

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

SPECIAL TYPES OF CONTRACTS.

21-611. ACCESS CONTRACTS.

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

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

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

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

(4) ACCESS MUST BE AVAILABLE:

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

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

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

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

(2) CAUSED BY:

(A) SCHEDULED DOWNTIME;

(B) REASONABLE NEEDS FOR MAINTENANCE;

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