

**EXHIBIT B – Draft Federal Legislation Enacting the Convention as Federal Law with Express Scope of Preemption Provision**

**IMPLEMENTING LEGISLATION**

*An Act*

To implement the United Nations Convention on the Use of Electronic Communications in International Contracts.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**Section 1. Short Title.**

This Act may be cited as “International Electronic Commerce Convention Implementation Act of 20\_\_.”

**Section 2. Findings and Purpose.**

(a) **Findings**

(1) The ability to employ electronic communications in international contractual transactions is essential;

(2) Laws that promote predictable enforcement of transactions employing electronic communications increase the value of such transactions, support responsible domestic and international commercial practice and reduce commercial risk;

(3) The United Nations Convention on the Use of Electronic Communications in International Contracts achieves these objectives;

(3) With few exceptions, the terms of the Convention substantively are consistent with United States domestic legislation as enacted by the Electronic Signatures in Global and National Commerce Act of 2000 and in the States by the Uniform Electronic Transactions Act;

(4) Representatives of Federal and State law bodies in the United States as well as representative of global commercial interests were leaders in the development of the Convention.

(5) Implementation of the Convention by the United States would further the uniformity and harmonization of international commercial law.

(b) **Purpose.**

The purpose of this Act is to implement the United Nations Convention on the Use of Electronic Communications in International Contracts in the United States.

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**Section 3. Definitions.** In this Act,

- (a) “Convention” means the United Nations Convention on the Use of Electronic Communication in International Contracts, a true and correct copy of which is attached to this Act as Appendix A.
- (b) “Data Messages” means information, generated, sent, received or stored by electronic, magnetic, optical or similar means, including, but not limited to, electronic data interchange, electronic mail, telegram, telex, or telecopy.
- (c) “Electronic Communication” means any communication that the parties make by means of data messages.
- (d) “E-Sign” means the Electronic Signatures in Global and National Commerce Act of 2000.
- (e) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.
- (f) “UETA” or “Uniform Electronic Transactions Act,” means the Official 1999 Text of the Uniform Electronic Transactions Act, as approved and recommended for enactment in all the States by the National Conference of Commissioners on Uniform State Laws in 1999.

**Section 4. Scope.** Notwithstanding any other provision of federal or state law, this Act applies to electronic communications that are within the scope of the Convention in accordance with the terms of Chapter 1 of the Convention, and not otherwise excluded pursuant to Declarations taken by the United States of America pursuant to Article 19 of the Convention.

**Section 5. Implementation of the Convention in the United States of America.**

Unless and to the extent otherwise agreed between parties to a transaction, the terms and provisions of the Convention shall apply to electronic communications.

**Section 6. Scope of preemption.**

This chapter and the terms of the Convention shall preempt otherwise applicable state or federal law solely to the extent that an electronic communication is used in connection with a transaction between parties whose places of business are in different countries as determined under the Convention, and nothing contained in this chapter or the Convention shall be construed as indicating an intent on the part of Congress to occupy the field in which any provisions of this chapter or the Convention operate. It is expressly recognized by Congress that the general principles applicable under the Convention are consistent with the general principles applicable

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under (i) the UETA and (ii) E-Sign, and that issues not answered under the Convention shall be settled consistently with the general principles applicable under the UETA and E-Sign.

**[Section 7. Exclusions**

- (1) This Chapter and the terms of the Convention shall apply to electronic communications related to, or used in a contract or other record to the extent it is governed by Sections 1-107 (Revised Section 1-306) and 1-206 (deleted from Revised Article 1), Article 2 (Sales of Goods), or Article 2A (Lease of Goods) of the Uniform Commercial Code, as in effect in any jurisdiction in the United States of America.
- (2) This Chapter and the terms of the Convention shall not apply:
  - (a) 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
  - (b) 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;
      - 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.]

LEGISLATIVE NOTE: Section 7 tracks the specific inclusions and exclusions found in the proposed declarations in the Letter of Submittal (Exhibit A). These provisions are included to track the existing exclusions from E-Sign and the UETA. The first paragraph is included to assure that parties outside the United States are fully aware that the Convention will apply to validate electronic communications used in connection with international contracts for the sale

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or lease of goods that may be governed by the Uniform Commercial Code. The inclusion of these provisions in this legislation is intended to provide greater notice to parties than simply leaving the exclusions as part of the Declarations made by the United States upon ratification of the Convention. However, the Convention probably does not apply to the matters that subsection (2) excludes and express reference to these matters in this legislation could raise an inference that the United States believes that these types of communications are not already outside the scope of the Convention. It may not be desirable to create this negative inference. The question of whether to include Section 7 in this legislation is left to Congress.

EXPLANATORY NOTE

Through this proposed legislation the Convention is implemented as the law applicable to electronic communications covered by the Convention.

Section 6 makes clear the Congress' intent that the legislation adopting the Convention as applicable law to the limited transactions included in the Scope of the Convention is not intended to govern or preempt any other state or federal law.

The exclusions included in Section 7 are consistent with the exclusions noted in the United States Declarations in Exhibit A, the Letter of Submittal. These exclusions track the exclusions in E-Sign as well as the exclusions from the UETA. They are intended 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.