

21-210. TERMS OF CONTRACT FORMED BY CONDUCT.

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

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

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

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

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

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

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

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