 21-203. OFFER AND ACCEPTANCE IN GENERAL.

32 UNLESS OTHERWISE UNAMBIGUOUSLY INDICATED BY THE LANGUAGE OR THE
33 CIRCUMSTANCES:

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

36 (2) AN ORDER OR OTHER OFFER TO ACQUIRE A COPY FOR PROMPT OR
37 CURRENT DELIVERY INVITES ACCEPTANCE BY EITHER A PROMPT PROMISE TO SHIP
38 OR A PROMPT OR CURRENT SHIPMENT OF A CONFORMING OR NONCONFORMING
39 COPY. HOWEVER, A SHIPMENT OF A NONCONFORMING COPY IS NOT AN ACCEPTANCE
40 IF THE LICENSOR SEASONABLY NOTIFIES THE LICENSEE THAT THE SHIPMENT IS
41 OFFERED ONLY AS AN ACCOMMODATION TO THE LICENSEE.

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

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

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

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

12 21-204. ACCEPTANCE WITH VARYING TERMS.

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

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

20 (C) IF AN ACCEPTANCE MATERIALLY ALTERS THE OFFER, THE FOLLOWING
21 RULES APPLY:

22 (1) A CONTRACT IS NOT FORMED UNLESS:

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

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

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

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

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

34 (2) AN ADDITIONAL NONMATERIAL TERM IN THE ACCEPTANCE IS A
35 PROPOSAL FOR AN ADDITIONAL TERM. BETWEEN MERCHANTS, THE PROPOSED
36 ADDITIONAL TERM BECOMES PART OF THE CONTRACT UNLESS THE OFFEROR GIVES

1 NOTICE OF OBJECTION BEFORE, OR WITHIN A REASONABLE TIME AFTER, IT
2 RECEIVES THE PROPOSED TERMS.

3 21-205. CONDITIONAL OFFER OR ACCEPTANCE.

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

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

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

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

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

23 21-206. OFFER AND ACCEPTANCE: ELECTRONIC AGENTS.

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

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

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

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

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

5 21-207. FORMATION: RELEASES OF INFORMATIONAL RIGHTS.

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

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

10 (2) ENFORCEABLE UNDER ESTOPPEL, IMPLIED LICENSE, OR OTHER
11 LAW.

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

15 (1) THE PARTY GRANTING THE RELEASE; OR

16 (2) THE PARTY RECEIVING THE RELEASE, EXCEPT FOR RELATIVELY
17 INSIGNIFICANT ACTS.

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

20 TERMS OF RECORDS.

21 21-208. ADOPTING TERMS OF RECORDS.

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

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

27 (2) THE TERMS OF A RECORD MAY BE ADOPTED PURSUANT TO
28 PARAGRAPH (1) OF THIS SECTION AFTER BEGINNING PERFORMANCE OR USE IF THE
29 PARTIES HAD REASON TO KNOW THAT THEIR AGREEMENT WOULD BE REPRESENTED
30 IN WHOLE OR PART BY A LATER RECORD TO BE AGREED ON AND THERE WOULD NOT
31 BE AN OPPORTUNITY TO REVIEW THE RECORD OR A COPY OF IT BEFORE
32 PERFORMANCE OR USE BEGINS. IF THE PARTIES FAIL TO AGREE TO THE LATER
33 TERMS AND DID NOT INTEND TO FORM A CONTRACT UNLESS THEY SO AGREED, §
34 21-202(E) OF THIS SUBTITLE APPLIES.

35 (3) IF A PARTY ADOPTS THE TERMS OF A RECORD, THE TERMS BECOME
36 PART OF THE CONTRACT WITHOUT REGARD TO THE PARTY'S KNOWLEDGE OR

1 UNDERSTANDING OF INDIVIDUAL TERMS IN THE RECORD, EXCEPT FOR A TERM THAT
2 IS UNENFORCEABLE BECAUSE IT FAILS TO SATISFY ANOTHER REQUIREMENT OF
3 THIS TITLE.

4 21-209. MASS-MARKET LICENSE.

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

10 (1) THE TERM IS UNCONSCIONABLE OR IS UNENFORCEABLE UNDER §
11 21-105(A) OR (B) OF THIS TITLE; OR

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

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

20 (1) REIMBURSEMENT OF ANY REASONABLE EXPENSES INCURRED IN
21 COMPLYING WITH THE LICENSOR'S INSTRUCTIONS FOR RETURNING OR DESTROYING
22 THE COMPUTER INFORMATION OR, IN THE ABSENCE OF INSTRUCTIONS, EXPENSES
23 INCURRED FOR RETURN POSTAGE OR SIMILAR REASONABLE EXPENSE IN
24 RETURNING THE COMPUTER INFORMATION; AND

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

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

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

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

1 21-210. TERMS OF CONTRACT FORMED BY CONDUCT.

2 (A) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (B) OF THIS SECTION
3 AND SUBJECT TO § 21-301 OF THIS TITLE, IF A CONTRACT IS FORMED BY CONDUCT OF
4 THE PARTIES, THE TERMS OF THE CONTRACT ARE DETERMINED BY CONSIDERATION
5 OF THE TERMS AND CONDITIONS TO WHICH THE PARTIES EXPRESSLY AGREED,
6 COURSE OF PERFORMANCE, COURSE OF DEALING, USAGE OF TRADE, THE NATURE
7 OF THE PARTIES' CONDUCT, THE RECORDS EXCHANGED, THE INFORMATION OR
8 INFORMATIONAL RIGHTS INVOLVED, THE SUPPLEMENTARY PROVISIONS OF THIS
9 TITLE, AND ALL OTHER RELEVANT CIRCUMSTANCES.

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

13 21-211. PRETRANSACTION DISCLOSURES IN INTERNET-TYPE TRANSACTIONS.

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

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

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

28 (B) DISCLOSING THE AVAILABILITY OF THE STANDARD TERMS IN A
29 PROMINENT PLACE ON THE SITE FROM WHICH THE COMPUTER INFORMATION IS
30 OFFERED AND PROMPTLY FURNISHING A COPY OF THE STANDARD TERMS ON
31 REQUEST BEFORE THE TRANSFER OF THE COMPUTER INFORMATION; AND

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

1 ELECTRONIC CONTRACTS: GENERALLY.

2 21-212. EFFICACY AND COMMERCIAL REASONABLENESS OF ATTRIBUTION
3 PROCEDURE.

4 THE EFFICACY, INCLUDING THE COMMERCIAL REASONABLENESS, OF AN
5 ATTRIBUTION PROCEDURE IS DETERMINED BY THE COURT. IN MAKING THIS
6 DETERMINATION, THE FOLLOWING RULES APPLY:

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

9 (2) EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (1) OF THIS
10 SECTION, COMMERCIAL REASONABLENESS AND EFFECTIVENESS IS DETERMINED IN
11 LIGHT OF THE PURPOSES OF THE PROCEDURE AND THE COMMERCIAL
12 CIRCUMSTANCES AT THE TIME THE PARTIES AGREED TO OR ADOPTED THE
13 PROCEDURE.

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

16 21-213. DETERMINING ATTRIBUTION.

17 (A) AN ELECTRONIC AUTHENTICATION, DISPLAY, MESSAGE, RECORD, OR
18 PERFORMANCE IS ATTRIBUTED TO A PERSON IF IT WAS THE ACT OF THE PERSON OR
19 ITS ELECTRONIC AGENT, OR IF THE PERSON IS BOUND BY IT UNDER AGENCY OR
20 OTHER LAW. THE PARTY RELYING ON ATTRIBUTION OF AN ELECTRONIC
21 AUTHENTICATION, DISPLAY, MESSAGE, RECORD, OR PERFORMANCE TO ANOTHER
22 PERSON HAS THE BURDEN OF ESTABLISHING ATTRIBUTION.

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

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

30 (D) IF AN ATTRIBUTION PROCEDURE EXISTS TO DETECT ERRORS OR CHANGES
31 IN AN ELECTRONIC AUTHENTICATION, DISPLAY, MESSAGE, RECORD, OR
32 PERFORMANCE, AND WAS AGREED TO OR ADOPTED BY THE PARTIES OR
33 ESTABLISHED BY LAW, AND ONE PARTY CONFORMED TO THE PROCEDURE BUT THE
34 OTHER PARTY DID NOT, AND THE NONCONFORMING PARTY WOULD HAVE DETECTED
35 THE CHANGE OR ERROR HAD THAT PARTY ALSO CONFORMED, THE EFFECT OF
36 NONCOMPLIANCE IS DETERMINED BY THE AGREEMENT BUT, IN THE ABSENCE OF
37 AGREEMENT, THE CONFORMING PARTY MAY AVOID THE EFFECT OF THE ERROR OR
38 CHANGE.

1 21-214. ELECTRONIC ERROR: CONSUMER DEFENSES.

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

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

9 (1) PROMPTLY ON LEARNING OF THE ERROR:

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

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

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

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

19 21-215. ELECTRONIC MESSAGE: WHEN EFFECTIVE; EFFECT OF ACKNOWLEDGMENT.

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

22 (B) RECEIPT OF AN ELECTRONIC ACKNOWLEDGMENT OF AN ELECTRONIC
23 MESSAGE ESTABLISHES THAT THE MESSAGE WAS RECEIVED BUT BY ITSELF DOES
24 NOT ESTABLISH THAT THE CONTENT SENT CORRESPONDS TO THE CONTENT
25 RECEIVED.

26 SUBTITLE 3. CONSTRUCTION; GENERAL; INTERPRETATION.

27 GENERAL.

28 21-301. PAROL OR EXTRINSIC EVIDENCE.

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

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

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

6 21-302. PRACTICAL CONSTRUCTION.

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

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

13 (2) COURSE OF PERFORMANCE PREVAILS OVER COURSE OF DEALING
14 AND USAGE OF TRADE; AND

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

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

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

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

26 21-303. MODIFICATION AND RESCISSION.

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

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

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

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

4 21-304. CONTINUING CONTRACTUAL TERMS.

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

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

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

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

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

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

25 21-305. TERMS TO BE SPECIFIED.

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

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

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

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

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

1 21-306. PERFORMANCE UNDER OPEN TERMS.

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

6 INTERPRETATION.

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

8 (A) A LICENSE GRANTS:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 21-308. DURATION OF CONTRACT.

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

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

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

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

38 (I) TRANSFERS OWNERSHIP OF A COPY; OR

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

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

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

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

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

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

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

22 SUBTITLE 4. WARRANTIES.

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

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

35 (B) A LICENSOR WARRANTS:

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

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

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

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

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

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

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

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

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

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

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

5 21-402. EXPRESS WARRANTY.

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

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

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

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

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

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

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

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

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

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

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

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

6 (2) TO THE DISTRIBUTOR THAT:

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

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

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

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

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

20 21-404. IMPLIED WARRANTY: INFORMATIONAL CONTENT.

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

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

29 (1) PUBLISHED INFORMATIONAL CONTENT; OR

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

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

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

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

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

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

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

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

19 (2) PUBLISHED INFORMATIONAL CONTENT, BUT THERE MAY BE A
20 WARRANTY WITH REGARD TO THE LICENSOR'S SELECTION AMONG PUBLISHED
21 INFORMATIONAL CONTENT FROM DIFFERENT PROVIDERS.

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

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

31 21-406. DISCLAIMER OR MODIFICATION OF WARRANTY.

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

38 (B) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTIONS (C), (D), AND (E) OF
39 THIS SECTION, TO DISCLAIM OR MODIFY AN IMPLIED WARRANTY OR ANY PART OF IT,

1 BUT NOT THE WARRANTY IN § 21-401 OF THIS SUBTITLE, THE FOLLOWING RULES
2 APPLY:

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

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

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

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

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

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

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

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

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

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

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

10 21-407. MODIFICATION OF A COMPUTER PROGRAM.

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

18 21-408. CULMINATION AND CONFLICT OF WARRANTIES.

19 WARRANTIES, WHETHER EXPRESS OR IMPLIED, MUST BE CONSTRUED AS
20 CONSISTENT WITH EACH OTHER AND AS CUMULATIVE, BUT IF THAT CONSTRUCTION
21 IS UNREASONABLE, THE INTENTION OF THE PARTIES DETERMINES WHICH
22 WARRANTY IS DOMINANT. IN ASCERTAINING THAT INTENTION, THE FOLLOWING
23 RULES APPLY:

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

26 (2) A SAMPLE DISPLACES INCONSISTENT GENERAL LANGUAGE OF
27 DESCRIPTION.

28 (3) EXPRESS WARRANTIES DISPLACE INCONSISTENT IMPLIED
29 WARRANTIES OTHER THAN AN IMPLIED WARRANTY UNDER § 21-405(A) OF THIS
30 SUBTITLE.

31 21-409. THIRD-PARTY BENEFICIARIES OF WARRANTY.

32 (A) EXCEPT FOR PUBLISHED INFORMATIONAL CONTENT, A WARRANTY TO A
33 LICENSEE EXTENDS TO PERSONS FOR WHOSE BENEFIT THE LICENSOR INTENDS TO
34 SUPPLY THE INFORMATION OR INFORMATIONAL RIGHTS AND WHICH RIGHTFULLY
35 USE THE INFORMATION IN A TRANSACTION OR APPLICATION OF A KIND IN WHICH
36 THE LICENSOR INTENDS THE INFORMATION TO BE USED.

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

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

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

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

12 OWNERSHIP AND TRANSFERS.

13 21-501. OWNERSHIP OF INFORMATIONAL RIGHTS.

14 (A) IF AN AGREEMENT PROVIDES FOR CONVEYANCE OF OWNERSHIP OF
15 INFORMATIONAL RIGHTS IN A COMPUTER PROGRAM, OWNERSHIP PASSES AT THE
16 TIME AND PLACE SPECIFIED BY THE AGREEMENT BUT DOES NOT PASS UNTIL THE
17 PROGRAM IS IN EXISTENCE AND IDENTIFIED TO THE CONTRACT. IF THE AGREEMENT
18 DOES NOT SPECIFY A DIFFERENT TIME, OWNERSHIP PASSES WHEN THE PROGRAM
19 AND THE INFORMATIONAL RIGHTS ARE IN EXISTENCE AND IDENTIFIED TO THE
20 CONTRACT.

21 (B) TRANSFER OF A COPY DOES NOT TRANSFER OWNERSHIP OF
22 INFORMATIONAL RIGHTS.

23 21-502. TITLE TO COPY.

24 (A) IN A LICENSE:

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

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

29 (3) IF A LICENSOR RESERVES TITLE TO A COPY, THE LICENSOR RETAINS
30 TITLE TO THAT COPY AND ANY COPIES MADE OF IT, UNLESS THE LICENSE GRANTS
31 THE LICENSEE A RIGHT TO MAKE AND SELL COPIES TO OTHERS, IN WHICH CASE THE
32 RESERVATION OF TITLE APPLIES ONLY TO COPIES DELIVERED TO THE LICENSEE BY
33 THE LICENSOR.

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

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

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

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

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

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

12 21-503. TRANSFER OF CONTRACTUAL INTEREST.

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

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

16 (A) IS PROHIBITED BY OTHER LAW; OR

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

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

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

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

37 (3) A RIGHT TO DAMAGES FOR BREACH OF THE WHOLE CONTRACT OR A
38 RIGHT TO PAYMENT ARISING OUT OF THE TRANSFEROR'S DUE PERFORMANCE OF ITS

1 ENTIRE OBLIGATION MAY BE TRANSFERRED NOTWITHSTANDING AN AGREEMENT
2 OTHERWISE.

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

5 21-504. EFFECT OF TRANSFER OF CONTRACTUAL INTEREST.

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

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

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

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

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

19 (4) THE TRANSFER DOES NOT RELIEVE THE TRANSFEROR OF ANY DUTY
20 TO PERFORM, OR OF LIABILITY FOR BREACH OF CONTRACT, UNLESS THE OTHER
21 PARTY TO THE ORIGINAL CONTRACT AGREES THAT THE TRANSFER HAS THAT
22 EFFECT.

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

28 21-505. PERFORMANCE BY DELEGATE; SUBCONTRACT.

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

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

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

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

1 (C) AN ATTEMPTED DELEGATION THAT VIOLATES A TERM PROHIBITING
2 DELEGATION IS NOT EFFECTIVE.

3 21-506. TRANSFER BY LICENSEE.

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

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

13 FINANCING ARRANGEMENTS.

14 21-507. FINANCING IF FINANCIER DOES NOT BECOME LICENSEE.

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

17 (1) THE FINANCIER DOES NOT RECEIVE THE BENEFITS OR BURDENS OF
18 THE LICENSE.

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

21 (A) THE LICENSE;

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

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

28 21-508. FINANCE LICENSES.

29 (A) IF A FINANCIER BECOMES A LICENSEE IN CONNECTION WITH ITS
30 FINANCIAL ACCOMMODATION CONTRACT AND THEN TRANSFERS ITS CONTRACTUAL
31 INTEREST UNDER THE LICENSE, OR SUBLICENSES THE LICENSED COMPUTER
32 INFORMATION OR INFORMATIONAL RIGHTS, TO A LICENSEE RECEIVING THE
33 FINANCIAL ACCOMMODATION, THE FOLLOWING RULES APPLY:

34 (1) THE TRANSFER OR SUBLICENSE TO THE ACCOMMODATED LICENSEE
35 IS NOT EFFECTIVE UNLESS:

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

3 (B) THE FOLLOWING CONDITIONS ARE FULFILLED:

4 (I) BEFORE THE LICENSOR DELIVERED THE INFORMATION
5 OR GRANTED THE LICENSE TO THE FINANCIER, THE LICENSOR RECEIVED NOTICE IN
6 A RECORD FROM THE FINANCIER GIVING THE NAME AND LOCATION OF THE
7 ACCOMMODATED LICENSEE AND CLEARLY INDICATING THAT THE LICENSE WAS
8 BEING OBTAINED IN ORDER TO TRANSFER THE CONTRACTUAL INTEREST OR
9 SUBLICENSE THE LICENSED INFORMATION OR INFORMATIONAL RIGHTS TO THE
10 ACCOMMODATED LICENSEE;

11 (II) THE FINANCIER BECAME A LICENSEE SOLELY TO MAKE
12 THE FINANCIAL ACCOMMODATION; AND

13 (III) THE ACCOMMODATED LICENSEE ADOPTS THE TERMS OF
14 THE LICENSE, WHICH TERMS MAY BE SUPPLEMENTED BY THE FINANCIAL
15 ACCOMMODATION CONTRACT, TO THE EXTENT THE TERMS OF THE FINANCIAL
16 ACCOMMODATION CONTRACT ARE NOT INCONSISTENT WITH THE LICENSE AND ANY
17 RIGHTS OF THE LICENSOR UNDER OTHER LAW.

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

22 (B) IF A FINANCIER MAKES AN EFFECTIVE TRANSFER OF ITS CONTRACTUAL
23 INTEREST IN A LICENSE, OR AN EFFECTIVE SUBLICENSE OF THE LICENSED
24 INFORMATION OR INFORMATIONAL RIGHTS, TO AN ACCOMMODATED LICENSEE, THE
25 FOLLOWING RULES APPLY:

26 (1) THE ACCOMMODATED LICENSEE'S RIGHTS AND OBLIGATIONS ARE
27 GOVERNED BY:

28 (A) THE LICENSE;

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

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

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

1 21-509. FINANCING ARRANGEMENTS: OBLIGATIONS IRREVOCABLE.

2 UNLESS THE ACCOMMODATED LICENSEE IS A CONSUMER, A TERM IN A
3 FINANCIAL ACCOMMODATION CONTRACT PROVIDING THAT THE ACCOMMODATED
4 LICENSEE'S OBLIGATIONS TO THE FINANCIER ARE IRREVOCABLE AND
5 INDEPENDENT IS ENFORCEABLE. THE OBLIGATIONS BECOME IRREVOCABLE AND
6 INDEPENDENT UPON THE LICENSEE'S ACCEPTANCE OF THE LICENSE OR THE
7 FINANCIER'S GIVING OF VALUE, WHICHEVER OCCURS FIRST.

8 21-510. FINANCING ARRANGEMENTS: REMEDIES OR ENFORCEMENT.

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

12 (1) THE FINANCIER MAY CANCEL THE FINANCIAL ACCOMMODATION
13 CONTRACT.

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

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

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

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

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

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

37 (1) A FINANCIER DESCRIBED IN SUBSECTION (A)(3) OF THIS SECTION
38 WHICH IS ENTITLED UNDER THE FINANCIAL ACCOMMODATION CONTRACT TO TAKE
39 POSSESSION OR PREVENT USE OF INFORMATION, COPIES, OR RELATED MATERIALS

1 MAY DO SO ONLY IF THE LICENSOR CONSENTS OR IF DOING SO WOULD NOT RESULT
2 IN A MATERIAL ADVERSE CHANGE OF THE DUTY OF THE LICENSOR, MATERIALLY
3 INCREASE THE BURDEN OR RISK IMPOSED ON THE LICENSOR, DISCLOSE OR
4 THREATEN TO DISCLOSE TRADE SECRETS OR CONFIDENTIAL MATERIAL OF THE
5 LICENSOR, OR MATERIALLY IMPAIR THE LICENSOR'S LIKELIHOOD OR EXPECTATION
6 OF OBTAINING RETURN PERFORMANCE.

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

11 (A) THE LICENSEE OWNS THE LICENSED COPY, THE LICENSE DOES
12 NOT PRECLUDE TRANSFER OF THE LICENSEE'S CONTRACTUAL RIGHTS, AND THE
13 TRANSFER COMPLIES WITH FEDERAL COPYRIGHT LAW FOR THE OWNER OF A COPY
14 TO MAKE THE TRANSFER; OR

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

18 (3) THE FINANCIER'S REMEDIES UNDER THE FINANCIAL
19 ACCOMMODATION CONTRACT ARE SUBJECT TO THE LICENSOR'S RIGHTS AND THE
20 TERMS OF THE LICENSE.

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

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

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

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

29 GENERAL.

30 21-601. PERFORMANCE OF CONTRACT IN GENERAL.

31 (A) A PARTY SHALL PERFORM IN A MANNER THAT CONFORMS TO THE
32 CONTRACT.

33 (B) IF AN UNCURED MATERIAL BREACH OF CONTRACT BY ONE PARTY
34 PRECEDES THE AGGRIEVED PARTY'S PERFORMANCE, THE AGGRIEVED PARTY NEED
35 NOT PERFORM EXCEPT WITH RESPECT TO CONTRACTUAL USE TERMS. IN ADDITION,
36 THE FOLLOWING RULES APPLY:

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

4 (2) THE AGGRIEVED PARTY MAY CANCEL THE CONTRACT ONLY IF THE
5 BREACH IS A MATERIAL BREACH OF THE WHOLE CONTRACT OR THE AGREEMENT SO
6 PROVIDES.

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

10 (1) A TENDER OF PERFORMANCE OCCURS WHEN THE PARTY, WITH
11 MANIFEST PRESENT ABILITY AND WILLINGNESS TO PERFORM, OFFERS TO
12 COMPLETE THE PERFORMANCE.

13 (2) IF A PERFORMANCE BY THE OTHER PARTY IS DUE AT THE TIME OF
14 THE TENDERED PERFORMANCE, TENDER OF THE OTHER PARTY'S PERFORMANCE IS
15 A CONDITION TO THE TENDERING PARTY'S OBLIGATION TO COMPLETE THE
16 TENDERED PERFORMANCE.

17 (3) A PARTY SHALL PAY OR RENDER THE CONSIDERATION REQUIRED BY
18 THE AGREEMENT FOR A PERFORMANCE IT ACCEPTS. A PARTY THAT ACCEPTS A
19 PERFORMANCE HAS THE BURDEN OF ESTABLISHING A BREACH OF CONTRACT WITH
20 RESPECT TO THE ACCEPTED PERFORMANCE.

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

25 21-602. LICENSOR'S OBLIGATION TO ENABLE USE.

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

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

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

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

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

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

6 (5) IF THE AGREEMENT REQUIRES A TRANSFER OF OWNERSHIP OF
7 INFORMATIONAL RIGHTS AND A FILING OR RECORDING IS ALLOWED BY LAW TO
8 ESTABLISH PRIORITY OF THE TRANSFERRED OWNERSHIP, ON REQUEST BY THE
9 LICENSEE, THE LICENSOR SHALL EXECUTE AND TENDER A RECORD APPROPRIATE
10 FOR THAT PURPOSE.

11 21-603. SUBMISSIONS OF INFORMATION TO SATISFACTION OF A PARTY.

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

14 (1) §§ 21-606 THROUGH 21-610 AND §§ 21-704 THROUGH 21-707 OF THIS
15 TITLE DO NOT APPLY TO THE SUBMISSION.

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

21 (3) EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (4), NEITHER
22 REFUSAL NOR ACCEPTANCE OCCURS UNLESS THE RECIPIENT EXPRESSLY REFUSES
23 OR ACCEPTS THE SUBMITTED INFORMATION, BUT THE RECIPIENT MAY NOT USE THE
24 SUBMITTED INFORMATION BEFORE ACCEPTANCE.

25 (4) SILENCE AND A FAILURE TO ACT IN REFERENCE TO A SUBMISSION
26 BEYOND A COMMERCIALLY REASONABLE TIME TO RESPOND ENTITLE THE
27 SUBMITTING PARTY TO DEMAND, IN A RECORD DELIVERED TO THE RECIPIENT, A
28 DECISION ON THE SUBMISSION. IF THE RECIPIENT FAILS TO RESPOND WITHIN A
29 REASONABLE TIME AFTER RECEIPT OF THE DEMAND, THE SUBMISSION IS DEEMED
30 TO HAVE BEEN REFUSED.

31 21-604. IMMEDIATELY COMPLETED PERFORMANCE.

32 IF A PERFORMANCE INVOLVES DELIVERY OF INFORMATION OR SERVICES
33 WHICH, BECAUSE OF THEIR NATURE, MAY PROVIDE A LICENSEE, IMMEDIATELY ON
34 PERFORMANCE OR DELIVERY, WITH SUBSTANTIALLY ALL THE BENEFIT OF THE
35 PERFORMANCE OR WITH OTHER SIGNIFICANT BENEFIT THAT CANNOT BE
36 RETURNED, THE FOLLOWING RULES APPLY:

37 (1) §§ 21-607 THROUGH 21-610 AND §§ 21-704 THROUGH 21-707 OF THIS
38 TITLE DO NOT APPLY.

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

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

8 21-605. ELECTRONIC REGULATION OF PERFORMANCE.

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

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

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

16 (2) THE RESTRAINT PREVENTS A USE THAT IS INCONSISTENT WITH THE
17 AGREEMENT;

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

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

24 (C) THIS SECTION DOES NOT AUTHORIZE AN AUTOMATIC RESTRAINT THAT
25 AFFIRMATIVELY PREVENTS OR MAKES IMPRACTICABLE A LICENSEE'S ACCESS TO ITS
26 OWN INFORMATION OR INFORMATION OF A THIRD PARTY, OTHER THAN THE
27 LICENSOR, IF THAT INFORMATION IS IN THE POSSESSION OF THE LICENSEE OR A
28 THIRD PARTY AND ACCESSED WITHOUT USE OF THE LICENSOR'S INFORMATION OR
29 INFORMATIONAL RIGHTS.

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

33 (E) THIS SECTION DOES NOT PRECLUDE ELECTRONIC REPLACEMENT OR
34 DISABLING OF AN EARLIER COPY OF INFORMATION BY THE LICENSOR IN
35 CONNECTION WITH DELIVERY OF A NEW COPY OR VERSION UNDER AN AGREEMENT
36 TO REPLACE OR DISABLE THE EARLIER COPY BY ELECTRONIC MEANS WITH AN
37 UPGRADE OR OTHER NEW INFORMATION.

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

4 PERFORMANCE IN DELIVERY OF COPIES.

5 21-606. COPY: DELIVERY; TENDER OF DELIVERY.

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

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

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

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

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

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

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

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

36 (B) IN TENDERING ELECTRONIC DELIVERY OF A COPY, THE
37 TENDERING PARTY SHALL INITIATE OR CAUSE TO HAVE INITIATED A TRANSMISSION
38 THAT IS REASONABLE IN LIGHT OF THE NATURE OF THE INFORMATION AND OTHER

1 CIRCUMSTANCES, WITH EXPENSES OF TRANSMISSION TO BE BORNE BY THE
2 RECEIVING PARTY.

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

7 21-607. COPY: PERFORMANCE RELATED TO DELIVERY; PAYMENT.

8 (A) IF PERFORMANCE REQUIRES DELIVERY OF A COPY, THE FOLLOWING
9 RULES APPLY:

10 (1) THE PARTY REQUIRED TO DELIVER NEED NOT COMPLETE A
11 TENDERED DELIVERY UNTIL THE RECEIVING PARTY TENDERS ANY PERFORMANCE
12 THEN DUE.

13 (2) TENDER OF DELIVERY IS A CONDITION OF THE OTHER PARTY'S DUTY
14 TO ACCEPT THE COPY AND ENTITLES THE TENDERING PARTY TO ACCEPTANCE OF
15 THE COPY.

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

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

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

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

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

30 21-608. COPY: RIGHT TO INSPECT; PAYMENT BEFORE INSPECTION.

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

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

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

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

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

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

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

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

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

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

28 21-609. COPY: WHEN ACCEPTANCE OCCURS.

29 (A) ACCEPTANCE OF A COPY OCCURS WHEN THE PARTY TO WHICH THE COPY
30 IS TENDERED:

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

34 (2) DOES NOT MAKE AN EFFECTIVE REFUSAL;

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

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

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

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

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

15 21-610. COPY: EFFECT OF ACCEPTANCE; BURDEN OF ESTABLISHING; NOTICE OF
16 CLAIMS.

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

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

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

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

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

1 SPECIAL TYPES OF CONTRACTS.

2 21-611. ACCESS CONTRACTS.

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

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

8 (2) A CHANGE IN THE CONTENT OF THE INFORMATION IS A BREACH OF
9 CONTRACT ONLY IF THE CHANGE CONFLICTS WITH AN EXPRESS TERM OF THE
10 AGREEMENT.

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

15 (4) ACCESS MUST BE AVAILABLE:

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

18 (B) TO THE EXTENT NOT EXPRESSLY STATED IN THE AGREEMENT,
19 AT TIMES AND IN A MANNER REASONABLE FOR THE PARTICULAR TYPE OF
20 CONTRACT IN LIGHT OF THE ORDINARY STANDARDS OF THE BUSINESS, TRADE, OR
21 INDUSTRY.

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

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

28 (2) CAUSED BY:

29 (A) SCHEDULED DOWNTIME;

30 (B) REASONABLE NEEDS FOR MAINTENANCE;

31 (C) REASONABLE PERIODS OF FAILURE OF EQUIPMENT,
32 COMPUTER PROGRAMS, OR COMMUNICATIONS; OR

33 (D) EVENTS REASONABLY BEYOND THE LICENSOR'S CONTROL,
34 AND THE LICENSOR EXERCISES SUCH COMMERCIALY REASONABLE EFFORTS AS
35 THE CIRCUMSTANCES REQUIRE.

1 21-612. CORRECTION AND SUPPORT CONTRACTS.

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

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

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

11 (A) SHALL PERFORM AT A TIME AND PLACE AND IN A MANNER
12 CONSISTENT WITH THE EXPRESS TERMS OF THE AGREEMENT AND, TO THE EXTENT
13 NOT STATED IN THE EXPRESS TERMS, AT A TIME AND PLACE AND IN A MANNER THAT
14 IS REASONABLE IN LIGHT OF ORDINARY STANDARDS OF THE BUSINESS, TRADE, OR
15 INDUSTRY; AND

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

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

26 21-613. CONTRACTS INVOLVING PUBLISHERS, DEALERS, AND END USERS.

27 (A) IN THIS SECTION:

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

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

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

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

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

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

12 (3) THE DEALER IS NOT BOUND BY THE TERMS, AND DOES NOT RECEIVE
13 THE BENEFITS, OF AN AGREEMENT BETWEEN THE PUBLISHER AND THE END USER
14 UNLESS THE DEALER AND END USER ADOPT THOSE TERMS AS PART OF THE
15 AGREEMENT.

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

20 (1) IN THE FORM AS RECEIVED; AND

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

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

25 LOSS AND IMPOSSIBILITY.

26 21-614. RISK OF LOSS OF COPY.

27 (A) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, THE RISK OF LOSS AS
28 TO A COPY THAT IS TO BE DELIVERED TO A LICENSEE, INCLUDING A COPY
29 DELIVERED BY ELECTRONIC MEANS, PASSES TO THE LICENSEE UPON ITS RECEIPT
30 OF THE COPY.

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

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

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

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

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

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

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

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

19 21-615. EXCUSE BY FAILURE OF PRESUPPOSED CONDITIONS.

20 (A) UNLESS A PARTY HAS ASSUMED A DIFFERENT OBLIGATION, DELAY IN
21 PERFORMANCE BY A PARTY, OR NONPERFORMANCE IN WHOLE OR PART BY A PARTY,
22 OTHER THAN OF AN OBLIGATION TO MAKE PAYMENTS OR TO CONFORM TO
23 CONTRACTUAL USE TERMS, IS NOT A BREACH OF CONTRACT IF THE DELAY OR
24 NONPERFORMANCE IS OF A PERFORMANCE THAT HAS BEEN MADE IMPRACTICABLE
25 BY:

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

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

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

34 (C) IF AN EXCUSE AFFECTS ONLY A PART OF A PARTY'S CAPACITY TO
35 PERFORM AN OBLIGATION FOR DELIVERY OF COPIES, THE PARTY CLAIMING EXCUSE
36 SHALL ALLOCATE PERFORMANCE AMONG ITS CUSTOMERS IN ANY MANNER THAT IS
37 FAIR AND REASONABLE AND NOTIFY THE OTHER PARTY OF THE ESTIMATED QUOTA
38 TO BE MADE AVAILABLE. IN MAKING THE ALLOCATION, THE PARTY CLAIMING

1 EXCUSE MAY INCLUDE THE REQUIREMENTS OF REGULAR CUSTOMERS NOT THEN
2 UNDER CONTRACT AND ITS OWN REQUIREMENTS.

3 (D) A PARTY THAT RECEIVES NOTICE PURSUANT TO SUBSECTION (B) OF THIS
4 SECTION OF A MATERIAL OR INDEFINITE DELAY IN DELIVERY OF COPIES OR OF AN
5 ALLOCATION UNDER SUBSECTION (C) OF THIS SECTION, BY NOTICE IN A RECORD,
6 MAY:

7 (1) TERMINATE AND THEREBY DISCHARGE ANY EXECUTORY PORTION
8 OF THE CONTRACT; OR

9 (2) MODIFY THE CONTRACT BY AGREEING TO TAKE THE AVAILABLE
10 ALLOCATION IN SUBSTITUTION.

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

15 TERMINATION.

16 21-616. TERMINATION: SURVIVAL OF OBLIGATIONS.

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

20 (B) THE FOLLOWING SURVIVE TERMINATION:

21 (1) A RIGHT BASED ON PREVIOUS BREACH OR PERFORMANCE OF THE
22 CONTRACT;

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

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

28 (4) AN OBLIGATION TO DELIVER, OR DISPOSE OF INFORMATION,
29 MATERIALS, DOCUMENTATION, COPIES, RECORDS, OR THE LIKE TO THE OTHER
30 PARTY, AN OBLIGATION TO DESTROY COPIES, OR A RIGHT TO OBTAIN INFORMATION
31 FROM AN ESCROW AGENT;

32 (5) A CHOICE OF LAW OR FORUM;

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

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

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

5 (9) A LIMITATION OF REMEDY OR MODIFICATION OR DISCLAIMER OF
6 WARRANTY;

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

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

10 21-617. NOTICE OF TERMINATION.

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

15 (B) AN ACCESS CONTRACT MAY BE TERMINATED WITHOUT GIVING NOTICE.
16 HOWEVER, EXCEPT ON THE HAPPENING OF AN AGREED EVENT, TERMINATION
17 REQUIRES GIVING REASONABLE NOTICE TO THE LICENSEE IF THE ACCESS
18 CONTRACT PERTAINS TO INFORMATION OWNED AND PROVIDED BY THE LICENSEE
19 TO THE LICENSOR.

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

24 21-618. TERMINATION: ENFORCEMENT.

25 (A) ON TERMINATION OF A LICENSE, A PARTY IN POSSESSION OR CONTROL OF
26 INFORMATION, COPIES, OR OTHER MATERIALS THAT ARE THE PROPERTY OF THE
27 OTHER PARTY, OR ARE SUBJECT TO A CONTRACTUAL OBLIGATION TO BE DELIVERED
28 TO THAT PARTY ON TERMINATION, SHALL USE COMMERCIALY REASONABLE
29 EFFORTS TO DELIVER OR HOLD THEM FOR DISPOSAL ON INSTRUCTIONS OF THAT
30 PARTY. IF ANY MATERIALS ARE JOINTLY OWNED, THE PARTY IN POSSESSION OR
31 CONTROL SHALL MAKE THEM AVAILABLE TO THE JOINT OWNERS.

32 (B) TERMINATION OF A LICENSE ENDS ALL RIGHT UNDER THE LICENSE FOR
33 THE LICENSEE TO USE OR ACCESS THE LICENSED INFORMATION, INFORMATIONAL
34 RIGHTS, OR COPIES. CONTINUED USE OF THE LICENSED COPIES OR EXERCISE OF
35 TERMINATED RIGHTS IS A BREACH OF CONTRACT UNLESS AUTHORIZED BY A TERM
36 THAT SURVIVES TERMINATION.

37 (C) EACH PARTY MAY ENFORCE ITS RIGHTS UNDER SUBSECTIONS (A) AND (B)
38 OF THIS SECTION BY ACTING PURSUANT TO § 21-605 OF THIS SUBTITLE OR BY

1 JUDICIAL PROCESS, INCLUDING OBTAINING AN ORDER THAT THE PARTY OR AN
2 OFFICER OF THE COURT TAKE THE FOLLOWING ACTIONS WITH RESPECT TO ANY
3 LICENSED INFORMATION, DOCUMENTATION, COPIES, OR OTHER MATERIALS TO BE
4 DELIVERED:

5 (1) DELIVER OR TAKE POSSESSION OF THEM;

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

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

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

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

16 SUBTITLE 7. BREACH OF CONTRACT; GENERAL; DEFECTIVE COPIES; REPUDIATION
17 AND ASSURANCES.

18 GENERAL.

19 21-701. BREACH OF CONTRACT; MATERIAL BREACH.

20 (A) WHETHER A PARTY IS IN BREACH OF CONTRACT IS DETERMINED BY THE
21 AGREEMENT OR, IN THE ABSENCE OF AGREEMENT, THIS TITLE. A BREACH OCCURS IF
22 A PARTY WITHOUT LEGAL EXCUSE FAILS TO PERFORM AN OBLIGATION IN A TIMELY
23 MANNER, REPUDIATES A CONTRACT, OR EXCEEDS A CONTRACTUAL USE TERM, OR
24 OTHERWISE IS NOT IN COMPLIANCE WITH AN OBLIGATION PLACED ON IT BY THIS
25 TITLE OR THE AGREEMENT. A BREACH, WHETHER OR NOT MATERIAL, ENTITLES THE
26 AGGRIEVED PARTY TO ITS REMEDIES.

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

28 (1) THE CONTRACT SO PROVIDES;

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

31 (3) THE CIRCUMSTANCES, INCLUDING THE LANGUAGE OF THE
32 AGREEMENT, THE REASONABLE EXPECTATIONS OF THE PARTIES, THE STANDARDS
33 AND PRACTICES OF THE BUSINESS, TRADE, OR INDUSTRY, AND THE CHARACTER OF
34 THE BREACH, INDICATE THAT:

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

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

4 (C) THE CUMULATIVE EFFECT OF NONMATERIAL BREACHES MAY BE
5 MATERIAL.

6 21-702. WAIVER OF REMEDY FOR BREACH OF CONTRACT.

7 (A) A CLAIM OR RIGHT ARISING OUT OF A BREACH OF CONTRACT MAY BE
8 DISCHARGED IN WHOLE OR PART WITHOUT CONSIDERATION BY A WAIVER IN A
9 RECORD TO WHICH THE PARTY MAKING THE WAIVER AGREES AFTER BREACH, SUCH
10 AS BY MANIFESTING ASSENT, OR WHICH THE PARTY MAKING THE WAIVER
11 AUTHENTICATES AND DELIVERS TO THE OTHER PARTY.

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

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

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

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

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

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

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

1 21-703. CURE OF BREACH OF CONTRACT.

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

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

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

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

16 (B) IN A LICENSE OTHER THAN IN A MASS-MARKET TRANSACTION, IF THE
17 AGREEMENT REQUIRED A SINGLE DELIVERY OF A COPY AND THE PARTY RECEIVING
18 TENDER OF DELIVERY WAS REQUIRED TO ACCEPT A NONCONFORMING COPY
19 BECAUSE THE NONCONFORMITY WAS NOT A MATERIAL BREACH OF CONTRACT, THE
20 PARTY IN BREACH SHALL PROMPTLY AND IN GOOD FAITH MAKE AN EFFORT TO CURE
21 IF:

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

24 (2) THE COST OF THE EFFORT TO CURE DOES NOT
25 DISPROPORTIONATELY EXCEED THE DIRECT DAMAGES CAUSED BY THE
26 NONCONFORMITY TO THE AGGRIEVED PARTY.

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

31 DEFECTIVE COPIES.

32 21-704. COPY: REFUSAL OF DEFECTIVE TENDER.

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

36 (1) REFUSE THE TENDER;

37 (2) ACCEPT THE TENDER; OR

1 (3) ACCEPT ANY COMMERCIALY REASONABLE UNITS AND REFUSE THE
2 REST.

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

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

7 (1) IT IS MADE BEFORE ACCEPTANCE;

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

10 (3) THE REFUSING PARTY SEASONABLY NOTIFIES THE TENDERING
11 PARTY OF THE REFUSAL.

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

16 21-705. COPY: CONTRACT WITH PREVIOUS VESTED GRANT OF RIGHTS.

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

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

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

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

30 21-706. COPY: DUTIES UPON RIGHTFUL REFUSAL.

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

34 (1) IF THE REFUSING PARTY RIGHTFULLY CANCELS THE CONTRACT, §
35 21-802 OF THIS TITLE APPLIES AND ALL CONTRACTUAL USE TERMS CONTINUE.

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

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

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

12 (A) OCCURS AFTER THE TENDERING PARTY IS SEASONABLY
13 NOTIFIED OF REFUSAL;

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

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

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

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

23 (B) FOLLOW REASONABLE INSTRUCTIONS OF THE TENDERING
24 PARTY FOR RETURNING OR DELIVERING COPIES, ACCESS MATERIAL, AND
25 DOCUMENTATION, BUT INSTRUCTIONS ARE NOT REASONABLE IF THE TENDERING
26 PARTY DOES NOT ARRANGE FOR PAYMENT OF OR REIMBURSEMENT FOR
27 REASONABLE EXPENSES OF COMPLYING WITH THE INSTRUCTIONS.

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

34 (4) BOTH PARTIES REMAIN BOUND BY ALL CONTRACTUAL USE TERMS
35 THAT WOULD HAVE BEEN ENFORCEABLE HAD THE PERFORMANCE NOT BEEN
36 REFUSED.

37 (5) IN COMPLYING WITH THIS SECTION, THE REFUSING PARTY SHALL
38 ACT IN GOOD FAITH. CONDUCT IN GOOD FAITH UNDER THIS SECTION IS NOT

1 ACCEPTANCE OR CONVERSION AND MAY NOT BE A GROUND FOR AN ACTION FOR
2 DAMAGES UNDER THE CONTRACT.

3 21-707. COPY: REVOCATION OF ACCEPTANCE.

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

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

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

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

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

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

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

20 (2) IT OCCURS AFTER A SUBSTANTIAL CHANGE IN CONDITION NOT
21 CAUSED BY DEFECTS IN THE INFORMATION, SUCH AS AFTER THE PARTY
22 COMMINGLES THE INFORMATION IN A MANNER THAT MAKES ITS RETURN
23 IMPOSSIBLE; OR

24 (3) THE PARTY ATTEMPTING TO REVOKE RECEIVED A SUBSTANTIAL
25 BENEFIT OR VALUE FROM THE INFORMATION, AND THE BENEFIT OR VALUE CANNOT
26 BE RETURNED.

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

30 REPUDIATION AND ASSURANCES.

31 21-708. ADEQUATE ASSURANCE OF PERFORMANCE.

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

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

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

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

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

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

18 21-709. ANTICIPATORY REPUDIATION.

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

22 (1) AWAIT PERFORMANCE BY THE REPUDIATING PARTY FOR A
23 COMMERCIALY REASONABLE TIME OR RESORT TO ANY REMEDY FOR BREACH OF
24 CONTRACT, EVEN IF IT HAS URGED THE REPUDIATING PARTY TO RETRACT THE
25 REPUDIATION OR HAS NOTIFIED THE REPUDIATING PARTY THAT IT WOULD AWAIT
26 ITS PERFORMANCE; AND

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

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

33 21-710. RETRACTION OF ANTICIPATORY REPUDIATION.

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

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

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

8 SUBTITLE 8. REMEDIES; GENERAL; DAMAGES; REMEDIES RELATED TO
9 PERFORMANCE.

10 GENERAL.

11 21-801. REMEDIES IN GENERAL.

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

14 (B) EXCEPT AS OTHERWISE PROVIDED IN §§ 21-803 AND 21-804 OF THIS
15 SUBTITLE, IF A PARTY IS IN BREACH OF CONTRACT, WHETHER OR NOT THE BREACH
16 IS MATERIAL, THE AGGRIEVED PARTY HAS THE REMEDIES PROVIDED IN THE
17 AGREEMENT OR THIS TITLE, BUT THE AGGRIEVED PARTY SHALL CONTINUE TO
18 COMPLY WITH ANY CONTRACTUAL USE TERMS WITH RESPECT TO INFORMATION OR
19 COPIES RECEIVED FROM THE OTHER PARTY WHICH HAVE NOT BEEN RETURNED OR
20 ARE NOT RETURNABLE TO THE OTHER PARTY.

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

24 21-802. CANCELLATION.

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

28 (B) CANCELLATION IS NOT EFFECTIVE UNTIL THE CANCELING PARTY GIVES
29 NOTICE OF CANCELLATION TO THE PARTY IN BREACH, UNLESS A DELAY REQUIRED
30 TO NOTIFY THE PARTY WOULD CAUSE OR THREATEN MATERIAL HARM OR LOSS TO
31 THE AGGRIEVED PARTY. THE NOTIFICATION MAY BE IN ANY FORM REASONABLE
32 UNDER THE CIRCUMSTANCES. HOWEVER, IN AN ACCESS CONTRACT, A PARTY MAY
33 CANCEL RIGHTS OF ACCESS WITHOUT NOTICE.

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

35 (1) IF A PARTY IS IN POSSESSION OR CONTROL OF LICENSED
36 INFORMATION, DOCUMENTATION, MATERIALS, OR COPIES OF LICENSED
37 INFORMATION, THE FOLLOWING RULES APPLY:

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

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

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

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

13 (A) ANY RIGHT BASED ON PREVIOUS BREACH OR PERFORMANCE;
14 AND

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

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

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

24 (A) IS WITHIN CONTRACTUAL USE TERMS;

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

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

29 (5) THE LICENSEE SHALL PAY THE LICENSOR THE REASONABLE VALUE
30 OF ANY USE AFTER CANCELLATION PERMITTED UNDER PARAGRAPH (4) OF THIS
31 SUBSECTION.

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

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

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

5 21-803. CONTRACTUAL MODIFICATION OF REMEDY.

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

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

15 (2) RESORT TO A CONTRACTUAL REMEDY IS OPTIONAL UNLESS THE
16 REMEDY IS EXPRESSLY AGREED TO BE EXCLUSIVE, IN WHICH CASE IT IS THE SOLE
17 REMEDY.

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

22 (C) FAILURE OR UNCONSCIONABILITY OF AN AGREED EXCLUSIVE OR
23 LIMITED REMEDY MAKES A TERM DISCLAIMING OR LIMITING CONSEQUENTIAL OR
24 INCIDENTAL DAMAGES UNENFORCEABLE UNLESS THE AGREEMENT EXPRESSLY
25 MAKES THE DISCLAIMER OR LIMITATION INDEPENDENT OF THE AGREED REMEDY.

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

33 21-804. LIQUIDATION OF DAMAGES.

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

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

37 (2) THE ACTUAL LOSS; OR

1 (3) THE ACTUAL OR ANTICIPATED DIFFICULTIES OF PROVING LOSS IN
2 THE EVENT OF BREACH.

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

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

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

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

17 (D) A TERM THAT DOES NOT LIQUIDATE DAMAGES, BUT THAT LIMITS
18 DAMAGES AVAILABLE TO THE AGGRIEVED PARTY, MUST BE EVALUATED UNDER §
19 21-803 OF THIS SUBTITLE.

20 21-805. LIMITATION OF ACTIONS.

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

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

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

31 (2) IN A CONSUMER CONTRACT, THE PERIOD OF LIMITATION MAY NOT
32 BE REDUCED.

33 (C) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (D) OF THIS SECTION, A
34 RIGHT OF ACTION ACCRUES WHEN THE ACT OR OMISSION CONSTITUTING A BREACH
35 OF CONTRACT OCCURS, EVEN IF THE AGGRIEVED PARTY DID NOT KNOW OF THE
36 BREACH. A RIGHT OF ACTION FOR BREACH OF WARRANTY ACCRUES WHEN TENDER
37 OF DELIVERY OF A COPY PURSUANT TO § 21-606 OF THIS TITLE, OR ACCESS TO THE
38 INFORMATION, OCCURS. HOWEVER, IF THE WARRANTY EXPRESSLY EXTENDS TO
39 FUTURE PERFORMANCE OF THE INFORMATION OR A COPY, THE RIGHT OF ACTION

1 ACCRUES WHEN THE PERFORMANCE FAILS TO CONFORM TO THE WARRANTY, BUT
2 NOT LATER THAN THE DATE THE WARRANTY EXPIRES.

3 (D) IN THE FOLLOWING CASES, A RIGHT OF ACTION ACCRUES ON THE LATER
4 OF THE DATE THE ACT OR OMISSION CONSTITUTING THE BREACH OF CONTRACT
5 OCCURRED OR THE DATE ON WHICH IT WAS OR SHOULD HAVE BEEN DISCOVERED BY
6 THE AGGRIEVED PARTY, BUT NOT EARLIER THAN THE DATE FOR DELIVERY OF A
7 COPY IF THE CLAIM RELATES TO INFORMATION IN THE COPY:

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

9 (A) INFRINGEMENT OR MISAPPROPRIATION; OR

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

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

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

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

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

25 21-806. REMEDIES FOR FRAUD.

26 REMEDIES FOR MATERIAL MISREPRESENTATION OR FRAUD INCLUDE ALL
27 REMEDIES AVAILABLE UNDER THIS TITLE FOR NONFRAUDULENT BREACH OF
28 CONTRACT.

29 DAMAGES.

30 21-807. MEASUREMENT OF DAMAGES IN GENERAL.

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

1 (B) A PARTY MAY NOT RECOVER:

2 (1) CONSEQUENTIAL DAMAGES FOR LOSSES RESULTING FROM THE
3 CONTENT OF PUBLISHED INFORMATIONAL CONTENT UNLESS THE AGREEMENT
4 EXPRESSLY SO PROVIDES; OR

5 (2) DAMAGES THAT ARE SPECULATIVE.

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

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

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

23 21-808. LICENSOR'S DAMAGES.

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

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

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

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

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

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

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

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

14 (II) THE MARKET VALUE OF A COMMERCIALY REASONABLE
15 HYPOTHETICAL SUBSTITUTE TRANSACTION;

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

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

23 (2) CONSEQUENTIAL AND INCIDENTAL DAMAGES.

24 21-809. LICENSEE'S DAMAGES.

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

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

37 (A) WITH RESPECT TO PERFORMANCE THAT HAS BEEN ACCEPTED
38 AND THE ACCEPTANCE NOT RIGHTFULLY REVOKED, THE VALUE OF THE

1 PERFORMANCE REQUIRED LESS THE VALUE OF THE PERFORMANCE ACCEPTED AS
2 OF THE TIME AND PLACE OF ACCEPTANCE;

3 (B) WITH RESPECT TO PERFORMANCE THAT HAS NOT BEEN
4 RENDERED OR THAT WAS RIGHTFULLY REFUSED OR ACCEPTANCE OF WHICH WAS
5 RIGHTFULLY REVOKED:

6 (I) THE AMOUNT OF ANY PAYMENTS MADE AND THE VALUE
7 OF OTHER CONSIDERATION GIVEN TO THE LICENSOR WITH RESPECT TO THAT
8 PERFORMANCE AND NOT PREVIOUSLY RETURNED TO THE LICENSEE;

9 (II) THE MARKET VALUE OF THE PERFORMANCE LESS THE
10 CONTRACT FEE FOR THAT PERFORMANCE; OR

11 (III) THE COST OF A COMMERCIALY REASONABLE
12 SUBSTITUTE TRANSACTION LESS THE CONTRACT FEE UNDER THE BREACHED
13 CONTRACT, IF THE SUBSTITUTE TRANSACTION WAS ENTERED INTO BY THE
14 LICENSEE IN GOOD FAITH AND WITHOUT UNREASONABLE DELAY FOR
15 SUBSTANTIALLY SIMILAR INFORMATION WITH THE SAME CONTRACTUAL USE
16 TERMS; OR

17 (C) DAMAGES CALCULATED IN ANY REASONABLE MANNER; AND

18 (2) INCIDENTAL AND CONSEQUENTIAL DAMAGES.

19 (B) THE AMOUNT OF DAMAGES MUST BE REDUCED BY ANY UNPAID
20 CONTRACT FEES FOR PERFORMANCE BY THE LICENSOR WHICH HAS BEEN
21 ACCEPTED BY THE LICENSEE AND AS TO WHICH THE ACCEPTANCE HAS NOT BEEN
22 RIGHTFULLY REVOKED.

23 21-810. RECOUPMENT.

24 (A) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (B) OF THIS SECTION,
25 AN AGGRIEVED PARTY, UPON NOTIFYING THE PARTY IN BREACH OF CONTRACT OF
26 ITS INTENTION TO DO SO, MAY DEDUCT ALL OR ANY PART OF THE DAMAGES
27 RESULTING FROM THE BREACH FROM ANY PAYMENTS STILL DUE UNDER THE SAME
28 CONTRACT.

29 (B) IF A BREACH OF CONTRACT IS NOT MATERIAL WITH REFERENCE TO THE
30 PARTICULAR PERFORMANCE, AN AGGRIEVED PARTY MAY EXERCISE ITS RIGHTS
31 UNDER SUBSECTION (A) OF THIS SECTION ONLY IF THE AGREEMENT DOES NOT
32 REQUIRE FURTHER AFFIRMATIVE PERFORMANCE BY THE OTHER PARTY AND THE
33 AMOUNT OF DAMAGES DEDUCTED CAN BE READILY LIQUIDATED UNDER THE
34 AGREEMENT.

35 REMEDIES RELATED TO PERFORMANCE.

36 21-811. SPECIFIC PERFORMANCE.

37 (A) SPECIFIC PERFORMANCE MAY BE ORDERED:

1 (1) IF THE AGREEMENT PROVIDES FOR THAT REMEDY, OTHER THAN AN
2 OBLIGATION FOR THE PAYMENT OF MONEY;

3 (2) IF THE CONTRACT WAS NOT FOR PERSONAL SERVICES AND THE
4 AGREED PERFORMANCE IS UNIQUE; OR

5 (3) IN OTHER PROPER CIRCUMSTANCES.

6 (B) AN ORDER FOR SPECIFIC PERFORMANCE MAY CONTAIN ANY CONDITIONS
7 CONSIDERED JUST AND MUST PROVIDE ADEQUATE SAFEGUARDS CONSISTENT WITH
8 THE CONTRACT TO PROTECT THE CONFIDENTIALITY OF INFORMATION,
9 INFORMATION, AND INFORMATIONAL RIGHTS OF BOTH PARTIES.

10 21-812. COMPLETING PERFORMANCE.

11 (A) ON BREACH OF CONTRACT BY A LICENSEE, THE LICENSOR MAY:

12 (1) IDENTIFY TO THE CONTRACT ANY CONFORMING COPY NOT ALREADY
13 IDENTIFIED IF, AT THE TIME THE LICENSOR LEARNED OF THE BREACH, THE COPY
14 WAS IN ITS POSSESSION;

15 (2) IN THE EXERCISE OF REASONABLE COMMERCIAL JUDGMENT FOR
16 PURPOSES OF AVOIDING LOSS AND EFFECTIVE REALIZATION ON EFFORT OR
17 INVESTMENT, COMPLETE THE INFORMATION AND IDENTIFY IT TO THE CONTRACT,
18 CEASE WORK ON IT, RELICENSE OR DISPOSE OF IT, OR PROCEED IN ANY OTHER
19 COMMERCIALY REASONABLE MANNER; AND

20 (3) PURSUE ANY REMEDY FOR BREACH THAT HAS NOT BEEN WAIVED.

21 (B) ON BREACH BY A LICENSEE, BOTH PARTIES REMAIN BOUND BY ALL
22 CONTRACTUAL USE TERMS.

23 21-813. CONTINUING USE.

24 ON BREACH OF CONTRACT BY A LICENSOR, THE FOLLOWING RULES APPLY:

25 (1) A LICENSEE THAT HAS NOT CANCELED THE CONTRACT MAY
26 CONTINUE TO USE THE INFORMATION AND INFORMATIONAL RIGHTS UNDER THE
27 CONTRACT. IF THE LICENSEE CONTINUES TO USE THE INFORMATION OR
28 INFORMATIONAL RIGHTS, THE LICENSEE IS BOUND BY ALL TERMS OF THE
29 CONTRACT, INCLUDING CONTRACTUAL USE TERMS, OBLIGATIONS NOT TO COMPETE,
30 AND OBLIGATIONS TO PAY CONTRACT FEES.

31 (2) THE LICENSEE MAY PURSUE ANY REMEDY FOR BREACH WHICH HAS
32 NOT BEEN WAIVED.

33 (3) THE LICENSOR'S RIGHTS REMAIN IN EFFECT BUT ARE SUBJECT TO
34 THE LICENSEE'S REMEDY FOR BREACH, INCLUDING ANY RIGHT OF RECOUPMENT OR
35 SETOFF.

1 21-814. DISCONTINUING ACCESS.

2 ON MATERIAL BREACH OF AN ACCESS CONTRACT OR IF THE AGREEMENT SO
3 PROVIDES, A PARTY MAY DISCONTINUE ALL CONTRACTUAL RIGHTS OF ACCESS OF
4 THE PARTY IN BREACH AND DIRECT ANY PERSON THAT IS ASSISTING THE
5 PERFORMANCE OF THE CONTRACT TO DISCONTINUE ITS PERFORMANCE.

6 21-815. RIGHT TO POSSESSION AND PREVENT USE.

7 (A) ON CANCELLATION OF A LICENSE, THE LICENSOR HAS THE RIGHT:

8 (1) TO POSSESSION OF ALL COPIES OF THE LICENSED INFORMATION IN
9 THE POSSESSION OR CONTROL OF THE LICENSEE AND ANY OTHER MATERIALS
10 PERTAINING TO THAT INFORMATION WHICH BY CONTRACT ARE TO BE RETURNED OR
11 DELIVERED BY THE LICENSEE TO THE LICENSOR; AND

12 (2) TO PREVENT THE CONTINUED EXERCISE OF CONTRACTUAL AND
13 INFORMATIONAL RIGHTS IN THE LICENSED INFORMATION UNDER THE LICENSE.

14 (B) EXCEPT AS OTHERWISE PROVIDED IN § 21-814 OF THIS SUBTITLE, A
15 LICENSOR MAY EXERCISE ITS RIGHTS UNDER SUBSECTION (A) OF THIS SECTION
16 WITHOUT JUDICIAL PROCESS ONLY IF THIS CAN BE DONE:

17 (1) WITHOUT A BREACH OF THE PEACE;

18 (2) WITHOUT A FORESEEABLE RISK OF PERSONAL INJURY OR
19 SIGNIFICANT PHYSICAL DAMAGE TO INFORMATION OR PROPERTY OTHER THAN THE
20 LICENSED INFORMATION; AND

21 (3) IN ACCORDANCE WITH § 21-816 OF THIS SUBTITLE.

22 (C) IN A JUDICIAL PROCEEDING, THE COURT MAY ENJOIN A LICENSEE IN
23 BREACH OF CONTRACT FROM CONTINUED USE OF THE INFORMATION AND
24 INFORMATIONAL RIGHTS AND MAY ORDER THE LICENSOR OR A JUDICIAL OFFICER
25 TO TAKE THE STEPS DESCRIBED IN § 21-618 OF THIS TITLE.

26 (D) A PARTY HAS A RIGHT TO AN EXPEDITED JUDICIAL HEARING ON A
27 REQUEST FOR PREJUDGMENT RELIEF TO ENFORCE OR PROTECT ITS RIGHTS UNDER
28 THIS SECTION.

29 (E) THE RIGHT TO POSSESSION UNDER THIS SECTION IS NOT AVAILABLE TO
30 THE EXTENT THAT THE INFORMATION, BEFORE BREACH OF THE LICENSE AND IN
31 THE ORDINARY COURSE OF PERFORMANCE UNDER THE LICENSE, WAS SO ALTERED
32 OR COMMINGLED THAT THE INFORMATION IS NO LONGER IDENTIFIABLE OR
33 SEPARABLE.

34 (F) A LICENSEE THAT PROVIDES INFORMATION TO A LICENSOR SUBJECT TO
35 CONTRACTUAL USE TERMS HAS THE RIGHTS AND IS SUBJECT TO THE LIMITATIONS
36 OF A LICENSOR UNDER THIS SECTION WITH RESPECT TO THE INFORMATION IT
37 PROVIDES.

1 21-816. LIMITATIONS ON ELECTRONIC SELF-HELP.

2 (A) IN THIS SECTION, "ELECTRONIC SELF-HELP" MEANS THE USE OF
3 ELECTRONIC MEANS TO EXERCISE A LICENSOR'S RIGHTS UNDER § 21-815(B) OF THIS
4 SUBTITLE.

5 (B) ON CANCELLATION OF A LICENSE, ELECTRONIC SELF-HELP IS NOT
6 PERMITTED, EXCEPT AS PROVIDED IN THIS SECTION.

7 (C) A LICENSEE SHALL SEPARATELY MANIFEST ASSENT TO A TERM
8 AUTHORIZING USE OF ELECTRONIC SELF-HELP. THE TERM MUST:

9 (1) PROVIDE FOR NOTICE OF EXERCISE AS PROVIDED IN SUBSECTION
10 (D) OF THIS SECTION;

11 (2) STATE THE NAME OF THE PERSON DESIGNATED BY THE LICENSEE
12 TO WHICH NOTICE OF EXERCISE MUST BE GIVEN AND THE MANNER IN WHICH
13 NOTICE MUST BE GIVEN AND PLACE TO WHICH NOTICE MUST BE SENT TO THAT
14 PERSON; AND

15 (3) PROVIDE A SIMPLE PROCEDURE FOR THE LICENSEE TO CHANGE THE
16 DESIGNATED PERSON OR PLACE.

17 (D) BEFORE RESORTING TO ELECTRONIC SELF-HELP AUTHORIZED BY A TERM
18 OF THE LICENSE, THE LICENSOR SHALL GIVE NOTICE IN A RECORD TO THE PERSON
19 DESIGNATED BY THE LICENSEE STATING:

20 (1) THAT THE LICENSOR INTENDS TO RESORT TO ELECTRONIC
21 SELF-HELP AS A REMEDY ON OR AFTER 15 DAYS FOLLOWING RECEIPT BY THE
22 LICENSEE OF THE NOTICE;

23 (2) THE NATURE OF THE CLAIMED BREACH THAT ENTITLES THE
24 LICENSOR TO RESORT TO SELF-HELP; AND

25 (3) THE NAME, TITLE, AND ADDRESS, INCLUDING DIRECT TELEPHONE
26 NUMBER, FACSIMILE NUMBER, OR E-MAIL ADDRESS, TO WHICH THE LICENSEE MAY
27 COMMUNICATE CONCERNING THE CLAIMED BREACH.

28 (E) A LICENSEE MAY RECOVER DIRECT AND INCIDENTAL DAMAGES CAUSED
29 BY WRONGFUL USE OF ELECTRONIC SELF-HELP. THE LICENSEE MAY ALSO RECOVER
30 CONSEQUENTIAL DAMAGES FOR WRONGFUL USE OF ELECTRONIC SELF-HELP,
31 WHETHER OR NOT THOSE DAMAGES ARE EXCLUDED BY THE TERMS OF THE
32 LICENSE, IF:

33 (1) WITHIN THE PERIOD SPECIFIED IN SUBSECTION (D)(1) OF THIS
34 SECTION, THE LICENSEE GIVES NOTICE TO THE LICENSOR'S DESIGNATED PERSON
35 DESCRIBING IN GOOD FAITH THE GENERAL NATURE AND MAGNITUDE OF DAMAGES;

1 (2) THE LICENSOR HAS REASON TO KNOW THE DAMAGES OF THE TYPE
2 DESCRIBED IN SUBSECTION (F) OF THIS SECTION MAY RESULT FROM THE
3 WRONGFUL USE OF ELECTRONIC SELF-HELP; OR

4 (3) THE LICENSOR DOES NOT PROVIDE THE NOTICE REQUIRED IN
5 SUBSECTION (D) OF THIS SECTION.

6 (F) EVEN IF THE LICENSOR COMPLIES WITH SUBSECTIONS (C) AND (D) OF
7 THIS SECTION, ELECTRONIC SELF-HELP MAY NOT BE USED IF THE LICENSOR HAS
8 REASON TO KNOW THAT ITS USE WILL RESULT IN SUBSTANTIAL INJURY OR HARM TO
9 THE PUBLIC HEALTH OR SAFETY OR GRAVE HARM TO THE PUBLIC INTEREST
10 SUBSTANTIALLY AFFECTING THIRD PERSONS NOT INVOLVED IN THE DISPUTE.

11 (G) A COURT OF COMPETENT JURISDICTION OF THIS STATE SHALL GIVE
12 PROMPT CONSIDERATION TO A PETITION FOR INJUNCTIVE RELIEF AND MAY ENJOIN,
13 TEMPORARILY OR PERMANENTLY, THE LICENSOR FROM EXERCISING ELECTRONIC
14 SELF-HELP EVEN IF AUTHORIZED BY A LICENSE TERM OR ENJOIN THE LICENSEE
15 FROM MISAPPROPRIATION OR MISUSE OF COMPUTER INFORMATION, AS MAY BE
16 APPROPRIATE, UPON CONSIDERATION OF THE FOLLOWING:

17 (1) GRAVE HARM OF THE KINDS STATED IN SUBSECTION (F) OF THIS
18 SECTION, OR THE THREAT THEREOF, WHETHER OR NOT THE LICENSOR HAS REASON
19 TO KNOW OF THOSE CIRCUMSTANCES;

20 (2) IRREPARABLE HARM OR THREAT OF IRREPARABLE HARM TO THE
21 LICENSEE OR LICENSOR;

22 (3) THAT THE PARTY SEEKING THE RELIEF IS MORE LIKELY THAN NOT
23 TO SUCCEED UNDER ITS CLAIM WHEN IT IS FINALLY ADJUDICATED;

24 (4) THAT ALL OF THE CONDITIONS TO ENTITLE A PERSON TO THE
25 RELIEF UNDER THE LAWS OF THIS STATE HAVE BEEN FULFILLED; AND

26 (5) THAT THE PARTY THAT MAY BE ADVERSELY AFFECTED IS
27 ADEQUATELY PROTECTED AGAINST LOSS, INCLUDING A LOSS BECAUSE OF
28 MISAPPROPRIATION OR MISUSE OF COMPUTER INFORMATION, THAT IT MAY SUFFER
29 BECAUSE THE RELIEF IS GRANTED UNDER THIS TITLE.

30 (H) BEFORE BREACH OF CONTRACT, RIGHTS OR OBLIGATIONS UNDER THIS
31 SECTION MAY NOT BE WAIVED OR VARIED BY AN AGREEMENT, BUT THE PARTIES, IN
32 THE TERM REFERRED TO IN SUBSECTION (C) OF THIS SECTION, MAY SPECIFY
33 ADDITIONAL PROVISIONS MORE FAVORABLE TO THE LICENSEE.

34 (I) THIS SECTION DOES NOT APPLY IF THE LICENSOR OBTAINS POSSESSION
35 OF A COPY WITHOUT A BREACH OF THE PEACE AND THE ELECTRONIC SELF-HELP IS
36 USED SOLELY WITH RESPECT TO THAT COPY.

37 SECTION 2. AND BE IT FURTHER ENACTED, That this Act does not affect
38 the digital signature requirements of the digital signature pilot program established
39 under § 8-504 of the State Government Article.

1 SECTION 3. AND BE IT FURTHER ENACTED, That if any provision of this
2 Act or the application thereof to any person or circumstance is held invalid for any
3 reason in a court of competent jurisdiction, the invalidity does not affect other
4 provisions or any other application of this Act which can be given effect without the
5 invalid provision or application, and for this purpose the provisions of this Act are
6 declared severable.

7 SECTION 4. AND BE IT FURTHER ENACTED, That a presently existing
8 obligation or contract right may not be impaired in any way by this Act.

9 SECTION 5. AND BE IT FURTHER ENACTED, That this Act shall be
10 construed only prospectively and may not be applied or interpreted to have any effect
11 on or application to any right of action that accrues before the effective date of this
12 Act.

13 SECTION 6. AND BE IT FURTHER ENACTED, That this Act shall take effect
14 October 1, 2000.