

SENATE BILL 142

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14

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

Committee Report: Favorable with amendments
Senate action: Adopted
Read second time: April 3, 2000

CHAPTER _____

1 AN ACT concerning

2 **Maryland Uniform Computer Information Transactions Act**

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

1 and online information, and certain other computer information and products
 2 under certain circumstances; making the warranties created under this Act
 3 available to an individual who is a party to an agreement within the scope of
 4 this Act and to certain other individuals; establishing provisions for the
 5 disclaimer or modification of certain warranties created by this Act under
 6 certain circumstances; establishing provisions of law applicable to the
 7 ownership and transfer rights of parties to an agreement to sell or license
 8 computer information within the scope of this Act; establishing provisions of law
 9 applicable to financing the sale or license of computer information within the
 10 scope of this Act; establishing provisions of law applicable to the parties'
 11 performance of obligations under an agreement within the scope of this Act;
 12 specifying certain circumstances excusing or terminating the parties'
 13 performance of obligations under an agreement within the scope of this Act;
 14 establishing provisions of law applicable to actions by a party sufficient to
 15 constitute a breach or material breach of an agreement within the scope of this
 16 Act; specifying the remedies available to an aggrieved party as the result of the
 17 breach or material breach of an agreement within the scope of this Act; defining
 18 certain terms; providing that this Act does not affect certain requirements of the
 19 digital signature pilot program; making provisions of this Act severable;
 20 providing that this Act does not impair any existing obligation or contract right;
 21 providing for the prospective application of this Act; establishing a Joint
 22 Oversight Committee on Technology; providing for the membership and duties
 23 of the Joint Committee; providing for the effective dates of this Act; providing for
 24 the termination of a portion of this Act; and generally relating to agreements
 25 created electronically or through the Internet, agreements to create, modify,
 26 transfer, distribute, and license computer information, and certain other
 27 matters within the scope of the Maryland Uniform Computer Information
 28 Transactions Act.

29 BY repealing and reenacting, with amendments,
 30 Article - Commercial Law
 31 Section 13-101(c)
 32 Annotated Code of Maryland
 33 (1990 Replacement Volume and 1999 Supplement)

34 BY adding to
 35 Article - Commercial Law
 36 Section 13-101.1; 21-101 through 21-114, inclusive, to be under the new
 37 subtitle "Subtitle 1. General Provisions; Short Title and Definitions;
 38 General Scope and Terms"; 21-201 through ~~21-215~~ 21-216, inclusive, to be
 39 under the new subtitle "Subtitle 2. Formation and Terms; Formation of a
 40 Contract; Terms of Records; Electronic Contracts: Generally"; 21-301
 41 through 21-309, inclusive, to be under the new subtitle "Subtitle 3.
 42 Construction; General; Interpretation"; 21-401 through 21-409, inclusive,
 43 to be under the new subtitle "Subtitle 4. Warranties"; 21-501 through
 44 21-511, inclusive, to be under the new subtitle "Subtitle 5. Transfer of
 45 Interests and Rights; Ownership and Transfers; Financing Arrangements";

1 21-601 through 21-618, inclusive, to be under the new subtitle "Subtitle 6.
 2 Performance; General; Performance in Delivery of Copies; Special Types of
 3 Contracts; Loss and Impossibility; Termination"; 21-701 through 21-710,
 4 inclusive, to be under the new subtitle "Subtitle 7. Breach of Contract;
 5 General; Defective Copies; Repudiation and Assurances"; 21-801 through
 6 21-816, inclusive, to be under the new subtitle "Subtitle 8. Remedies;
 7 General; Damages; Remedies Related to Performance" and the new title
 8 "Title 21. Maryland Uniform Computer Information Transactions Act"
 9 Annotated Code of Maryland
 10 (1990 Replacement Volume and 1999 Supplement)

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

13 **Article - Commercial Law**

14 13-101.

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

17 (2) "Consumer" includes:

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

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

22 13-101.1.

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

26 TITLE 21. MARYLAND UNIFORM COMPUTER INFORMATION TRANSACTIONS ACT.

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

29 SHORT TITLE AND DEFINITIONS.

30 21-101. SHORT TITLE.

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

33 21-102. DEFINITIONS.

34 (A) IN THIS TITLE:

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

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

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

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

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

19 (6) "AUTHENTICATE" MEANS:

20 (A) TO SIGN; OR

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

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

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

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

34 (10) "COMPUTER INFORMATION" MEANS INFORMATION IN ELECTRONIC
35 FORM WHICH IS OBTAINED FROM OR THROUGH THE USE OF A COMPUTER OR WHICH
36 IS IN A FORM CAPABLE OF BEING PROCESSED BY A COMPUTER. THE TERM INCLUDES
37 A COPY OF THE INFORMATION AND ANY DOCUMENTATION OR PACKAGING
38 ASSOCIATED WITH THE COPY.

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

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

12 (13) "CONSEQUENTIAL DAMAGES":

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

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

24 (C) ~~THE TERM~~ DOES NOT INCLUDE DIRECT DAMAGES OR
25 INCIDENTAL DAMAGES.

26 (14) "CONSPICUOUS", WITH REFERENCE TO A TERM, MEANS SO WRITTEN,
27 DISPLAYED, OR PRESENTED THAT A REASONABLE PERSON AGAINST WHICH IT IS TO
28 OPERATE OUGHT TO HAVE NOTICED IT. A TERM IN AN ELECTRONIC RECORD
29 INTENDED TO EVOKE A RESPONSE BY AN ELECTRONIC AGENT IS CONSPICUOUS IF IT
30 IS PRESENTED IN A FORM THAT WOULD ENABLE A REASONABLY CONFIGURED
31 ELECTRONIC AGENT TO TAKE IT INTO ACCOUNT OR REACT TO IT WITHOUT REVIEW
32 OF THE RECORD BY AN INDIVIDUAL. CONSPICUOUS TERMS INCLUDE THE
33 FOLLOWING:

34 (A) WITH RESPECT TO A PERSON:

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

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

1 (III) A TERM PROMINENTLY REFERENCED IN AN ELECTRONIC
2 RECORD OR DISPLAY WHICH IS READILY ACCESSIBLE OR REVIEWABLE FROM THE
3 RECORD OR DISPLAY; AND

4 (B) WITH RESPECT TO A PERSON OR AN ELECTRONIC AGENT, A
5 TERM OR REFERENCE TO A TERM THAT IS SO PLACED IN A RECORD OR DISPLAY THAT
6 THE PERSON OR ELECTRONIC AGENT CANNOT PROCEED WITHOUT TAKING ACTION
7 WITH RESPECT TO THE PARTICULAR TERM OR REFERENCE.

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

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

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

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

23 (19) "CONTRACTUAL USE TERM" MEANS AN ENFORCEABLE TERM THAT
24 DEFINES OR LIMITS THE USE, DISCLOSURE OF, OR ACCESS TO LICENSED
25 INFORMATION OR INFORMATIONAL RIGHTS, INCLUDING A TERM THAT DEFINES THE
26 SCOPE OF A LICENSE.

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

31 (21) "COURSE OF DEALING" MEANS A SEQUENCE OF PREVIOUS CONDUCT
32 BETWEEN THE PARTIES TO A PARTICULAR TRANSACTION WHICH ESTABLISHES A
33 COMMON BASIS OF UNDERSTANDING FOR INTERPRETING THEIR EXPRESSIONS AND
34 OTHER CONDUCT.

35 (22) "COURSE OF PERFORMANCE" MEANS REPEATED PERFORMANCES,
36 UNDER A CONTRACT THAT INVOLVES REPEATED OCCASIONS FOR PERFORMANCE,
37 WHICH ARE ACCEPTED OR ACQUIESCED IN WITHOUT OBJECTION BY A PARTY
38 HAVING KNOWLEDGE OF THE NATURE OF THE PERFORMANCE AND AN
39 OPPORTUNITY TO OBJECT TO IT.

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

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

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

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

12 (27) "ELECTRONIC AGENT" MEANS A COMPUTER PROGRAM, OR
13 ELECTRONIC OR OTHER AUTOMATED MEANS, USED BY A PERSON TO INITIATE AN
14 ACTION, OR TO RESPOND TO ELECTRONIC MESSAGES OR PERFORMANCES, ON THE
15 PERSON'S BEHALF WITHOUT REVIEW OR ACTION BY AN INDIVIDUAL AT THE TIME OF
16 THE ACTION OR RESPONSE TO THE MESSAGE OR PERFORMANCE.

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

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

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

28 (A) A DEPOSIT, LOAN, FUNDS, OR MONETARY VALUE REPRESENTED
29 IN ELECTRONIC FORM AND STORED OR CAPABLE OF STORAGE BY ELECTRONIC
30 MEANS AND RETRIEVABLE AND TRANSFERABLE BY ELECTRONIC MEANS, OR OTHER
31 RIGHT TO PAYMENT TO OR FROM A PERSON;

32 (B) AN INSTRUMENT OR OTHER ITEM;

33 (C) A PAYMENT ORDER, CREDIT CARD TRANSACTION, DEBIT CARD
34 TRANSACTION, FUNDS TRANSFER, AUTOMATED CLEARINGHOUSE TRANSFER, OR
35 SIMILAR WHOLESALE OR RETAIL TRANSFER OF FUNDS;

36 (D) A LETTER OF CREDIT, DOCUMENT OF TITLE, FINANCIAL ASSET,
37 INVESTMENT PROPERTY, OR SIMILAR ASSET HELD IN A FIDUCIARY OR AGENCY
38 CAPACITY; OR

1 (E) RELATED IDENTIFYING, VERIFYING, ACCESS-ENABLING,
2 AUTHORIZING, OR MONITORING INFORMATION.

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

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

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

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

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

29 (I) INSPECTION, RECEIPT, TRANSMISSION,
30 TRANSPORTATION, CARE, OR CUSTODY OF IDENTIFIED COPIES OR INFORMATION
31 THAT IS THE SUBJECT OF THE BREACH;

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

33 (III) EFFECTING COVER OR RETRANSFER OF COPIES OR
34 INFORMATION AFTER THE BREACH;

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

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

38 (B) DOES NOT INCLUDE CONSEQUENTIAL DAMAGES OR DIRECT
39 DAMAGES.

1 (35) "INFORMATION" MEANS DATA, TEXT, IMAGES, SOUNDS, MASK
2 WORKS, OR COMPUTER PROGRAMS, INCLUDING COLLECTIONS AND COMPILATIONS
3 OF THEM.

4 (36) "INFORMATION PROCESSING SYSTEM" MEANS AN ELECTRONIC
5 SYSTEM FOR CREATING, GENERATING, SENDING, RECEIVING, STORING, DISPLAYING,
6 OR PROCESSING INFORMATION.

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

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

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

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

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

22 ~~(39)~~ (40) "KNOWLEDGE", WITH RESPECT TO A FACT, MEANS ACTUAL
23 KNOWLEDGE OF THE FACT.

24 ~~(40)~~ (41) "LICENSE" MEANS A CONTRACT THAT AUTHORIZES ACCESS TO,
25 OR USE, DISTRIBUTION, PERFORMANCE, MODIFICATION, OR REPRODUCTION OF,
26 INFORMATION OR INFORMATIONAL RIGHTS, BUT EXPRESSLY LIMITS THE ACCESS OR
27 USES AUTHORIZED OR EXPRESSLY GRANTS FEWER THAN ALL RIGHTS IN THE
28 INFORMATION, WHETHER OR NOT THE TRANSFEREE HAS TITLE TO A LICENSED
29 COPY. THE TERM INCLUDES AN ACCESS CONTRACT, A LEASE OF A COMPUTER
30 PROGRAM, AND A CONSIGNMENT OF A COPY. THE TERM DOES NOT INCLUDE A
31 RESERVATION OR CREATION OF A SECURITY INTEREST TO THE EXTENT THE
32 INTEREST IS GOVERNED BY TITLE 9 OF THIS ARTICLE.

33 ~~(41)~~ (42) "LICENSEE" MEANS A PERSON ENTITLED BY AGREEMENT TO
34 ACQUIRE OR EXERCISE RIGHTS IN, OR TO HAVE ACCESS TO OR USE OF, COMPUTER
35 INFORMATION UNDER AN AGREEMENT TO WHICH THIS TITLE APPLIES. A LICENSOR
36 IS NOT A LICENSEE WITH RESPECT TO RIGHTS RESERVED TO IT UNDER THE
37 AGREEMENT.

38 ~~(42)~~ (43) "LICENSOR" MEANS A PERSON OBLIGATED BY AGREEMENT TO
39 TRANSFER OR CREATE RIGHTS IN, OR TO GIVE ACCESS TO OR USE OF, COMPUTER
40 INFORMATION OR INFORMATIONAL RIGHTS IN IT UNDER AN AGREEMENT TO WHICH

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

6 ~~(43)~~ (44) "MASS-MARKET LICENSE" MEANS A STANDARD FORM USED IN
7 A MASS-MARKET TRANSACTION.

8 ~~(44)~~ (45) "MASS-MARKET TRANSACTION" MEANS A TRANSACTION THAT
9 IS:

10 (A) A CONSUMER CONTRACT; OR

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

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

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

20 (III) THE TRANSACTION IS NOT:

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

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

27 3. A SITE LICENSE; OR

28 4. AN ACCESS CONTRACT.

29 ~~(45)~~ (46) "MERCHANT" MEANS A PERSON:

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

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

35 (C) TO WHICH THE KNOWLEDGE OR SKILL PECULIAR TO THE
36 PRACTICES OR INFORMATION INVOLVED IN THE TRANSACTION MAY BE ATTRIBUTED

1 BY THE PERSON'S EMPLOYMENT OF AN AGENT OR BROKER OR OTHER
2 INTERMEDIARY THAT BY ITS OCCUPATION HOLDS ITSELF OUT AS HAVING THE
3 KNOWLEDGE OR SKILL.

4 ~~(46)~~ (47) "NONEXCLUSIVE LICENSE" MEANS A LICENSE THAT DOES NOT
5 PRECLUDE THE LICENSOR FROM TRANSFERRING TO OTHER LICENSEES THE SAME
6 INFORMATION, INFORMATIONAL RIGHTS, OR CONTRACTUAL RIGHTS WITHIN THE
7 SAME SCOPE. THE TERM INCLUDES A CONSIGNMENT OF A COPY.

8 ~~(47)~~ (48) "NOTICE" OF A FACT MEANS KNOWLEDGE OF THE FACT,
9 RECEIPT OF NOTIFICATION OF THE FACT, OR REASON TO KNOW THE FACT EXISTS.

10 ~~(48)~~ (49) "NOTIFY", OR "GIVE NOTICE", MEANS TO TAKE SUCH STEPS AS
11 MAY BE REASONABLY REQUIRED TO INFORM THE OTHER PERSON IN THE ORDINARY
12 COURSE, WHETHER OR NOT THE OTHER PERSON ACTUALLY COMES TO KNOW OF IT.

13 ~~(49)~~ (50) "PARTY" MEANS A PERSON THAT ENGAGES IN A TRANSACTION
14 OR MAKES AN AGREEMENT UNDER THIS TITLE.

15 ~~(50)~~ (51) "PERSON" MEANS AN INDIVIDUAL, CORPORATION, BUSINESS
16 TRUST, ESTATE, TRUST, PARTNERSHIP, LIMITED LIABILITY COMPANY, ASSOCIATION,
17 JOINT VENTURE, GOVERNMENTAL SUBDIVISION, INSTRUMENTALITY, OR AGENCY,
18 PUBLIC CORPORATION, OR ANY OTHER LEGAL OR COMMERCIAL ENTITY.

19 ~~(51)~~ (52) "PUBLISHED INFORMATIONAL CONTENT" MEANS
20 INFORMATIONAL CONTENT PREPARED FOR OR MADE AVAILABLE TO RECIPIENTS
21 GENERALLY, OR TO A CLASS OF RECIPIENTS, IN SUBSTANTIALLY THE SAME FORM.
22 THE TERM DOES NOT INCLUDE INFORMATIONAL CONTENT THAT IS:

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

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

28 ~~(52)~~ (53) "RECEIPT" MEANS:

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

30 (B) WITH RESPECT TO A NOTICE:

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

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

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

1 ANY OTHER PLACE HELD OUT BY THE PERSON AS A PLACE FOR RECEIPT OF
2 COMMUNICATIONS OF THE KIND; OR

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

10 ~~(53)~~ (54) "RECEIVE" MEANS TO TAKE RECEIPT.

11 ~~(54)~~ (55) "RECORD" MEANS INFORMATION THAT IS INSCRIBED ON A
12 TANGIBLE MEDIUM OR THAT IS STORED IN AN ELECTRONIC OR OTHER MEDIUM AND
13 IS RETRIEVABLE IN PERCEIVABLE FORM.

14 ~~(55)~~ (56) "RELEASE" MEANS AN AGREEMENT BY A PARTY NOT TO OBJECT
15 TO, OR EXERCISE ANY RIGHTS OR PURSUE ANY REMEDIES TO LIMIT, THE USE OF
16 INFORMATION OR INFORMATIONAL RIGHTS WHICH AGREEMENT DOES NOT REQUIRE
17 AN AFFIRMATIVE ACT BY THE PARTY TO ENABLE OR SUPPORT THE OTHER PARTY'S
18 USE OF THE INFORMATION OR INFORMATIONAL RIGHTS. THE TERM INCLUDES A
19 WAIVER OF INFORMATIONAL RIGHTS.

20 ~~(56)~~ (57) "RETURN", WITH RESPECT TO A RECORD CONTAINING
21 CONTRACTUAL TERMS THAT WERE REJECTED, REFERS ONLY TO THE COMPUTER
22 INFORMATION AND MEANS:

23 (A) IN THE CASE OF A LICENSEE THAT REJECTS A RECORD
24 REGARDING A SINGLE INFORMATION PRODUCT TRANSFERRED FOR A SINGLE
25 CONTRACT FEE, A RIGHT TO REIMBURSEMENT OF THE CONTRACT FEE PAID FROM
26 THE PERSON TO WHICH IT WAS PAID OR FROM ANOTHER PERSON THAT OFFERS TO
27 REIMBURSE THAT FEE, ON:

28 (I) SUBMISSION OF PROOF OF PURCHASE; AND

29 (II) PROPER REDELIVERY OF THE COMPUTER INFORMATION
30 AND ALL COPIES WITHIN A REASONABLE TIME AFTER INITIAL DELIVERY OF THE
31 INFORMATION TO THE LICENSEE;

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

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

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

32 ~~(59)~~ (60) "SEND" MEANS, WITH ANY COSTS PROVIDED FOR AND
33 PROPERLY ADDRESSED OR DIRECTED AS REASONABLE UNDER THE CIRCUMSTANCES
34 OR AS 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)~~ (61) "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)~~ (62) "STATE" MEANS A STATE OF THE UNITED STATES, THE
15 DISTRICT OF COLUMBIA, PUERTO RICO, THE ~~UNITES~~ UNITED STATES VIRGIN
16 ISLANDS, OR ANY TERRITORY OR INSULAR POSSESSION SUBJECT TO THE
17 JURISDICTION OF THE UNITED STATES.

18 ~~(62)~~ (63) "TERM", WITH RESPECT TO AN AGREEMENT, MEANS THAT
19 PORTION OF THE AGREEMENT WHICH RELATES TO A PARTICULAR MATTER.

20 ~~(63)~~ (64) "TERMINATION" MEANS THE ENDING OF A CONTRACT BY A
21 PARTY PURSUANT TO A POWER CREATED BY AGREEMENT OR LAW OTHERWISE THAN
22 BECAUSE OF BREACH OF CONTRACT.

23 ~~(64)~~ (65) "TRANSFER":

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

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

32 ~~(65)~~ (66) "USAGE OF TRADE" MEANS ANY PRACTICE OR METHOD OF
33 DEALING THAT HAS SUCH REGULARITY OF OBSERVANCE IN A PLACE, VOCATION, OR
34 TRADE AS TO JUSTIFY AN EXPECTATION THAT IT WILL BE OBSERVED WITH RESPECT
35 TO THE TRANSACTION IN QUESTION.

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

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

38 (2) "DOCUMENT OF TITLE" § 1-201.

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

10 GENERAL SCOPE AND TERMS.

11 21-103. SCOPE; EXCLUSIONS.

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

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

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

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

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

27 (2) SUBJECT TO SUBSECTION (D)(3)(A) OF THIS SECTION, IF A
28 TRANSACTION INCLUDES AN AGREEMENT FOR CREATING OR FOR OBTAINING
29 RIGHTS TO CREATE COMPUTER INFORMATION AND A MOTION PICTURE, THIS TITLE
30 DOES NOT APPLY TO THE AGREEMENT IF THE DOMINANT CHARACTER OF THE
31 AGREEMENT IS FOR CREATING OR OBTAINING RIGHTS TO CREATE A MOTION
32 PICTURE. IN ALL OTHER SUCH AGREEMENTS, THIS TITLE DOES NOT APPLY TO THE
33 PART OF THE AGREEMENT THAT INVOLVES A MOTION PICTURE EXCLUDED UNDER

1 SUBSECTION (D)(3) OF THIS SECTION, BUT DOES APPLY TO THE COMPUTER
 2 INFORMATION.

3 ~~(2)~~ (3) ~~IN ALL OTHER CASES NOT INVOLVING GOODS, THIS TITLE~~
 4 ~~APPLIES TO THE ENTIRE TRANSACTION IF THE COMPUTER INFORMATION AND~~
 5 ~~INFORMATIONAL RIGHTS, OR ACCESS TO THEM, IS THE PRIMARY SUBJECT MATTER,~~
 6 ~~BUT OTHERWISE APPLIES ONLY TO THE PART OF THE TRANSACTION INVOLVING~~
 7 ~~COMPUTER INFORMATION, INFORMATIONAL RIGHTS IN IT, AND CREATION OR~~
 8 ~~MODIFICATION OF IT, UNLESS THE COMPUTER INFORMATION AND INFORMATIONAL~~
 9 ~~RIGHTS, OR ACCESS TO THEM, IS THE PRIMARY SUBJECT MATTER, IN WHICH CASE~~
 10 ~~THIS TITLE APPLIES TO THE ENTIRE TRANSACTION.~~

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

13 (D) THIS TITLE DOES NOT APPLY TO:

14 (1) A FINANCIAL SERVICES TRANSACTION;

15 (2) AN INSURANCE SERVICES TRANSACTION;

16 ~~(2)~~ (3) ~~A CONTRACT AN AGREEMENT TO CREATE, PERFORM OR~~
 17 ~~PERFORM IN, INCLUDE INFORMATION IN, ACQUIRE, USE, DISTRIBUTE, MODIFY,~~
 18 ~~REPRODUCE, HAVE ACCESS TO, ADAPT, MAKE AVAILABLE, TRANSMIT, LICENSE, OR~~
 19 ~~DISPLAY:~~

20 ~~(A) AUDIO OR VISUAL PROGRAMMING THAT IS PROVIDED BY~~
 21 ~~BROADCAST, SATELLITE, OR CABLE AS DEFINED OR USED IN THE FEDERAL~~
 22 ~~COMMUNICATIONS ACT AND RELATED REGULATIONS AS THEY EXISTED ON JULY 1,~~
 23 ~~1999, OR BY SIMILAR METHODS OF DELIVERING THAT PROGRAMMING; OR~~

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

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

31 ~~(3)~~ (4) A COMPULSORY LICENSE;

32 ~~(4)~~ (5) A CONTRACT OF EMPLOYMENT OF AN INDIVIDUAL, OTHER
 33 THAN AN INDIVIDUAL HIRED AS AN INDEPENDENT CONTRACTOR TO CREATE OR
 34 MODIFY COMPUTER INFORMATION, UNLESS SUCH INDEPENDENT CONTRACTOR IS A
 35 FREELANCER IN THE NEWS REPORTING INDUSTRY AS THAT TERM IS COMMONLY
 36 UNDERSTOOD IN THAT INDUSTRY;

37 ~~(5)~~ (6) A CONTRACT THAT DOES NOT REQUIRE THAT INFORMATION BE
 38 FURNISHED AS COMPUTER INFORMATION OR IN WHICH UNDER THE AGREEMENT

1 THE FORM OF THE INFORMATION AS COMPUTER INFORMATION IS OTHERWISE
 2 INSIGNIFICANT WITH RESPECT TO THE PRIMARY SUBJECT MATTER OF THE PART OF
 3 THE TRANSACTION PERTAINING TO THE INFORMATION; OR

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

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

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

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

28 21-104. MIXED TRANSACTIONS: AGREEMENT TO OPT-IN OR OPT-OUT.

29 THE PARTIES MAY AGREE THAT THIS TITLE, INCLUDING
 30 CONTRACT-FORMATION RULES, GOVERNS THE TRANSACTION, IN WHOLE OR PART,
 31 OR THAT OTHER LAW GOVERNS THE TRANSACTION AND THIS TITLE DOES NOT
 32 APPLY, IF A MATERIAL PART OF THE SUBJECT MATTER TO WHICH THE AGREEMENT
 33 APPLIES IS COMPUTER INFORMATION OR INFORMATIONAL RIGHTS IN IT THAT ARE
 34 WITHIN THE SCOPE OF THIS TITLE, OR IS SUBJECT MATTER WITHIN THIS TITLE
 35 UNDER § 21-103(B) OF THIS SUBTITLE, OR IS SUBJECT MATTER EXCLUDED BY §
 36 21-103(D)~~(4)~~ OR ~~(2)~~ (1), (2), OR (3) OF THIS SUBTITLE. HOWEVER, ANY AGREEMENT TO
 37 DO SO IS SUBJECT TO THE FOLLOWING RULES:

38 (1) AN AGREEMENT THAT THIS TITLE GOVERNS A TRANSACTION DOES
 39 NOT ALTER THE APPLICABILITY OF ANY STATUTE, RULE, REGULATION, OR
 40 PROCEDURE THAT MAY NOT BE VARIED BY AGREEMENT OF THE PARTIES OR THAT
 41 MAY BE VARIED ONLY IN A MANNER SPECIFIED BY THE STATUTE, RULE,
 42 REGULATION, OR PROCEDURE, INCLUDING A CONSUMER PROTECTION STATUTE OR

1 REGULATION. IN ADDITION, IN A MASS-MARKET TRANSACTION, THE AGREEMENT
2 DOES NOT ALTER THE APPLICABILITY OF A LAW APPLICABLE TO A COPY OF
3 INFORMATION IN PRINTED FORM.

4 (2) AN AGREEMENT THAT THIS TITLE DOES NOT GOVERN A
5 TRANSACTION:

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

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

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

15 (4) A COPY OF A COMPUTER PROGRAM CONTAINED IN AND SOLD OR
16 LEASED AS PART OF GOODS AND WHICH IS EXCLUDED FROM THIS TITLE BY §
17 21-103(B)(1) OF THIS SUBTITLE CANNOT PROVIDE THE BASIS FOR AN AGREEMENT
18 UNDER THIS SECTION THAT THIS TITLE GOVERNS THE TRANSACTION.

19 21-105. RELATION TO FEDERAL LAW; FUNDAMENTAL PUBLIC POLICY;
20 TRANSACTIONS SUBJECT TO OTHER STATE LAW.

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

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

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, INCLUDING TITLE 13 OF THIS
37 ARTICLE, THE CONSUMER PROTECTION STATUTE OR REGULATION GOVERNS.

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

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

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

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

10 (4) A REQUIREMENT OF CONSENT OR AGREEMENT TO A TERM IS
11 SATISFIED BY A MANIFESTATION OF ASSENT TO THE TERM IN ACCORDANCE WITH
12 THIS TITLE.

13 21-106. RULES OF CONSTRUCTION.

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

16 (1) SUPPORT AND FACILITATE THE REALIZATION OF THE FULL
17 POTENTIAL OF COMPUTER INFORMATION TRANSACTIONS;

18 (2) CLARIFY THE LAW GOVERNING COMPUTER INFORMATION
19 TRANSACTIONS;

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

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

25 (5) PERMIT THE CONTINUED EXPANSION OF COMMERCIAL PRACTICES
26 IN THE EXCLUDED TRANSACTIONS THROUGH CUSTOM, USAGE, AND AGREEMENT OF
27 THE PARTIES.

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

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

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

4 21-107. LEGAL RECOGNITION OF ELECTRONIC RECORD AND AUTHENTICATION; USE
5 OF ELECTRONIC AGENTS.

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

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

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

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

18 21-108. PROOF AND EFFECT OF AUTHENTICATION.

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

23 (B) COMPLIANCE WITH A COMMERCIALLY REASONABLE ATTRIBUTION
24 PROCEDURE AGREED TO OR ADOPTED BY THE PARTIES OR ESTABLISHED BY LAW
25 FOR AUTHENTICATING A RECORD AUTHENTICATES THE RECORD AS A MATTER OF
26 LAW.

27 21-109. CHOICE OF LAW.

28 (A) THE PARTIES IN THEIR AGREEMENT MAY CHOOSE THE APPLICABLE LAW.
29 HOWEVER, ~~THE CHOICE IS NOT ENFORCEABLE IN A CONSUMER CONTRACT TO THE~~
30 ~~EXTENT IT WOULD VARY A RULE THAT MAY NOT BE VARIED BY AGREEMENT UNDER~~
31 ~~THE LAW OF THE JURISDICTION WHOSE LAW WOULD APPLY UNDER SUBSECTIONS~~
32 ~~(B) AND (C) OF THIS SECTION IN THE ABSENCE OF THE AGREEMENT~~ A CONSUMER
33 CONTRACT SHALL BE GOVERNED BY THE LAW OF THE JURISDICTION THAT IS THE
34 PRINCIPAL RESIDENCE OF THE CONSUMER.

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

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

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

8 (3) IN ALL OTHER CASES, THE CONTRACT IS GOVERNED BY THE LAW OF
9 THE JURISDICTION HAVING THE MOST SIGNIFICANT RELATIONSHIP TO THE
10 TRANSACTION.

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

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

22 21-110. CONTRACTUAL CHOICE OF FORUM.

23 (A) (1) EXCEPT FOR A CONSUMER CONTRACT, THE PARTIES IN THEIR
24 AGREEMENT MAY CHOOSE AN EXCLUSIVE JUDICIAL FORUM UNLESS THE CHOICE IS
25 UNREASONABLE AND UNJUST.

26 (2) IN A CONSUMER CONTRACT, THE JUDICIAL FORUM SHALL BE THE
27 JURISDICTION OF THE PRINCIPAL RESIDENCE OF THE CONSUMER, EXCEPT THAT A
28 CONSUMER MAY FILE AN ACTION IN ANY JUDICIAL FORUM HAVING JURISDICTION.

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

31 (C) NOTWITHSTANDING THE PROVISIONS OF THIS SECTION OR A CONTRARY
32 TERM IN AN AGREEMENT, A PARTY TO A COMPUTER INFORMATION TRANSACTION
33 THAT IS FOR THE CREATION OF COMPUTER INFORMATION MAY CHOOSE AN
34 ALTERNATIVE DISPUTE RESOLUTION MECHANISM, INCLUDING MEDIATION,
35 ARBITRATION, OR OTHER NON-JUDICIAL DISPUTE RESOLUTION PROCESS, AS THE
36 MEANS FOR RESOLVING A DISPUTE UNDER THE AGREEMENT.

37 21-111. UNCONSCIONABLE CONTRACT OR TERM.

38 (A) IF A COURT AS A MATTER OF LAW FINDS A CONTRACT OR A TERM
39 THEREOF TO HAVE BEEN UNCONSCIONABLE AT THE TIME IT WAS MADE, THE COURT

1 MAY REFUSE TO ENFORCE THE CONTRACT, ENFORCE THE REMAINDER OF THE
2 CONTRACT WITHOUT THE UNCONSCIONABLE TERM, OR LIMIT THE APPLICATION OF
3 THE UNCONSCIONABLE TERM SO AS TO AVOID AN UNCONSCIONABLE RESULT.

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

9 21-112. MANIFESTING ASSENT; OPPORTUNITY TO REVIEW.

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

13 (1) AUTHENTICATES THE RECORD OR TERM WITH INTENT TO ADOPT OR
14 ACCEPT IT; OR

15 (2) INTENTIONALLY ENGAGES IN CONDUCT OR MAKES STATEMENTS
16 WITH REASON TO KNOW THAT THE OTHER PARTY OR ITS ELECTRONIC AGENT MAY
17 INFER FROM THE CONDUCT OR STATEMENT THAT THE PERSON ASSENTS TO THE
18 RECORD OR TERM.

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

21 (1) AUTHENTICATES THE RECORD OR TERM; OR

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

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

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

34 (E) WITH RESPECT TO AN OPPORTUNITY TO REVIEW, THE FOLLOWING RULES
35 APPLY:

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

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

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

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

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

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

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

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

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

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

30 (2) THE LIMITATIONS ON ENFORCEABILITY IMPOSED BY
31 UNCONSCIONABILITY UNDER § 21-111 OF THIS SUBTITLE AND FUNDAMENTAL
32 PUBLIC POLICY UNDER § 21-105(B) OF THIS SUBTITLE MAY NOT BE VARIED BY
33 AGREEMENT.

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

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

- 1 (B) THE LIMITATIONS ON AGREED CHOICE OF FORUM IN § 21-110;
- 2 (C) THE REQUIREMENTS FOR MANIFESTING ASSENT AND
3 OPPORTUNITY FOR REVIEW IN § 21-112;
- 4 (D) THE LIMITATIONS ON ENFORCEABILITY IN § 21-201;
- 5 (E) THE LIMITATIONS ON A MASS-MARKET LICENSE IN § 21-209;
- 6 (F) THE CONSUMER DEFENSE ARISING FROM AN ELECTRONIC
7 ERROR IN § 21-214;
- 8 (G) THE REQUIREMENTS FOR AN ENFORCEABLE TERM IN §§
9 21-303(B), 21-307(G), 21-406(B) AND (C), AND 21-804(A);
- 10 (H) THE LIMITATIONS ON A FINANCIER IN §§ 21-507 THROUGH
11 21-511;
- 12 (I) THE RESTRICTIONS ON ALTERING THE PERIOD OF
13 LIMITATIONS IN § 21-805(A) AND (B); AND
- 14 (J) THE LIMITATIONS ON SELF-HELP REPOSSESSION IN §§
15 21-815(B) AND 21-816.
- 16 (B) ANY USAGE OF TRADE OF WHICH THE PARTIES ARE OR SHOULD BE AWARE
17 AND ANY COURSE OF DEALING OR COURSE OF PERFORMANCE BETWEEN THE
18 PARTIES ARE RELEVANT TO DETERMINING THE EXISTENCE OR MEANING OF AN
19 AGREEMENT.
- 20 21-114. SUPPLEMENTAL PRINCIPLES; GOOD FAITH; DECISION FOR COURT;
21 REASONABLE TIME; REASON TO KNOW.
- 22 (A) UNLESS DISPLACED BY THIS TITLE, PRINCIPLES OF LAW AND EQUITY,
23 INCLUDING THE LAW MERCHANT AND THE COMMON LAW OF THIS STATE RELATIVE
24 TO CAPACITY TO CONTRACT, PRINCIPAL AND AGENT, ESTOPPEL, FRAUD,
25 MISREPRESENTATION, DURESS, COERCION, MISTAKE, AND OTHER VALIDATING OR
26 INVALIDATING CAUSE, SUPPLEMENT THIS TITLE. AMONG THE LAWS
27 SUPPLEMENTING AND NOT DISPLACED BY THIS TITLE ARE TRADE SECRET LAWS AND
28 UNFAIR COMPETITION LAWS.
- 29 (B) EVERY CONTRACT OR DUTY WITHIN THE SCOPE OF THIS TITLE IMPOSES
30 AN OBLIGATION OF GOOD FAITH IN ITS PERFORMANCE OR ENFORCEMENT.
- 31 (C) WHETHER A TERM IS CONSPICUOUS OR IS UNENFORCEABLE UNDER §
32 21-105(A) OR (B), § 21-111, OR § 21-209(A) OF THIS TITLE AND WHETHER AN
33 ATTRIBUTION PROCEDURE IS COMMERCIALY REASONABLE OR EFFECTIVE UNDER §
34 21-108, § 21-212, OR § 21-213 OF THIS TITLE ARE QUESTIONS TO BE DETERMINED BY
35 THE COURT.

1 (D) WHETHER AN AGREEMENT HAS LEGAL CONSEQUENCES IS DETERMINED
2 BY THIS TITLE.

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

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

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

9 (F) A PERSON HAS REASON TO KNOW A FACT IF THE PERSON HAS
10 KNOWLEDGE OF THE FACT OR, FROM ALL THE FACTS AND CIRCUMSTANCES KNOWN
11 TO THE PERSON WITHOUT INVESTIGATION, THE PERSON SHOULD BE AWARE THAT
12 THE FACT EXISTS.

13 SUBTITLE 2. FORMATION AND TERMS; FORMATION OF A CONTRACT; TERMS OF
14 RECORDS; ELECTRONIC CONTRACTS: GENERALLY.

15 FORMATION OF A CONTRACT.

16 21-201. FORMAL REQUIREMENTS.

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

20 (1) THE PARTY AGAINST WHICH ENFORCEMENT IS SOUGHT
21 AUTHENTICATED A RECORD SUFFICIENT TO INDICATE THAT A CONTRACT HAS BEEN
22 FORMED AND WHICH REASONABLY IDENTIFIES THE COPY OR SUBJECT MATTER TO
23 WHICH THE CONTRACT REFERS; OR

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

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

31 (C) A CONTRACT THAT DOES NOT SATISFY THE REQUIREMENTS OF
32 SUBSECTION (A) OF THIS SECTION IS NEVERTHELESS ENFORCEABLE UNDER THAT
33 SUBSECTION IF:

34 (1) A PERFORMANCE WAS TENDERED OR THE INFORMATION WAS MADE
35 AVAILABLE BY ONE PARTY AND THE TENDER WAS ACCEPTED OR THE INFORMATION
36 ACCESSED BY THE OTHER; OR

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

6 (D) BETWEEN MERCHANTS, IF, WITHIN A REASONABLE TIME, A RECORD IN
7 CONFIRMATION OF THE CONTRACT AND SUFFICIENT AGAINST THE SENDER IS
8 RECEIVED AND THE PARTY RECEIVING IT HAS REASON TO KNOW ITS CONTENTS, THE
9 RECORD SATISFIES SUBSECTION (A) OF THIS SECTION AGAINST THE PARTY
10 RECEIVING IT UNLESS NOTICE OF OBJECTION TO ITS CONTENTS IS GIVEN IN A
11 RECORD WITHIN ~~40-DAYS~~ A REASONABLE TIME AFTER THE CONFIRMING RECORD IS
12 RECEIVED.

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

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

19 21-202. FORMATION IN GENERAL.

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

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

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

33 (D) IN THE ABSENCE OF CONDUCT OR PERFORMANCE BY BOTH PARTIES TO
34 THE CONTRARY, A CONTRACT IS NOT FORMED IF THERE IS A MATERIAL
35 DISAGREEMENT ABOUT A MATERIAL TERM, INCLUDING A TERM CONCERNING
36 SCOPE.

37 (E) IF A TERM IS TO BE ADOPTED BY LATER AGREEMENT AND THE PARTIES
38 INTEND NOT TO BE BOUND UNLESS THE TERM IS SO ADOPTED, A CONTRACT IS NOT
39 FORMED IF THE PARTIES DO NOT AGREE TO THE TERM. IN THAT CASE, EACH PARTY
40 SHALL DELIVER TO THE OTHER PARTY, OR WITH THE CONSENT OF THE OTHER
41 PARTY DESTROY, ALL COPIES OF INFORMATION, ACCESS MATERIALS, AND OTHER

1 MATERIALS RECEIVED OR MADE, AND EACH PARTY IS ENTITLED TO A RETURN WITH
2 RESPECT TO ANY CONTRACT FEE PAID FOR WHICH PERFORMANCE HAS NOT BEEN
3 RECEIVED, HAS NOT BEEN ACCEPTED, OR HAS BEEN REDELIVERED WITHOUT ANY
4 BENEFIT BEING RETAINED. THE PARTIES REMAIN BOUND BY ANY CONTRACTUAL
5 USE TERM ONLY WITH RESPECT TO INFORMATION OR COPIES RECEIVED OR MADE
6 FROM COPIES RECEIVED PURSUANT TO THE AGREEMENT ~~AND NOT DELIVERED OR~~
7 ~~DELIVERABLE TO THE OTHER PARTY, BUT THE CONTRACTUAL USE TERM DOES NOT~~
8 APPLY TO INFORMATION OR COPIES PROPERLY RECEIVED OR OBTAINED FROM
9 ANOTHER SOURCE.

10 21-203. OFFER AND ACCEPTANCE IN GENERAL.

11 UNLESS OTHERWISE UNAMBIGUOUSLY INDICATED BY THE LANGUAGE OR THE
12 CIRCUMSTANCES:

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

15 (2) AN ORDER OR OTHER OFFER TO ACQUIRE A COPY FOR PROMPT OR
16 CURRENT DELIVERY INVITES ACCEPTANCE BY EITHER A PROMPT PROMISE TO SHIP
17 OR A PROMPT OR CURRENT SHIPMENT OF A CONFORMING OR NONCONFORMING
18 COPY. HOWEVER, A SHIPMENT OF A NONCONFORMING COPY IS NOT AN ACCEPTANCE
19 IF THE LICENSOR SEASONABLY NOTIFIES THE LICENSEE THAT THE SHIPMENT IS
20 OFFERED ONLY AS AN ACCOMMODATION TO THE LICENSEE.

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

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

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

28 (B) IF THE RESPONSE CONSISTS OF BEGINNING PERFORMANCE,
29 FULL PERFORMANCE, OR GIVING ACCESS TO INFORMATION, WHEN THE
30 PERFORMANCE IS RECEIVED OR THE ACCESS IS ENABLED AND NECESSARY ACCESS
31 MATERIALS ARE RECEIVED.

32 21-204. ACCEPTANCE WITH VARYING TERMS.

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

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

1 (C) IF AN ACCEPTANCE MATERIALLY ALTERS THE OFFER, THE FOLLOWING
2 RULES APPLY:

3 (1) A CONTRACT IS NOT FORMED UNLESS:

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

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

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

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

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

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

20 21-205. CONDITIONAL OFFER OR ACCEPTANCE.

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

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

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

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

35 (2) A PARTY THAT AGREES, SUCH AS BY MANIFESTING ASSENT, TO A
36 CONDITIONAL OFFER THAT IS EFFECTIVE UNDER PARAGRAPH (1) OF THIS
37 SUBSECTION ADOPTS THE TERMS OF THE OFFER UNDER § 21-208 OR § 21-209 OF THIS

1 SUBTITLE, EXCEPT A TERM THAT CONFLICTS WITH AN EXPRESSLY AGREED TERM
2 REGARDING PRICE OR QUANTITY.

3 21-206. OFFER AND ACCEPTANCE: ELECTRONIC AGENTS.

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

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

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

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

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

24 21-207. FORMATION: RELEASES OF INFORMATIONAL RIGHTS.

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

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

29 (2) ENFORCEABLE UNDER ESTOPPEL, IMPLIED LICENSE, OR OTHER
30 LAW.

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

34 (1) THE PARTY GRANTING THE RELEASE; OR

35 (2) THE PARTY RECEIVING THE RELEASE, EXCEPT FOR RELATIVELY
36 INSIGNIFICANT ACTS.

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

3 TERMS OF RECORDS.

4 21-208. ADOPTING TERMS OF RECORDS.

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

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

10 (2) THE TERMS OF A RECORD MAY BE ADOPTED PURSUANT TO
11 PARAGRAPH (1) OF THIS SECTION AFTER BEGINNING PERFORMANCE OR USE IF THE
12 PARTIES HAD REASON TO KNOW THAT THEIR AGREEMENT WOULD BE REPRESENTED
13 IN WHOLE OR PART BY A LATER RECORD TO BE AGREED ON AND THERE WOULD NOT
14 BE AN OPPORTUNITY TO REVIEW THE RECORD OR A COPY OF IT BEFORE
15 PERFORMANCE OR USE BEGINS. IF THE PARTIES FAIL TO AGREE TO THE LATER
16 TERMS AND DID NOT INTEND TO FORM A CONTRACT UNLESS THEY SO AGREED, §
17 21-202(E) OF THIS SUBTITLE APPLIES.

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

23 21-209. MASS-MARKET LICENSE.

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

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

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

33 ~~(2)~~ (3) SUBJECT TO § 21-301 OF THIS TITLE, THE TERM CONFLICTS
34 WITH A TERM TO WHICH THE PARTIES TO THE LICENSE HAVE EXPRESSLY AGREED;
35 OR

36 (4) THE TERM IS NOT AVAILABLE FOR VIEWING BEFORE AND AFTER
37 ASSENT IN A PRINTED LICENSE OR IN ELECTRONIC FORM THAT CAN BE PRINTED OR
38 STORED FOR ARCHIVAL AND REVIEW PURPOSES BY THE LICENSEE.

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

7 (1) REIMBURSEMENT OF ANY REASONABLE EXPENSES INCURRED IN
8 COMPLYING WITH THE LICENSOR'S INSTRUCTIONS FOR RETURNING OR DESTROYING
9 THE COMPUTER INFORMATION OR, IN THE ABSENCE OF INSTRUCTIONS, EXPENSES
10 INCURRED FOR RETURN POSTAGE OR SIMILAR REASONABLE EXPENSE IN
11 RETURNING THE COMPUTER INFORMATION; AND

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

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

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

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

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

28 21-210. TERMS OF CONTRACT FORMED BY CONDUCT.

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

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

1 21-211. PRETRANSACTION DISCLOSURES IN INTERNET-TYPE TRANSACTIONS.

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

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

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

16 (B) DISCLOSING THE AVAILABILITY OF THE STANDARD TERMS IN A
17 PROMINENT PLACE ON THE SITE FROM WHICH THE COMPUTER INFORMATION IS
18 OFFERED AND PROMPTLY FURNISHING A COPY OF THE STANDARD TERMS ON
19 REQUEST BEFORE THE TRANSFER OF THE COMPUTER INFORMATION; AND

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

23 ELECTRONIC CONTRACTS: GENERALLY.

24 21-212. EFFICACY AND COMMERCIAL REASONABLENESS OF ATTRIBUTION
25 PROCEDURE.

26 THE EFFICACY, INCLUDING THE COMMERCIAL REASONABLENESS, OF AN
27 ATTRIBUTION PROCEDURE IS DETERMINED BY THE COURT. IN MAKING THIS
28 DETERMINATION, THE FOLLOWING RULES APPLY:

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

31 (2) EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (1) OF THIS
32 SECTION, COMMERCIAL REASONABLENESS AND EFFECTIVENESS IS DETERMINED IN
33 LIGHT OF THE PURPOSES OF THE PROCEDURE AND THE COMMERCIAL
34 CIRCUMSTANCES AT THE TIME THE PARTIES AGREED TO OR ADOPTED THE
35 PROCEDURE.

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

1 21-213. DETERMINING ATTRIBUTION.

2 (A) AN ELECTRONIC AUTHENTICATION, DISPLAY, MESSAGE, RECORD, OR
3 PERFORMANCE IS ATTRIBUTED TO A PERSON IF IT WAS THE ACT OF THE PERSON OR
4 ITS ELECTRONIC AGENT, OR IF THE PERSON IS BOUND BY IT UNDER AGENCY OR
5 OTHER LAW. THE PARTY RELYING ON ATTRIBUTION OF AN ELECTRONIC
6 AUTHENTICATION, DISPLAY, MESSAGE, RECORD, OR PERFORMANCE TO ANOTHER
7 PERSON HAS THE BURDEN OF ESTABLISHING ATTRIBUTION.

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

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

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

24 21-214. ELECTRONIC ERROR: CONSUMER DEFENSES.

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

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

32 (1) PROMPTLY ON LEARNING OF THE ERROR:

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

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

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

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

3 21-215. ELECTRONIC MESSAGE: WHEN EFFECTIVE; EFFECT OF ACKNOWLEDGMENT.

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

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

10 21-216. IDEA OR INFORMATION SUBMISSION.

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

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

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

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

23 (A) THE SUBMISSION IS MADE AND ACCEPTED PURSUANT TO THAT
24 PROCEDURE; OR

25 (B) THE RECIPIENT EXPRESSLY AGREES TO TERMS CONCERNING
26 THE SUBMISSION.

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

31 SUBTITLE 3. CONSTRUCTION; GENERAL; INTERPRETATION.

32 GENERAL.

33 21-301. PAROL OR EXTRINSIC EVIDENCE.

34 TERMS WITH RESPECT TO WHICH CONFIRMATORY RECORDS OF THE PARTIES
35 AGREE OR WHICH ARE OTHERWISE SET FORTH IN A RECORD INTENDED BY THE

1 PARTIES AS A FINAL EXPRESSION OF THEIR AGREEMENT WITH RESPECT TO TERMS
2 INCLUDED THEREIN MAY NOT BE CONTRADICTED BY EVIDENCE OF ANY PREVIOUS
3 AGREEMENT OR OF A CONTEMPORANEOUS ORAL AGREEMENT BUT MAY BE
4 EXPLAINED OR SUPPLEMENTED BY:

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

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

10 21-302. PRACTICAL CONSTRUCTION.

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

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

17 (2) COURSE OF PERFORMANCE PREVAILS OVER COURSE OF DEALING
18 AND USAGE OF TRADE; AND

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

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

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

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

30 21-303. MODIFICATION AND RESCISSION.

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

33 (B) AN AUTHENTICATED RECORD THAT PRECLUDES MODIFICATION OR
34 RESCISSION EXCEPT BY AN AUTHENTICATED RECORD MAY NOT OTHERWISE BE
35 MODIFIED OR RESCINDED. IN A STANDARD FORM SUPPLIED BY A MERCHANT TO A
36 CONSUMER, A TERM REQUIRING AN AUTHENTICATED RECORD FOR MODIFICATION

1 OF THE CONTRACT IS NOT ENFORCEABLE UNLESS THE CONSUMER MANIFESTS
2 ASSENT TO THE TERM.

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

6 (D) AN ATTEMPT AT MODIFICATION OR RESCISSION WHICH DOES NOT
7 SATISFY SUBSECTION (B) OR (C) OF THIS SECTION MAY OPERATE AS A WAIVER IF §
8 21-702 OF THIS TITLE IS SATISFIED.

9 21-304. CONTINUING CONTRACTUAL TERMS.

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

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

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

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

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

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

30 21-305. TERMS TO BE SPECIFIED.

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

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

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

3 (A) IS EXCUSED FOR ANY RESULTING DELAY IN ITS
4 PERFORMANCE; AND

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

7 21-306. PERFORMANCE UNDER OPEN TERMS.

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

12 INTERPRETATION.

13 21-307. INTERPRETATION AND REQUIREMENTS FOR A GRANT.

14 (A) A LICENSE GRANTS:

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

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

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

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

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

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

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

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

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

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

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

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

26 (1) AUTHENTICATED BY THE PARTY AGAINST WHICH ENFORCEMENT IS
27 SOUGHT; OR

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

30 21-308. DURATION OF CONTRACT.

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

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

1 MEETING THE SPECIFICATIONS HOLDS THE LICENSOR HARMLESS AGAINST ANY
2 SUCH CLAIM THAT ARISES OUT OF COMPLIANCE WITH EITHER THE REQUIRED
3 SPECIFICATION OR THE REQUIRED METHOD EXCEPT FOR A CLAIM THAT RESULTS
4 FROM THE FAILURE OF THE LICENSOR TO ADOPT, OR NOTIFY THE LICENSEE OF, A
5 NONINFRINGING ALTERNATIVE OF WHICH THE LICENSOR HAD REASON TO KNOW.

6 (B) A LICENSOR WARRANTS:

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

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

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

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

22 (C) THE WARRANTIES IN THIS SECTION ARE SUBJECT TO THE FOLLOWING
23 RULES:

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

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

39 (3) THE WARRANTIES UNDER SUBSECTIONS (A) AND (B)(2) OF THIS
40 SECTION ARE NOT MADE BY A LICENSE THAT MERELY PERMITS USE, OR COVENANTS

1 NOT TO CLAIM INFRINGEMENT BECAUSE OF THE USE, OF RIGHTS UNDER A
2 LICENSED PATENT.

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

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

16 21-402. EXPRESS WARRANTY.

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

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

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

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

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

38 (1) AN AFFIRMATION OR PREDICTION MERELY OF THE VALUE OF THE
39 INFORMATION OR INFORMATIONAL RIGHTS;

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

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

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

13 21-403. IMPLIED WARRANTY: MERCHANTABILITY OF A COMPUTER PROGRAM.

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

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

18 (2) TO THE DISTRIBUTOR THAT:

19 (A) THE PROGRAM IS ADEQUATELY PACKAGED AND LABELED AS
20 THE AGREEMENT REQUIRES; AND

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

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

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

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

32 21-404. IMPLIED WARRANTY: INFORMATIONAL CONTENT.

33 (A) UNLESS THE WARRANTY IS DISCLAIMED OR MODIFIED, A MERCHANT
34 THAT, IN A SPECIAL RELATIONSHIP OF RELIANCE WITH A LICENSEE, COLLECTS,
35 COMPILES, PROCESSES, PROVIDES, OR TRANSMITS INFORMATIONAL CONTENT
36 WARRANTS TO THAT LICENSEE THAT THERE IS NO INACCURACY IN THE

1 INFORMATIONAL CONTENT CAUSED BY THE MERCHANT'S FAILURE TO PERFORM
2 WITH REASONABLE CARE.

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

5 (1) PUBLISHED INFORMATIONAL CONTENT; OR

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

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

13 21-405. IMPLIED WARRANTY: LICENSEE'S PURPOSE; SYSTEM INTEGRATION.

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

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

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

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

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

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

35 (C) IF AN AGREEMENT REQUIRES A LICENSOR TO PROVIDE OR SELECT A
36 SYSTEM CONSISTING OF COMPUTER PROGRAMS AND GOODS, AND THE LICENSOR
37 HAS REASON TO KNOW THAT THE LICENSEE IS RELYING ON THE SKILL OR
38 JUDGMENT OF THE LICENSOR TO SELECT THE COMPONENTS OF THE SYSTEM,

1 THERE IS AN IMPLIED WARRANTY THAT THE COMPONENTS PROVIDED OR SELECTED
2 WILL FUNCTION TOGETHER AS A SYSTEM.

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

6 21-406. DISCLAIMER OR MODIFICATION OF WARRANTY.

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

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

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

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

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

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

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

37 (4) A DISCLAIMER OR MODIFICATION SUFFICIENT UNDER TITLE 2 OR
38 TITLE 2A OF THIS ARTICLE TO DISCLAIM OR MODIFY AN IMPLIED WARRANTY OF
39 MERCHANTABILITY IS SUFFICIENT TO DISCLAIM OR MODIFY THE WARRANTIES
40 UNDER §§ 21-403 AND 21-404 OF THIS SUBTITLE. A DISCLAIMER OR MODIFICATION

1 SUFFICIENT UNDER TITLE 2 OR TITLE 2A OF THIS ARTICLE TO DISCLAIM OR MODIFY
2 AN IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE IS SUFFICIENT TO
3 DISCLAIM OR MODIFY THE WARRANTIES UNDER § 21-405 OF THIS SUBTITLE.

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

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

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

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

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

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

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

32 (2) A MERCHANT MAY RECOVER FROM A MANUFACTURER OR A
33 LICENSOR THAT CAUSED THE BREACH ANY DAMAGES RESULTING FROM THE
34 BREACH OF IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A
35 PARTICULAR PURPOSE THAT COULD NOT BE DISCLAIMED OR MODIFIED UNDER THIS
36 SECTION.

37 (J) ANY ORAL OR WRITTEN LANGUAGE USED IN A CONSUMER CONTRACT
38 WHICH ATTEMPTS TO LIMIT OR MODIFY A CONSUMER'S REMEDIES FOR BREACH OF A
39 MERCHANT'S, LICENSOR'S, OR MANUFACTURER'S EXPRESS WARRANTIES IS
40 UNENFORCEABLE UNLESS THE MERCHANT, LICENSOR, OR MANUFACTURER

1 PROVIDES REASONABLE AND EXPEDITIOUS MEANS OF PERFORMING THE WARRANTY
2 OBLIGATIONS.

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

5 (1) AN INFORMATION/COMPUTER PROGRAM PROVIDED FOR NO FEE,
6 UNLESS THE INFORMATION/COMPUTER PROGRAM IS PROVIDED IN CONJUNCTION
7 WITH THE SALE OR LEASE OF GOODS, SERVICES, OR ANOTHER
8 INFORMATION/COMPUTER PROGRAM; OR

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

11 21-407. MODIFICATION OF A COMPUTER PROGRAM.

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

19 21-408. CULMINATION AND CONFLICT OF WARRANTIES.

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

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

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

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

32 21-409. THIRD-PARTY BENEFICIARIES OF WARRANTY.

33 (A) EXCEPT FOR PUBLISHED INFORMATIONAL CONTENT, A WARRANTY TO A
34 LICENSEE EXTENDS TO PERSONS FOR WHOSE BENEFIT THE LICENSOR INTENDS TO
35 SUPPLY THE INFORMATION OR INFORMATIONAL RIGHTS AND WHICH RIGHTFULLY
36 USE THE INFORMATION IN A TRANSACTION OR APPLICATION OF A KIND IN WHICH
37 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, BUT THE
36 CONTRACTUAL USE TERMS DO NOT APPLY TO INFORMATION OR COPIES PROPERLY
37 RECEIVED OR OBTAINED FROM ANOTHER SOURCE. IN ADDITION, THE FOLLOWING
38 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 CONSPICUOUS TERM OF THE AGREEMENT AUTHORIZES USE OF
16 THE RESTRAINT;

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

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

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

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

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

34 (E) THIS SECTION DOES NOT PRECLUDE ELECTRONIC REPLACEMENT OR
35 DISABLING OF AN EARLIER COPY OF INFORMATION BY THE LICENSOR IN
36 CONNECTION WITH DELIVERY OF A NEW COPY OR VERSION UNDER AN AGREEMENT
37 TO REPLACE OR DISABLE THE EARLIER COPY BY ELECTRONIC MEANS WITH AN
38 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. WHETHER A BREACH OF A CONTRACTUAL USE
27 TERM IS AN INFRINGEMENT OR A MISAPPROPRIATION IS DETERMINED BY
28 APPLICABLE INFORMATIONAL PROPERTY RIGHTS LAW.

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

30 (1) THE CONTRACT SO PROVIDES;

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

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

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

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

6 (C) THE CUMULATIVE EFFECT OF NONMATERIAL BREACHES MAY BE
7 MATERIAL.

8 21-702. WAIVER OF REMEDY FOR BREACH OF CONTRACT.

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

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

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

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

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

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

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

35 (F) EXCEPT FOR A WAIVER IN ACCORDANCE WITH SUBSECTION (A) OF THIS
36 SECTION OR A WAIVER SUPPORTED BY CONSIDERATION, A WAIVER AFFECTING AN
37 EXECUTORY PORTION OF A CONTRACT MAY BE RETRACTED BY SEASONABLE NOTICE
38 RECEIVED BY THE OTHER PARTY THAT STRICT PERFORMANCE WILL BE REQUIRED IN

1 THE FUTURE, UNLESS THE RETRACTION WOULD BE UNJUST IN VIEW OF A MATERIAL
2 CHANGE OF POSITION IN RELIANCE ON THE WAIVER BY THAT PARTY.

3 21-703. CURE OF BREACH OF CONTRACT.

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

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

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

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

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

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

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

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

33 DEFECTIVE COPIES.

34 21-704. COPY: REFUSAL OF DEFECTIVE TENDER.

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

- 1 (1) REFUSE THE TENDER;
2 (2) ACCEPT THE TENDER; OR
3 (3) ACCEPT ANY COMMERCIALY REASONABLE UNITS AND REFUSE THE
4 REST.

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

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

- 9 (1) IT IS MADE BEFORE ACCEPTANCE;
10 (2) IT IS MADE WITHIN A REASONABLE TIME AFTER TENDER OR
11 COMPLETION OF ANY PERMITTED EFFORT TO CURE; AND
12 (3) THE REFUSING PARTY SEASONABLY NOTIFIES THE TENDERING
13 PARTY OF THE REFUSAL.

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

18 21-705. COPY: CONTRACT WITH PREVIOUS VESTED GRANT OF RIGHTS.

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

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

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

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

32 21-706. COPY: DUTIES UPON RIGHTFUL REFUSAL.

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

1 (1) IF THE REFUSING PARTY RIGHTFULLY CANCELS THE CONTRACT, §
2 21-802 OF THIS TITLE APPLIES AND ALL CONTRACTUAL USE TERMS CONTINUE.

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

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

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

14 (A) OCCURS AFTER THE TENDERING PARTY IS SEASONABLY
15 NOTIFIED OF REFUSAL;

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

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

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

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

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

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

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

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

5 21-707. COPY: REVOCATION OF ACCEPTANCE.

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

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

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

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

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

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

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

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

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

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

32 REPUDIATION AND ASSURANCES.

33 21-708. ADEQUATE ASSURANCE OF PERFORMANCE.

34 (A) A CONTRACT IMPOSES AN OBLIGATION ON EACH PARTY NOT TO IMPAIR
35 THE OTHER'S EXPECTATION OF RECEIVING DUE PERFORMANCE. IF REASONABLE

1 GROUNDS FOR INSECURITY ARISE WITH RESPECT TO THE PERFORMANCE OF EITHER
2 PARTY, THE AGGRIEVED PARTY MAY:

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

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

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

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

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

20 21-709. ANTICIPATORY REPUDIATION.

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

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

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

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

35 21-710. RETRACTION OF ANTICIPATORY REPUDIATION.

36 (A) A REPUDIATING PARTY MAY RETRACT ITS REPUDIATION UNTIL ITS NEXT
37 PERFORMANCE IS DUE UNLESS THE AGGRIEVED PARTY, AFTER THE REPUDIATION,

1 HAS CANCELED THE CONTRACT, MATERIALLY CHANGED ITS POSITION, OR
2 OTHERWISE INDICATED THAT IT CONSIDERS THE REPUDIATION FINAL.

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

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

10 SUBTITLE 8. REMEDIES; GENERAL; DAMAGES; REMEDIES RELATED TO
11 PERFORMANCE.

12 GENERAL.

13 21-801. REMEDIES IN GENERAL.

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

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

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

28 21-802. CANCELLATION.

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

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

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

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

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

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

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

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

16 (A) ANY RIGHT BASED ON PREVIOUS BREACH OR PERFORMANCE;
17 AND

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

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

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

27 (A) IS WITHIN CONTRACTUAL USE TERMS;

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

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

32 (5) THE LICENSEE SHALL PAY THE LICENSOR THE REASONABLE VALUE
33 OF ANY USE AFTER CANCELLATION PERMITTED UNDER PARAGRAPH (4) OF THIS
34 SUBSECTION.

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

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

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

7 21-803. CONTRACTUAL MODIFICATION OF REMEDY.

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

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

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

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

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

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

35 21-804. LIQUIDATION OF DAMAGES.

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

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

1 (2) THE ACTUAL LOSS; OR

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

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

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

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

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

18 (D) A TERM THAT DOES NOT LIQUIDATE DAMAGES, BUT THAT LIMITS
19 DAMAGES AVAILABLE TO THE AGGRIEVED PARTY, MUST BE EVALUATED UNDER §
20 21-803 OF THIS SUBTITLE.

21 21-805. LIMITATION OF ACTIONS.

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

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

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

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

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

1 INFORMATION, OCCURS. HOWEVER, IF THE WARRANTY EXPRESSLY EXTENDS TO
2 FUTURE PERFORMANCE OF THE INFORMATION OR A COPY, THE RIGHT OF ACTION
3 ACCRUES WHEN THE PERFORMANCE FAILS TO CONFORM TO THE WARRANTY, BUT
4 NOT LATER THAN THE DATE THE WARRANTY EXPIRES.

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

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

11 (A) INFRINGEMENT OR MISAPPROPRIATION; OR

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

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

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

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

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

27 21-806. REMEDIES FOR FRAUD.

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

31 DAMAGES.

32 21-807. MEASUREMENT OF DAMAGES IN GENERAL.

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

1 FAILURE OF THE AGGRIEVED PARTY TO TAKE MEASURES REASONABLE UNDER THE
2 CIRCUMSTANCES IS ON THE PARTY IN BREACH OF CONTRACT.

3 (B) A PARTY MAY NOT RECOVER:

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

7 (2) DAMAGES THAT ARE SPECULATIVE.

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

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

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

25 21-808. LICENSOR'S DAMAGES.

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

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

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

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

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

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

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

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

16 (II) THE MARKET VALUE OF A COMMERCIALY REASONABLE
17 HYPOTHETICAL SUBSTITUTE TRANSACTION;

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

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

25 (2) CONSEQUENTIAL AND INCIDENTAL DAMAGES.

26 21-809. LICENSEE'S DAMAGES.

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

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

1 (A) WITH RESPECT TO PERFORMANCE THAT HAS BEEN ACCEPTED
2 AND THE ACCEPTANCE NOT RIGHTFULLY REVOKED, THE VALUE OF THE
3 PERFORMANCE REQUIRED LESS THE VALUE OF THE PERFORMANCE ACCEPTED AS
4 OF THE TIME AND PLACE OF ACCEPTANCE;

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

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

11 (II) THE MARKET VALUE OF THE PERFORMANCE LESS THE
12 CONTRACT FEE FOR THAT PERFORMANCE; OR

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

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

20 (2) INCIDENTAL AND CONSEQUENTIAL DAMAGES.

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

25 21-810. RECOUPMENT.

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

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

1 REMEDIES RELATED TO PERFORMANCE.

2 21-811. SPECIFIC PERFORMANCE.

3 (A) SPECIFIC PERFORMANCE MAY BE ORDERED:

4 (1) IF THE AGREEMENT PROVIDES FOR THAT REMEDY, OTHER THAN AN
5 OBLIGATION FOR THE PAYMENT OF MONEY;6 (2) IF THE CONTRACT WAS NOT FOR PERSONAL SERVICES AND THE
7 AGREED PERFORMANCE IS UNIQUE; OR

8 (3) IN OTHER PROPER CIRCUMSTANCES.

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

13 21-812. COMPLETING PERFORMANCE.

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

15 (1) IDENTIFY TO THE CONTRACT ANY CONFORMING COPY NOT ALREADY
16 IDENTIFIED IF, AT THE TIME THE LICENSOR LEARNED OF THE BREACH, THE COPY
17 WAS IN ITS POSSESSION;18 (2) IN THE EXERCISE OF REASONABLE COMMERCIAL JUDGMENT FOR
19 PURPOSES OF AVOIDING LOSS AND EFFECTIVE REALIZATION ON EFFORT OR
20 INVESTMENT, COMPLETE THE INFORMATION AND IDENTIFY IT TO THE CONTRACT,
21 CEASE WORK ON IT, RELICENSE OR DISPOSE OF IT, OR PROCEED IN ANY OTHER
22 COMMERCIALY REASONABLE MANNER; AND

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

24 (B) ON BREACH BY A LICENSEE, BOTH PARTIES REMAIN BOUND BY ALL
25 CONTRACTUAL USE TERMS, BUT THE CONTRACTUAL USE TERMS DO NOT APPLY TO
26 INFORMATION OR COPIES PROPERLY RECEIVED OR OBTAINED FROM ANOTHER
27 SOURCE.

28 21-813. CONTINUING USE.

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

30 (1) A LICENSEE THAT HAS NOT CANCELED THE CONTRACT MAY
31 CONTINUE TO USE THE INFORMATION AND INFORMATIONAL RIGHTS UNDER THE
32 CONTRACT. IF THE LICENSEE CONTINUES TO USE THE INFORMATION OR
33 INFORMATIONAL RIGHTS, THE LICENSEE IS BOUND BY ALL TERMS OF THE
34 CONTRACT, INCLUDING CONTRACTUAL USE TERMS, OBLIGATIONS NOT TO COMPETE,
35 AND OBLIGATIONS TO PAY CONTRACT FEES.

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

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

6 21-814. DISCONTINUING ACCESS.

7 ~~(A)~~ ON SUBJECT TO SUBSECTION (B) OF THIS SECTION, ON MATERIAL BREACH
8 OF AN ACCESS CONTRACT OR IF THE AGREEMENT SO PROVIDES, A PARTY MAY
9 DISCONTINUE ALL CONTRACTUAL RIGHTS OF ACCESS OF THE PARTY IN BREACH AND
10 DIRECT ANY PERSON THAT IS ASSISTING THE PERFORMANCE OF THE CONTRACT TO
11 DISCONTINUE ITS PERFORMANCE.

12 (B) IN AN ACCESS CONTRACT THAT REQUIRES PERIODIC PAYMENTS OVER
13 TIME, BEFORE OR AT THE TIME OF DISCONTINUATION OF ALL CONTRACTUAL
14 RIGHTS OF ACCESS, A PARTY SHALL NOTIFY THE PARTY IN BREACH IN A RECORD OF:

15 (1) THE DISCONTINUATION OF ALL CONTRACTUAL RIGHTS OF ACCESS
16 IN THE ACCESS CONTRACT;

17 (2) THE NATURE OF THE CLAIMED BREACH THAT ENTITLES THE PARTY
18 TO DISCONTINUE ALL CONTRACTUAL RIGHTS OF ACCESS IN THE ACCESS CONTRACT;

19 (3) THE OPPORTUNITY TO CURE AS PROVIDED UNDER § 21-703 OF THIS
20 TITLE; AND

21 (4) INFORMATION TO ALLOW FOR COMMUNICATION CONCERNING THE
22 CLAIMED BREACH, INCLUDING THE PARTY'S:

23 (I) ADDRESS AND TELEPHONE NUMBER; AND

24 (II) 1. FACSIMILE NUMBER; OR

25 2. E-MAIL ADDRESS.

26 21-815. RIGHT TO POSSESSION AND PREVENT USE.

27 (A) ON CANCELLATION OF A LICENSE, THE LICENSOR HAS THE RIGHT:

28 (1) TO POSSESSION OF ALL COPIES OF THE LICENSED INFORMATION IN
29 THE POSSESSION OR CONTROL OF THE LICENSEE AND ANY OTHER MATERIALS
30 PERTAINING TO THAT INFORMATION WHICH BY CONTRACT ARE TO BE RETURNED OR
31 DELIVERED BY THE LICENSEE TO THE LICENSOR; AND

32 (2) TO PREVENT THE CONTINUED EXERCISE OF CONTRACTUAL AND
33 INFORMATIONAL RIGHTS IN THE LICENSED INFORMATION UNDER THE LICENSE.

1 (B) EXCEPT AS OTHERWISE PROVIDED IN § 21-814 OF THIS SUBTITLE, A
2 LICENSOR MAY EXERCISE ITS RIGHTS UNDER SUBSECTION (A) OF THIS SECTION
3 WITHOUT JUDICIAL PROCESS ONLY IF THIS CAN BE DONE:

4 (1) WITHOUT A BREACH OF THE PEACE;

5 (2) WITHOUT A FORESEEABLE RISK OF PERSONAL INJURY OR
6 SIGNIFICANT PHYSICAL DAMAGE TO INFORMATION OR PROPERTY OTHER THAN THE
7 LICENSED INFORMATION; AND

8 (3) IN ACCORDANCE WITH § 21-816 OF THIS SUBTITLE.

9 (C) IN A JUDICIAL PROCEEDING, THE COURT MAY ENJOIN A LICENSEE IN
10 BREACH OF CONTRACT FROM CONTINUED USE OF THE INFORMATION AND
11 INFORMATIONAL RIGHTS AND MAY ORDER THE LICENSOR OR A JUDICIAL OFFICER
12 TO TAKE THE STEPS DESCRIBED IN § 21-618 OF THIS TITLE.

13 (D) A PARTY HAS A RIGHT TO AN EXPEDITED JUDICIAL HEARING ON A
14 REQUEST FOR PREJUDGMENT RELIEF TO ENFORCE OR PROTECT ITS RIGHTS UNDER
15 THIS SECTION.

16 (E) THE RIGHT TO POSSESSION UNDER THIS SECTION IS NOT AVAILABLE TO
17 THE EXTENT THAT THE INFORMATION, BEFORE BREACH OF THE LICENSE AND IN
18 THE ORDINARY COURSE OF PERFORMANCE UNDER THE LICENSE, WAS SO ALTERED
19 OR COMMINGLED THAT THE INFORMATION IS NO LONGER IDENTIFIABLE OR
20 SEPARABLE.

21 (F) A LICENSEE THAT PROVIDES INFORMATION TO A LICENSOR SUBJECT TO
22 CONTRACTUAL USE TERMS HAS THE RIGHTS AND IS SUBJECT TO THE LIMITATIONS
23 OF A LICENSOR UNDER THIS SECTION WITH RESPECT TO THE INFORMATION IT
24 PROVIDES.

25 21-816. LIMITATIONS ON ELECTRONIC SELF-HELP.

26 (A) IN THIS SECTION, "ELECTRONIC SELF-HELP" MEANS THE USE OF
27 ELECTRONIC MEANS TO EXERCISE A LICENSOR'S RIGHTS UNDER § 21-815(B) OF THIS
28 SUBTITLE.

29 (B) NOTWITHSTANDING THE PROVISIONS OF THIS SECTION, ELECTRONIC
30 SELF-HELP IS PROHIBITED IN MASS-MARKET TRANSACTIONS.

31 (C) PRIOR TO CANCELLATION OF A LICENSE IN WHICH THE PARTIES HAVE
32 AGREED TO PERMIT THE USE OF ELECTRONIC SELF-HELP, THE LICENSOR SHALL
33 PROVIDE A LICENSEE WITH THE OPPORTUNITY TO CURE THE CLAIMED BREACH
34 GIVING RISE TO THE CANCELLATION AS PROVIDED IN § 21-703 OF THIS TITLE.

35 ~~(B)~~ (D) ON CANCELLATION OF A LICENSE, ELECTRONIC SELF-HELP IS NOT
36 PERMITTED, EXCEPT AS PROVIDED IN THIS SECTION.

1 ~~(C)~~ (E) IF THE PARTIES AGREE TO PERMIT ELECTRONIC SELF-HELP, A
2 LICENSEE SHALL SEPARATELY MANIFEST ASSENT TO A TERM AUTHORIZING USE OF
3 ELECTRONIC SELF-HELP. THE TERM MUST:

4 (1) PROVIDE FOR NOTICE OF EXERCISE AS PROVIDED IN SUBSECTION
5 ~~(D)~~ (F) OF THIS SECTION;

6 (2) STATE THE NAME OF THE PERSON DESIGNATED BY THE LICENSEE
7 TO WHICH NOTICE OF EXERCISE MUST BE GIVEN AND THE MANNER IN WHICH
8 NOTICE MUST BE GIVEN AND PLACE TO WHICH NOTICE MUST BE SENT TO THAT
9 PERSON; AND

10 (3) PROVIDE A SIMPLE PROCEDURE FOR THE LICENSEE TO CHANGE THE
11 DESIGNATED PERSON OR PLACE.

12 ~~(D)~~ (F) BEFORE RESORTING TO ELECTRONIC SELF-HELP AUTHORIZED BY A
13 TERM OF THE LICENSE, THE LICENSOR SHALL GIVE NOTICE IN A RECORD TO THE
14 PERSON DESIGNATED BY THE LICENSEE STATING:

15 (1) THAT THE LICENSOR INTENDS TO RESORT TO ELECTRONIC
16 SELF-HELP AS A REMEDY ON OR AFTER ~~45~~ 30 DAYS FOLLOWING RECEIPT BY THE
17 LICENSEE OF THE NOTICE;

18 (2) THE NATURE OF THE CLAIMED BREACH THAT ENTITLES THE
19 LICENSOR TO RESORT TO SELF-HELP; AND

20 (3) THE NAME, TITLE, AND ADDRESS, INCLUDING DIRECT TELEPHONE
21 NUMBER, FACSIMILE NUMBER, OR E-MAIL ADDRESS, TO WHICH THE LICENSEE MAY
22 COMMUNICATE CONCERNING THE CLAIMED BREACH.

23 ~~(E)~~ (G) A LICENSEE MAY RECOVER DIRECT AND INCIDENTAL DAMAGES
24 CAUSED BY WRONGFUL USE OF ELECTRONIC SELF-HELP. THE LICENSEE MAY ALSO
25 RECOVER CONSEQUENTIAL DAMAGES FOR WRONGFUL USE OF ELECTRONIC
26 SELF-HELP, WHETHER OR NOT THOSE DAMAGES ARE EXCLUDED BY THE TERMS OF
27 THE LICENSE, IF:

28 (1) WITHIN THE PERIOD SPECIFIED IN SUBSECTION ~~(D)(4)~~ (F)(1) OF THIS
29 SECTION, THE LICENSEE GIVES NOTICE TO THE LICENSOR'S DESIGNATED PERSON
30 DESCRIBING IN GOOD FAITH THE GENERAL NATURE AND MAGNITUDE OF DAMAGES;

31 (2) THE LICENSOR HAS REASON TO KNOW THE DAMAGES OF THE TYPE
32 DESCRIBED IN SUBSECTION ~~(F)~~ (H) OF THIS SECTION MAY RESULT FROM THE
33 WRONGFUL USE OF ELECTRONIC SELF-HELP; OR

34 (3) THE LICENSOR DOES NOT PROVIDE THE NOTICE REQUIRED IN
35 SUBSECTION ~~(D)~~ (F) OF THIS SECTION.

36 ~~(F)~~ (H) EVEN IF THE LICENSOR COMPLIES WITH SUBSECTIONS ~~(C)~~ (E) AND
37 ~~(D)~~ (F) OF THIS SECTION, ELECTRONIC SELF-HELP MAY NOT BE USED IF THE
38 LICENSOR HAS REASON TO KNOW THAT ITS USE WILL RESULT IN SUBSTANTIAL

1 INJURY OR HARM TO THE PUBLIC HEALTH OR SAFETY OR GRAVE HARM TO THE
 2 PUBLIC INTEREST SUBSTANTIALLY AFFECTING THIRD PERSONS NOT INVOLVED IN
 3 THE DISPUTE.

4 ~~(G)~~ (I) A COURT OF COMPETENT JURISDICTION OF THIS STATE SHALL GIVE
 5 PROMPT CONSIDERATION TO A PETITION FOR INJUNCTIVE RELIEF AND MAY ENJOIN,
 6 TEMPORARILY OR PERMANENTLY, THE LICENSOR FROM EXERCISING ELECTRONIC
 7 SELF-HELP EVEN IF AUTHORIZED BY A LICENSE TERM OR ENJOIN THE LICENSEE
 8 FROM MISAPPROPRIATION OR MISUSE OF COMPUTER INFORMATION, AS MAY BE
 9 APPROPRIATE, UPON CONSIDERATION OF THE FOLLOWING:

10 (1) GRAVE HARM OF THE KINDS STATED IN SUBSECTION ~~(F)~~ (H) OF THIS
 11 SECTION, OR THE THREAT THEREOF, WHETHER OR NOT THE LICENSOR HAS REASON
 12 TO KNOW OF THOSE CIRCUMSTANCES;

13 (2) IRREPARABLE HARM OR THREAT OF IRREPARABLE HARM TO THE
 14 LICENSEE OR LICENSOR;

15 (3) THAT THE PARTY SEEKING THE RELIEF IS MORE LIKELY THAN NOT
 16 TO SUCCEED UNDER ITS CLAIM WHEN IT IS FINALLY ADJUDICATED;

17 (4) THAT ALL OF THE CONDITIONS TO ENTITLE A PERSON TO THE
 18 RELIEF UNDER THE LAWS OF THIS STATE HAVE BEEN FULFILLED; AND

19 (5) THAT THE PARTY THAT MAY BE ADVERSELY AFFECTED IS
 20 ADEQUATELY PROTECTED AGAINST LOSS, INCLUDING A LOSS BECAUSE OF
 21 MISAPPROPRIATION OR MISUSE OF COMPUTER INFORMATION, THAT IT MAY SUFFER
 22 BECAUSE THE RELIEF IS GRANTED UNDER THIS TITLE.

23 ~~(H)~~ (J) BEFORE BREACH OF CONTRACT, RIGHTS OR OBLIGATIONS UNDER
 24 THIS SECTION MAY NOT BE WAIVED OR VARIED BY AN AGREEMENT, ~~BUT EXCEPT~~
 25 THAT THE PARTIES MAY PROHIBIT USE OF ELECTRONIC SELF-HELP AND THE
 26 PARTIES, IN THE TERM REFERRED TO IN SUBSECTION ~~(G)~~ (E) OF THIS SECTION, MAY
 27 SPECIFY ADDITIONAL PROVISIONS MORE FAVORABLE TO THE LICENSEE.

28 ~~(I)~~ (K) THIS SECTION DOES NOT APPLY IF THE LICENSOR OBTAINS
 29 POSSESSION OF A COPY WITHOUT A BREACH OF THE PEACE AND THE ELECTRONIC
 30 SELF-HELP IS USED SOLELY WITH RESPECT TO THAT COPY.

31 (L) THIRD PERSONS HARMED BY THE WRONGFUL USE OF ELECTRONIC
 32 SELF-HELP UNDER THIS SECTION MAY RECOVER DAMAGES FROM THE LICENSOR TO
 33 THE SAME EXTENT AS RECOVERABLE BY THE LICENSEE.

34 SECTION 2. AND BE IT FURTHER ENACTED, That this Act does not affect
 35 the digital signature requirements of the digital signature pilot program established
 36 under § 8-504 of the State Government Article.

37 SECTION 3. AND BE IT FURTHER ENACTED, That if any provision of this
 38 Act or the application thereof to any person or circumstance is held invalid for any
 39 reason in a court of competent jurisdiction, the invalidity does not affect other

1 provisions or any other application of this Act which can be given effect without the
2 invalid provision or application, and for this purpose the provisions of this Act are
3 declared severable.

4 SECTION 4. AND BE IT FURTHER ENACTED, That a presently existing
5 obligation or contract right may not be impaired in any way by this Act.

6 SECTION 5. AND BE IT FURTHER ENACTED, That this Act shall be
7 construed only prospectively and may not be applied or interpreted to have any effect
8 on or application to any right of action that accrues before the effective date of this
9 Act.

10 SECTION 6. AND BE IT FURTHER ENACTED, That:

11 (a) There is a Joint Technology Oversight Committee.

12 (b) The Committee consists of the following ten members:

13 (1) five members of the Senate of Maryland, appointed by the President
14 of the Senate; and

15 (2) five members of the House of Delegates, appointed by the Speaker.

16 (c) The members of the Committee serve at the pleasure of the presiding
17 officer who appointed them.

18 (d) The President and the Speaker shall jointly appoint a Senator and a
19 Delegate to serve as co-chairmen who shall alternate in serving as the presiding
20 chairman of the Committee each year.

21 (e) (1) The Committee shall:

22 (i) review the implementation of the Maryland Uniform Computer
23 Information Transactions Act in this State; and

24 (ii) recommend to the Governor and the General Assembly any
25 appropriate changes in State law based on the findings of the Committee.

26 (2) The Committee may examine and evaluate additional technology
27 related issues as designated by the co-chairmen of the Committee.

28 (f) The Committee shall report its findings and recommendations to the
29 Governor, the Legislative Policy Committee, the Senate Finance Committee, and the
30 House Economic Matters Committee on or before December 1 of each year.

31 SECTION 7. AND BE IT FURTHER ENACTED, That Section 6 of this Act shall
32 take effect July 1, 2000. It shall remain effective for a period of 5 years and, at the end
33 of June 30, 2005, with no further action required by the General Assembly, Section 6
34 of this Act shall be abrogated and of no further force and effect.

1 SECTION ~~6.~~ 8. AND BE IT FURTHER ENACTED, That this Act shall take
2 effect October 1, 2000.