

EXHIBIT C – Draft Federal Legislation Enacting the Convention as Federal Law with Reference to UETA

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;
- (4) Because rules validating the employment of electronic media on an equal legal footing with tangible media as provided by the Convention are already embodied in the text of the Uniform Electronic Transactions Act, implementation of the Convention may be accomplished through application of the Uniform Electronic Transactions Act.
- (5) 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.
- (6) 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 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.

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

Unless and to the extent otherwise agreed between parties to a transaction, and notwithstanding Section 6 below, the terms and provisions of the Convention shall apply to electronic communications within the scope of the Convention.

Section 6. Application of UETA .

Subject to Section 5, if (i) but for Section 5, the law governing the efficacy of an electronic communication, or action taken with respect thereto, between parties whose places of business are in different nations would be the law of a State, and (ii) the UETA is in force in that State, then an electronic communication, or action taken with respect thereto, that is effective under UETA is effective under the Convention.¹

¹ **Section 5. Implementation of the Convention in the United States of America.**

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[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

Unless and to the extent otherwise agreed between parties to a transaction, and except as otherwise provided in Section 6 below, the terms and provisions of the Convention shall apply to electronic communications within the scope of the Convention.

Section 6. Implementation through UETA.

To the extent that a State statute, regulation or other rule constitutes an enactment or adoption of the UETA, the Convention shall be implemented by application of such State statute, regulation, or other rule, except that (i) any exception to the scope of the UETA enacted by a State under section 3(b)(4) of the UETA shall be preempted to the extent such exception is inconsistent with this subchapter or the Declarations taken by the United States of America with regard to the scope of the Convention, and (ii) any provision of the UETA limiting party autonomy shall be preempted to the extent such limitation is inconsistent with the terms of the Convention.

EXPLANATORY NOTE

This alternative to Sections 5 and 6 preserves the application of State law, in the form of the UETA by providing that such state enactment of the UETA shall serve to implement the Convention in a transaction that would otherwise be governed by the laws of that State. Though not worded as an exception to preemption, this method of implementation follows 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 application of the state UETA under Section 6, and therefore operate to preserve party autonomy in contracts governed by the Convention. Unlike the principal Sections 5 and 6, this provision would result in the state enactment of UETA being the law applicable to the particular transaction rather than the terms of the Convention. Under the principal provision, the terms of the Convention remain the applicable law, but the terms of consistent UETA provide the standard for determining the efficacy of a communication or action under the Convention.

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- 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 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 recognizes the substantive congruity of the Convention and UETA as promulgated by the Uniform Law Conference. Section 5 makes clear that the Convention applies notwithstanding anything to the contrary in Section 6, e.g., inconsistent provision in

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uniform UETA such as restrictions on party autonomy. However, subject to the overriding applicability of the Convention, Section 6 provides that to the extent an electronic communication or other act related to the electronic communication is effective under a state enactment of 1999 UETA, then such communication or act will be effective under the Convention. To the extent that a state has enacted UETA with provisions that vary in substance from the Official Text of UETA promulgated by the Uniform Law Conference, those variations are not within Section 6 and would not be relevant to a determination of the efficacy of the communication or action under the Convention. In addition, to the extent the UETA has provisions inconsistent with the Convention the provision in Section 5 enacting the Convention would override the provisions in Section 6. Section 6 may be viewed as a sort of “safe harbor” for establishing the efficacy of electronic communications and related actions that are made effectual under the UETA and therefore should be found to be effectual under the Convention.

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.