

EXHIBIT C – Draft Federal Legislation Enacting the Convention as Federal Law with  
Exemption from Preemption Provision - 10-23-09

Dear,

Herewith for your consideration is legislation to implement the provisions of the United Nations Convention on the Use of Electronic Communications in International Contracts (the UN Convention) currently before the United States Senate for its advice and consent. In the event that the UN Convention is ratified by the United States Senate as a non-self-executing treaty, the attached legislation will be required to implement the terms of the UN Convention.

Respectfully submitted,

### IMPLEMENTING LEGISLATION

*[The Electronic Signatures in Global and National Commerce Act, 15 USC § 7001 et seq, is amended by adding the following Section 7001A: ]*

#### **Electronic Contracting Provisions for International Business Transactions**

- (a) In General – Unless and to the extent otherwise agreed between parties to a transaction, the terms and provisions of the Convention shall apply to electronic communications which are covered by the Convention in accordance with the terms of Chapter 1 of the Convention.
- (b) Exclusions -- The terms and provisions of the Convention shall not apply:
  - (i) to electronic communications excluded from the Convention by Article 2 of the Convention, including electronic communications relating to contracts concluded for personal, family or household purposes; or
  - (ii) to electronic communications related to, or used in
    - 1. A contract or other record to the extent it is governed by
      - a. A law governing the creation and execution of wills, codicils, or testamentary trusts;
      - b. A law governing adoption, divorce, or other matters relating to family law; or
      - c. The Uniform Commercial Code, as in effect in any jurisdiction in the United States, other than Sections 1-107 (Revised section 1-306) and 1-206 (deleted from Revised Article 1) and Articles 2 and 2A.
    - 2. Court orders or notices, or official, court documents (including briefs, pleadings and other writings) required to be executed in connection with court proceedings;
    - 3. Any notice of
      - a. The cancellation or termination of utility services (including water, heat, and power);
      - b. Default, acceleration, repossession, foreclosure, or eviction, or the right to cure, under a credit agreement secured by, or rental agreement for, a primary residence of an individual;

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- c. The cancellation or termination of health insurance or benefits or life insurance benefits (excluding annuities);
    - d. Recall of a product, or material failure of a product, that risks endangering health or safety.
  - 4. Any document required to accompany any transportation or handling of hazardous materials, pesticides, or other toxic or dangerous materials.
- (c) Exception for Transactions covered by the UETA – Unless and to the extent otherwise agreed between parties to a transaction, to the extent that an electronic communication would otherwise be governed by a State statute that constitutes an enactment or adoption of, or is consistent with, the Uniform Electronic Transactions Act as approved and recommended by the National Conference of Commissioners on Uniform State Laws in 1999 (the “UETA”), the terms and provisions of such statute shall apply to the electronic communication. Notwithstanding the foregoing sentence, no limitation on party autonomy imposed under such State statute shall be given effect with respect to an electronic communication that would otherwise be governed by the Convention under subsection (a).
- (D) Definition of Convention – As used in this Section, the term “Convention” means the 2005 United Nations Convention on the Use of Electronic Communications in International Contracts, ratified by the United States in 2009.

EXPLANATORY NOTE

Through this proposed legislation the Convention is implemented as the law applicable to electronic communications covered by the Convention. The exclusions in subsection (b) track the exclusions in the federal E-Sign legislation as well as the exclusions from the UETA. The exclusions have been duplicated here to assure that the scope of coverage of the law applicable in domestic transactions (whether E-Sign or UETA) and international business transactions (under this legislation) is parallel. Subsection (c) preserves the application of State law, in the form of the UETA or legislation consistent with the UETA through an exception to preemption provision that parallels the exception to preemption provision in existing E-Sign. The principal discrepancy between the UETA and the Convention relates to the question of UETA limits on party autonomy which are specifically excluded from the preemption exception, and therefore operate to preserve party autonomy in contracts governed by the Convention.