



510 Contracting in Cyberspace

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Gary Hood is general counsel for Transora, the leading global business-to-business electronic marketplace for the consumer packaged goods industry. He has primary responsibility for negotiating and drafting Transora's customer and vendor contracts and managing Transora's legal affairs.

Prior to joining Transora, Mr. Hood was a senior associate in the Information Technology practice group at Piper Marbury Rudnick & Wolfe, in Chicago, where he focused his practice on structuring, negotiating, and drafting contracts and advising clients in the areas of ecommerce, software licensing, software development, outsourcing, strategic alliances, joint ventures, and various other business relationships.

Mr. Hood received his JD from the University of Illinois College of Law.

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Gerald Jenkins heads the Information Technology and E-Commerce Law Group at Goldberg, Kohn, Bell, Black, Rosenbloom & Moritz, Ltd. in Chicago. Mr. Jenkins works closely with both web-based and traditional companies that deploy ecommerce and internet strategies. He advises clients on a variety of electronic security and privacy issues, electronic contracting, web site development, intellectual property, and numerous data ownership issues. Mr. Jenkins has negotiated and documented a variety of transactions, including software licensing and development agreements, technology transfer agreements, advertising agreements between content providers and Web hosts, and outsourcing agreements. He has drafted policies governing email, phone mail, and internet access, and he currently advises clients on the impact of such policies on emerging corporate governance issues.

As adjunct professor of law at John Marshall Law School, Mr. Jenkins has taught courses on the security and privacy aspects of electronic data flows and is currently teaching a course on ecommerce.

Mr. Jenkins is a member of the Illinois Education Funding Advisory Board Revenue Source Working Group; president of the Board of the Chicago Charter School Management, a nonprofit educational management company; and a past president of Highland Park School District #108.

Mr. Jenkins received his BA with high honors from Eastern Illinois University and his law degree, *cum laude*, from Harvard University School of Law.

James M. Jordan, III

James M. Jordan III is the senior ebusiness counsel and chief privacy leader for GE Power Systems, a division of General Electric Company with \$22 billion on annual revenues and operations worldwide. His responsibilities include providing legal counsel for over 500 "digitization" projects and programs, including GE PartsEdge, an ecommerce extranet site with over \$2B annually in

turbine parts sales. He deals regularly with electronic contracting, personal data protection laws, export controls, software licensing, intellectual property, and online marketing and advertising.

Prior to joining GE Power Systems, Mr. Jordan was a partner in the Atlanta office of the law firm Alston & Bird, LLP, advising clients on ecommerce and intellectual property law matters. He was one of 110 U.S. lawyers listed in "An International Who's Who of Internet & E-Commerce Lawyers." He is a registered patent attorney and served as a nuclear submarine officer in the U.S. Navy.

Mr. Jordan serves on the Executive Committee of the Technology Law Section of the Georgia Bar Association, and is a member of the Intellectual Property Law Section. He volunteers on projects sponsored by the GE Elfun Society, including most recently the construction of two Habitat for Humanity homes in Atlanta.

Mr. Jordan received a BS and a JD from the University of Georgia.

Erik J. Phelps

Erik J. Phelps is the associate general counsel for Lands' End, Inc. in Dodgeville, WI. His duties include providing legal counsel to all of the various business units within the international direct merchant of apparel, on a wide variety of substantive issues. Much of his time is spent working with Lands' End's internet, information technology, and direct marketing areas. He advises these groups on a wide range of issues, including software and content licensing, information technology acquisition, as well as data privacy and general internet-related legal issues.

Before going in-house at Lands' End, Mr. Phelps was an associate and a cochair of the eBusiness group at Michael Best & Friedrich in Madison, WI, and, prior to that, an associate in the Media and Information Technology Group at Dow Lohnes & Albertson in Washington, DC.

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Legal Issues Affecting Electronic Contracting

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I. Business Issues

A. Cybercontracts fall into two basic categories:

1. Significant contracts that form the basis of key business relationships
 - (a) These typically fall into the B2B area.
 - (b) It is relatively easy to enter into a written agreement in advance that resolves the issues that may arise in connection with electronic business processes.
 - (c) On the other hand, many organizations that currently do almost of their business using EDI datasets fail to take the trouble to enter into trading partner agreements (written or otherwise). It is quite possible that these organizations continue the same habits as they move to other types of electronic business practices and procedures.
 - (d) An initial written contract may be essential for large custom arrangements.
 - (e) Secure encrypted communications and strong authentication are possible.
2. Large numbers of smaller contracts that are concluded in real time
 - (a) This typically includes B2C, but may also include a number of B2B transactions that are not mission critical.
 - (b) Entering into a written contract in advance may be impossible in many B2C transactions because of expense and consumer expectations.
 - (c) Strong authentication may be cost-prohibitive.
 - (d) Consumer protection concepts will apply.

- B. Tie-in of cybercontracting models to back-end systems
1. If the owner of a Web site implements a click through agreement (*i.e.*, a user cannot go to a particular page unless the user first clicks "I agree" on a dialog box), is the Web site owner's system capable of recording the user's mouse click in a way that can be proven in court later?
 - (a) What if the owner changes operating systems and the mouse-click data is no longer available?
 - (b) What if software versions change so dramatically that data must be exported from one database to another?
 - (c) Will the owner of the Web site be able to prove what version of dialog box existed at the time of the click through?
 - (d) Would it make a difference if the Web site owner contracts with an outside entity to host the Web site? What if the outside entity refuses to cooperate? Demands outrageous fees to testify? Files bankruptcy?
 - (e) This is an area where careful business procedures and full documentation are essential. It also suggests that once an organization depends on cybercontracting approaches, the legal department should be involved in upgrades and software changes to ensure that essential data is neither lost nor rendered inaccessible.

II. Contract Concepts

- A. Contracting parties, legislatures and courts are struggling with electronic analogs of existing paper-based business processes. Examples of electronic processes include:
1. Telexes
 2. Faxes
 3. E-mail
 4. Web forms
 5. Shrink-wrap agreements
 6. Click-wrap agreements
 7. Click-through agreements
 8. Electronically signed contracts

9. An increasingly common phenomenon is a person-to-machine or a machine-to-machine contract, *i.e.*, a contract concluded entirely by electronic agents.
- (a) Is the employer of the tool (electronic agent) bound by an agreement that the agent concludes?
 - (b) If the electronic agent does not do what its developer said it would do, is the employer of the tool still bound? Is the developer bound? Is the developer bound notwithstanding disclaimer language in the contract between the developer and the employer of the tool?
 - (c) When does the active party who works with an agent have the ability to undo a transaction?
 - (d) See relevant UCITA provisions:
 - (i) Sections 112 and 206
 - (ii) Sections 102(a)(27) and 213(a)-(c)
 - (A) Defines electronic agent
 - (B) Attribution
 - (iii) Sections 2(2), 2(3), 2(5), 2(6) and 9
 - (A) Critical issue is the lack of a human actor
 - (B) Attribution
 - (e) See E-Sign Sections 101(h) and 106(3).
 - (f) Types of bots or electronic agents
 - (i) Web crawlers create indices that are used to run search engines.
 - (ii) Data mining bots scan Web pages to find specific information (*e.g.*, possible infringement of trademarks or copyrights).
 - (iii) Online auction services aid bidders, but have led to litigation when the providers of the services do not have a pre-existing relationship with the auction service.
 - (iv) Online retailers provide a number of shopping aids.
 - (v) Meta-search engines invoke multiple searches on a number of search engines and display the combined results.

- (vi) Person-to-person payment systems sometimes display certain intelligent agent capabilities.
- (vii) Viruses are an insidious form agent.
- (g) Features of bots or intelligent agents
 - (i) Reactive—reacts to changes in the environment.
 - (ii) Autonomous—exercises control over its own actions.
 - (iii) Goal-oriented—seeks purposeful activity.
 - (iv) Temporally continuous—is a continually running process.
 - (v) Communicative—communicates with people and other bots.
 - (vi) Learning—changes its behavior on the basis of past experience.
 - (vii) Mobile—transports itself from one machine to another.
 - (viii) Many bots display a number of the above characteristics.
- (h) Standards for bots
 - (i) Existing
 - (A) Standard for Robot Exclusion (SRE)
 - (B) Not all bots are SRE-compliant
 - (ii) Other legal issues
 - (A) Scope of bot authority
 - (B) Liability for failure to act
 - (C) Consequences of a bot that commits a tort
 - (iii) While SRE is a first step for regulation bot behavior, no standards exist for more generalized intelligent agent behavior.
 - (A) If a bot is designed to run on the other party's system, what if the other party reviews the bot's source code to learn the bot's bidding and negotiating strategy?
 - (B) If a bot is designed to run in a neutral space, what if the owner of the neutral space makes a mistake, causing contracts

to be concluded at the wrong terms? Is the owner of the neutral space liable? What if all bot owners are required to sign full disclaimers before they enter the space? What if nothing is signed, but the acceptable use policy for the space contains a disclaimer?

- (i) See the article by Lawrence B. Solum, "Legal Personhood for Artificial Intelligences," 70 *N. C. L. Rev.* 1231 (1992).
10. Mass-market licenses—UCITA Sections 102(a)(44), 102(a)(45) and 209
- (a) Exception to enforceability for unconscionability
 - (b) Must be able to remove and send back without cost.
 - (c) Must have reasonable cause to know that provisions are there.
11. Payment mechanisms
- (a) Under the Fair Credit Billing Act, 15 USC 1666-1666j, chargebacks are required in the event of a dispute over credit card purchases.
 - (b) This is not the case with mechanisms like PayPal.
12. Online advertising—FTC Dot Com Disclosures 4-14 (2000)
13. Auctions
- (a) Auctioneer was traditionally the agent of the seller, but now takes on some roles for the buyer.
 - (b) Historically, auctioneers were licensed by states.
 - (c) Auction fraud
 - (i) Bid shilling—false identities are used to run up bids.
 - (ii) Bid shielding—a fake high bid is made and then withdrawn, letting the second highest (and relatively low) bid win.
 - (iii) Goods are not delivered.
 - (iv) Payment is not made or is made with a stolen credit card.
 - (v) Rating systems can be manipulated.

- (d) Insurance and escrow services are seldom used.
- 14. Digital rights management systems
- B. Contract basics
 - 1. Requirements for forming a contract
 - (a) Formation
 - (i) Offer
 - (ii) Acceptance
 - (iii) Consideration
 - (b) Alternative
 - (i) Promise
 - (ii) Reliance or promissory estoppels
 - 2. Practical ways to show assent
 - (a) "From" line on e-mail
 - (b) Closing on e-mail
 - (i) Manual
 - (ii) Automatic
 - (c) Digital signatures and PKI
 - (i) Presumptions in favor of authenticity can, as a practical matter, become a substantive liability rule.
 - (ii) It may be impossible to prove that a digital signature was compromised by brute force techniques that had nothing to do with any negligence on the part of digital signer.
 - (d) DUNS number (publicly available) used for EDI
 - (e) Biometrics
 - (f) Statutory selection of particular technology can become a practical subsidy for that technology and may prevent further development and improvement.
- C. Other contract issues
 - 1. Clear and conspicuous
 - (a) FTC "Dot Com Disclosures"
 - (b) Gramm-Leach-Bliley rules
 - 2. Unconscionability

- (a) See *Brower v. Gateway*, 246 A.D.2d 246, 37 U.C.C. Rep. Serv. 2d (CBC) 54 (N.Y. App. Div. 1998).
- 3. Warranties and consumer protection
 - (a) Magnuson-Moss Warranty Act requires that warranties say “full” or “limited.”
 - (b) Internet merchants may be subject to the FTC Mail and Telephone Order Merchandise Rule (Mail Order Rule), which the FTC has determined applies to Internet sellers.
- 4. Common terms limiting the right to use software
 - (a) Preclude or permit commercial usage.
 - (b) Allow or prohibit copies.
 - (c) Grant or limit access.
 - (d) Allow use through a site or a particular computer.
 - (e) Preclude or allow distribution of copies.
 - (f) Preclude or allow modification.
 - (g) Allow distribution or limit to internal use.
- 5. Parol evidence (merger clauses)
- 6. Battle of the forms less likely with Internet contracts
- 7. Choice of law and forum generally work
- 8. Consumer protection
- 9. Fraud
- D. Authentication and digital signatures
 - 1. Three factors
 - (a) Authentication of the signer
 - (b) Nonrepudiation
 - (c) Integrity of the content
 - 2. On August 1, 1996, the Information Security Committee of the American Bar Association Section of Science and Technology published Digital Signature Guidelines
 - 3. Certificate authority risks
 - (a) Negligence standard is typical.
 - (b) Is the standard changeable by contract?
 - 4. *Parma Tile Mosaic & Marble Co, Inc. v. Estate of Fred Short*, 87 N.Y.2d 524; 663 N.E.2d 633; 640 N.Y.S.2d 477 (1996). The

intent to sign will not be inferred from an automatic imprint at the top of the page.

5. See E-Sign Sections 101, 106(4), 106(5) and 106(9).
6. See UCITA Sections 107, 102(a)(6), 102(a)(55), 108, 201, 102(5) and 212.

III. Legislative initiatives

A. United States

1. Uniform Electronic Transactions Act (UETA) finalized in 1999.
 - (a) UETA is designed to overlay existing state signature statutes. As such, it is primarily procedural, shying away from substantive issues as much as possible.
 - (b) UETA has been adopted by 41 states and has been proposed in others. See www.nccusl.org.
 - (c) UETA did not follow revised Article 9 and UCITA by replacing “signature” with “authenticate” because its drafters thought that signature definitions were sufficiently flexible to obviate the need for a new term.
 - (d) UETA does not override certain requirements, *e.g.*, first class mail.
 - (e) Documents must be printable by the consumer, *e.g.*, Web-wrap agreements cannot be view only.
 - (f) Many statutes require record retention, *e.g.*, canceled checks are often required.
 - (g) UETA gives no higher statutory protection to digital signatures than it gives to other forms of authentication. It is up to the parties to prove the efficacy of their particular procedure and methodology
 - (h) There is no mailbox rule under UETA.
2. Electronic Signatures in Global and National Commerce Act (E-Sign Act) enacted in 2000
 - (a) E-Sign is more complex than UETA.
 - (b) As a result, E-Sign lacks the clarity and simplicity of either the UNCITRAL Model Law on Electronic Commerce or UETA.
 - (c) E-Sign contains exemptions for consumer transactions.
 - (d) In some states local digital signature legislation was passed before E-Sign.

- (i) Utah
 - (ii) California
 - (iii) Illinois
 - (iv) New Jersey
 - (e) Significant preemption issues are raised by UETA.
- B. Uniform Computer Information Transaction Act (UCITA)
 - 1. UCITA started as Article 2B under the UCC and was then moved out as an independent project.
 - 2. UCITA applies to:
 - (a) Computer software
 - (b) Multimedia interactive products
 - (c) Computer data and databases
 - (d) Internet and online information
 - (e) The use of electronic and online processes to do the foregoing
 - 3. Due to its importance to producers and users of software, UCITA has been highly controversial.
 - 4. A North Carolina statute, called bomb shelter legislation, is designed to prevent UCITA from being applied to its residents.
 - 5. Federal intellectual property law still preempts UCITA, *e.g.*, fair use.
 - 6. UCITA authorizes dialog boxes that one must go through to get to content. Properly done, these dialog boxes can be used in lieu of retaining written records.
 - 7. Clicking twice constitutes manifestation of assent.
 - 8. UCITA generally follows technology neutral rules that are followed in UETA.
 - 9. User protection
 - (a) UCITA contains conspicuousness requirements.
 - (i) Opting in or out of a mass-market license.
 - (ii) Disclaimer of noninfringement
 - (iii) Disclaimer of implied warranties
 - (iv) Prohibited transfer of licenses

- (b) Mass-market licenses are subject to special requirements—UCITA Sections 102(a)(44), 102(a)(45) and 209.
 - (i) Exception to enforceability for unconscionability
 - (ii) Must be able to remove and send back without cost.
 - (iii) Must have reasonable cause to know that provisions are there.
 - (c) UCITA displaces existing consumer protection laws.
10. UCITA generally validates shrink-wrap licenses.
- C. Uniform Commercial Code (UCC)
- 1. Article 5 (letters of credit) now uses the media neutral term, “record”; it also uses “authenticate.”
 - 2. Revised Article 9 uses “record” instead of “writing” and “authenticate” instead of “sign.”
 - 3. Article I definitions have not yet been changed.
- D. Legislation affecting signature requirements and authentication
- 1. Facsimile signature devices; see Uniform Facsimile Signatures of Public Officials Act.
 - 2. UCC Article 3 provides that signatures are admitted unless they are specifically denied. The burden is on the party trying to establish authenticity but a presumption exists in favor of genuineness and authorization.
 - 3. UCC Article 4A governs funds transfers.
 - (a) Examples
 - (i) Fedwire—operated by the Federal Reserve System
 - (ii) Clearinghouse for Interbank Payment Systems (CHIPS)
 - (b) Statute allows banks and their customers to agree to use a security procedure. Once agreed, the burden that a transfer was not authorized can be placed on the customer.
 - 4. Regulation Z implements the credit card rules under the Consumer Credit Protection Act, passed in 1970. It requires the means to identify the cardholder. Usually, this is the signature tape on the back, but it can also be a picture or fingerprint on the

card or a PIN (*e.g.*, the use of a credit card at an ATM). Accepting information over the telephone is entirely at the merchant's risk because there is no adequate means of identification.

5. Regulation E from Electronic Funds Transfer Act
 - (a) Types of consumer EFTs
 - (i) Point of service (POS) transfers
 - (ii) ATM transfers
 - (iii) Direct deposits or withdrawals of funds from a consumer account
 - (iv) Transfers initiated by telephone
 - (b) Requires an acceptable security procedure; not necessarily a signature

E. European Union

1. Distance Selling Directive, promulgated in 1997
 - (a) Also called the DS Directive
 - (b) Requires minimum levels of information
 - (c) Requires written confirmation
 - (d) Cooling-off period
 - (e) Cold calling not allowed unless permission given in advance
2. Electronic Commerce Directive
 - (a) Deals with ISPs
 - (b) Addresses electronic commerce issues
3. Electronic Signature Directive
 - (a) Technology neutral
 - (b) Provides for certification
 - (c) Certified service providers (CSPs) are liable for their certifications (not true in the United States)
4. Electronic Commerce Directive
5. Brussels Convention
6. 1980 Rome Convention
 - (a) Mandatory consumer locations jurisdiction
 - (b) Cooling off period

7. Directive on Unfair Terms in Consumer Contracts
 8. Additional EU citations
- F. UNCITRAL
1. Model Law on Electronic Commerce
 - (a) Does not override consumer protection laws
 - (b) Includes EDI
 - (c) Promotes agreed-to procedures
 2. Other laws and conventions
 - (a) Vienna Convention on Contracts for the International Sale of Goods
 - (b) Model Law on International Credit Transfers
 - (c) Model Law on International Commercial Arbitration
 - (d) Arbitration Rules
- IV. Case law
- A. Signature requirement
1. Telegraph held to be a signature; *Howley v. Whipple*, 48 N.H. 487 (1869).
 2. Telegrams generally are treated as signatures.
 3. A fax was not held to be a signature; *Department of Transportation v. Norris*, 474 S.E.2d 216 (Ga. Ct. App. 1996).
 4. Tape recording of a telephone call was not held to be a signature; *Sonders v. Roosevelt*, 476 N.Y.S.2d 331 (App. Div. 1984), *aff'd mem.*, 487 N.Y.S.2d 551 (1985).
 5. Telex confirmation was held to be enough; *General Time Corporation v. Eye Encounter, Inc.*, 274 S.E.2d 391, 395 (1981).
 6. Mailgram was held to be sufficient; *Hessenthaler v. Farzin*, 564 A.2d 990, 993 (1989).
 7. An automatically inserted name at top of fax was not held to be a signature; *Parma Tile Mosaic & Marble Company v. Estate of Short*, *Ibid*.
- B. Enforceability
1. Shrink wrap
 - (a) *Step-Saver Data Systems, Inc. v. Wyse Technology*, 939 F.2D 91 (3D Cir. 1991); held not enforceable.

- (b) *Arizona Retail Systems, Inc. v. Software Link, Inc.*, 831 F. Supp. 759 (D. Ariz. 1993); held not enforceable.
 - (c) *ProCD, Inc. v. Zeidenberg*, 86 F.3d 1447 (7th Cir. 1996); held enforceable.
 - (d) *Hill v. Gateway*, 105 F.3d 1147 (7th Cir. 1997); held enforceable because the computer could be returned.
 - (e) *Brower v. Gateway 2000, Inc.*, Ibid; held enforceable except for the arbitration clause because the arbitration in Chicago under International Chamber of Commerce required a minimum payment of \$4,000, \$2,000 of which was not refundable, even if the consumer won.
 - (f) *Mortenson Company, Inc. v. Timberline Software Corporation*, 140 Wn.2d 568; 998 P.2d 305 (2000); held that a limitation on consequential damages was enforceable, even though the user allegedly lost \$2,000,000 due to faulty software.
 - (g) *Klocek v. Gateway, Inc.*, 104 F. Supp. 2d 1332 (D. Kan. 2000); mandatory arbitration clause not enforced; did not follow Pro-CD.
2. Click wrap
- (a) Hotmail could prevent spam; user could not have received free e-mail service without agreeing to contractual terms.
 - (b) *Groff v. America Online*, 1998 WL 307001 (R.I. Super. 1998); held enforceable; reasonable opportunity to review is enough.
- C. E-mail contracts
- 1. *Shattuck v. Klotzbach*, Civ. Act. No. 01-1109A (Superior Ct., Mass., 2001); e-mails regarding the sale of a house were enforced against the sellers even though the e-mails were only typewritten messages.
 - 2. Mailbox rule
 - (a) UETA Section 15 defines "sent."
 - (b) UCITA Sections 102(a)(28) and 215 defines electronic message and establishes time of receipt
- D. Shrink wrap, click wrap, browse wrap or click-through
- 1. Examples
 - (a) Dialog box that must be answered

- (b) Link to another page that does not require the user to go to the linked page
 - (c) Terms on the outside of the box
 - (d) Terms on the inside of the box
 - (e) A disk or CD-ROM that prevents installation without accepting
 - (f) Software that requires agreement each time the software is opened or run
2. *ProCD, Inc. v. Zeidenberg*, 86 F.3d 1447 (7th Cir. 1996).
 3. *Hill v. Gateway 2000, Inc.*, Ibid; enforced arbitration clause because the customer kept the computer for more than 30 days.
 4. *Klocek v. Gateway, Inc.*, Ibid; refused to enforce arbitration clause.
 5. Layered contracting or rolling contracting, *i.e.*, purchaser is presented with terms only after the goods are delivered; generally requires the ability to undo the contract after the user has a reasonable opportunity to review the contractual terms.
 6. *Lan Systems, Inc. v. Netscout Service Level Corp.*, 183 F.Supp.2d 328 (D. Mass 2002); VAR's purchase order did not limit damages; a click-wrap agreement did; held in favor of software company and enforced click wrap.
 7. See UETA Section 14—automated transactions. If the only way a user can reach the content is to click through and that can be shown, the agreement will be enforced.
 8. *Pollstar v. Gigmania, Ltd.*, 170 F.Supp.2d 974 (E.D. Cal. 2000); Pollstar published time-sensitive concert data on its Web site. Pollstar claims that defendant Gigmania downloaded and used Pollstar content in violation of Pollstar's license limitations. Gigmania loses its motion to dismiss.
 9. *Specht v. Netscape Communications Corp.*, 150 F.Supp.2d 585 (S.D.N.Y. 2001). Free software states that its use is limited by means of a linked page. The software does not require the user to read the linked page, nor does the software require a click through. Held that downloading is not assent and that the arbitration clause was not enforceable.
 10. Should privacy policy links be treated differently than terms-of-use links?

- E. Limits of contracts
 - 1. Unconscionability
 - (a) *In re RealNetworks, Inc.*, 2000 WL 631341 (N.D.Ill. 2000). Arbitration was required in Washington, and class actions were prohibited. Held not unconscionable.
 - (b) See UCITA Section 111.
 - 2. Enforceability of choice of law, choice of forum and arbitration clauses
 - (a) *Brower v. Gateway 2000, Inc.*, Ibid.
 - (b) *Groff v. America Online, Inc.*, Ibid.
 - (c) *America Online, Inc. v. Superior Court of Alameda County*, 90 Cal. App. 4th 1 (Cal. Ct. App. 2001).
- F. Acceptable use limitations
 - 1. Limitations on fair use; site tries to affect a surfer's rights via a hyperlink to a separate page, entitled Legal Information, etc.
 - 2. *Ticketmaster Corporation v. Tickets.com*, 75 Fed. Supp. 2d 1290 (USDA DUCD, 1999); granted summary judgment to the defendant and did not enforce a prohibition on deep links; allowed the plaintiff leave to amend to allow it to show that the defendant knew about the prohibition.
- V. Contract law
 - A. EDI trading partner agreements
 - 1. Can be public or proprietary
 - 2. Public
 - (a) ANSI X 12 (American National Standards Institute)
 - (b) EDIFACT—EDI for Administration, Commerce, and Transport
 - (c) Uniform Rules of Conduct for Interchange of Trade Data by Teletransmission (UNCID) published by the International Chamber of Commerce (ICC); voluntary, but could be a default
 - (d) ABA Model EDI contract
 - (e) International Model EDI Agreement published by Working Party 4, available at www.unece.org/trade/rec/rec26n1.htm.

3. Electronic trading letter is a private letter that is designed as a substitute for a model agreement.
 - (a) Much shorter
 - (b) Covers enforceability and rules for communication, as well as establishes terms and conditions
- B. Contracts authorizing digital signatures or other forms of authentication

ONLINE CONTRACTINGⁱ

by
Gary Hood and Ben Foster

I. Introduction

The established principles of contract law govern the formation and enforcement of a "meeting of the minds" between multiple parties. Yet, what are the implications of joining those minds not by a handshake or a signature, but by the exchange of sequences of one and zeroes? What does it mean when one of the "minds" is a preprogrammed computer module? As technological innovation has dramatically lowered the transactions costs of doing business through ultra-fast information exchange and automation, the rules that govern contracts are forced to keep pace by making the conversion from analog to digital. The development, maturation and ultimate success of electronic commerce is highly dependent upon the law's ability to make this conversion. Electronic commerce requires the enforcement of on-line terms and conditions, lest all the reduction of transaction costs be lost. Lawmakers, jurists and practitioners must all give careful consideration to the applicability of case law, state legislation, and the federal E-SIGN legislation to the enforceability of online and other electronic contracts.

The laws governing electronic contracts principally focus on the traditional requirements for contract formation and enforceability rather than on applying special substantive rules of contract law. There are three general categories of such traditional requirements that must be re-visited with respect to electronic contracting. First, how have the parties demonstrated their affirmative intent to be bound by their respective offer and acceptance so as to formally achieve contract formation? Second, where a statute requires a "writing" and/or a "signature" to make an agreement enforceable, what is the efficacy of an agreement that is only memorialized in the memory of a computer and is not "signed" in the traditional pen and ink sense? Third, how are the evidentiary requirements of proving the existence and affirmative acceptance of an agreement by an authorized person to be addressed in the world of electronic contracting? This article will explain how the law has adapted to these questions and provide recommendations for practitioners to consider in applying these evolving legal principles.

II. Offer and Acceptance—Case Law

Although recent state and federal legislation has largely removed some of the perceived legal barriers to electronic contracting (e.g., statutes of frauds),ⁱⁱ it is important to keep in mind that the effect of such legislation is merely to accord equal treatment to electronic and written agreements. That is, traditional requirements of contract law must still be satisfied in order for electronic contracts to be valid and enforceable.

One of the most ancient concepts of contract law is the requirement that contracting parties clearly manifest their acceptance of offered contractual terms. As stated in a recent high-profile electronic contracting case, "[T]he case law on software licensing has

not eroded the importance of assent in contract formation. Mutual assent is the bedrock of any agreement to which the law will give force.”ⁱⁱⁱ Online contracts, like other contracts, are formed when the parties manifest mutual assent to an agreement, which is generally established through an offer and acceptance. In fact, the phrase “online contracting” refers to the specialized process of contract formation rather than the substance of the contractual terms.^{iv} According to Farnsworth on Contracts (§ 3.13, 1990): (1) acceptance may be made only by the offeree, (2) acceptance must be unconditional and unqualified, and (3) the offeree must be aware of the offer and intend acceptance. However, because electronic contracts typically are consummated in a non-traditional manner (such as the act of “clicking” on a particular graphic image on a computer screen), they call into question whether the parties have sufficiently manifested assent to be bound by the terms and conditions of the agreement.

A. Shrink-Wrap Agreements

Although not electronic contracts themselves, a legal understanding of online agreements begins with an analysis of case law regarding the enforceability of software license agreements that accompany pre-packaged or “shrink-wrapped” software. The cellophane wrapping of a box containing software will be stamped with a sticker that explains to the purchaser that by opening the package, the purchaser agrees to the terms of the license contained in the box. Hence, in the “shrink-wrap” scenario, the customer pays for the product (the software license) before having an opportunity to review the non-negotiable license agreement. While some Courts have declined to enforce shrink-wrap licenses in some circumstances, a majority of the courts and legislatures considering the issue recently have upheld their enforceability so long as the terms of the agreement are not contrary to public policy.

In the leading case supporting the validity of shrink-wrap agreements, *ProCD, Inc. v. Zeidenberg*, 86 F.3d 1447 (7th Cir. 1996), the Seventh Circuit upheld the enforceability of a shrink-wrap software license agreement against a defendant who resold the licensed software over the Internet. In this case, the software at issue was sold in a pre-packaged box that provided that the software inside was subject to the restrictions imposed by the included license agreement. The terms of the license were printed in a user's manual, encoded onto the CD-ROM containing the software and appeared on the user's screen upon running the software.

The Court held that “shrink-wrap licenses are enforceable unless their terms are objectionable on grounds applicable to contracts in general (for example, if they violate a rule of positive law, or if they are unconscionable).” *Id.* at 1449. The Court reasoned that ProCD, as the “master of its contract,” invited acceptance of the contract by conduct, which the defendant did by opening and using the software after having an opportunity to react it and that such contracts are commonly accepted practice in software industry. Furthermore, the Court strongly emphasized the point that the defendant had no choice but to indicate its acceptance of the software on his computer screen before each use.

Although *ProCD* was decided under Wisconsin law, the Seventh Circuit reached the same conclusions under Illinois law in *Hill v. Gateway 2000*, 105 F.3d 1147 (7th Cir. 1997), *cert. denied*, 522 U.S. 808 (1997). In *Hill* the defendant computer manufacturer attached a notice on the outside of the box that contained one of its computers. The notice indicated that the purchaser, by the act of opening the box and keeping the computer for more than 30 days, consented to terms of the license agreement inside the box. When a subsequent dispute arose between the parties after 30 days, the manufacturer claimed that the arbitration clause in the agreement required the parties to submit the case to arbitration before instituting litigation. The Court agreed, finding that the notice was conspicuously displayed, that the shrink-wrap agreement was an industry norm in technology transactions and that the purchaser had evidenced his acceptance through performing the acts described in the notice.^v

On the other hand, not all courts have been receptive to shrink-wrap agreements. Most such cases were decided in the late 1980's and early 1990's while the mass software market, and the law's relationship to it, were still maturing.^{vi} A recent district court decision, however, appears to have reversed the steadily moving trend to validate shrink-wrap agreements. In *Klocek v. Gateway, Inc.*, 104 F. Supp.2d 1332 (D. Kan. 2000), the Court considered facts essentially identical to *Hill*, but reached the opposite legal conclusion. In ruling that neither the laws of Missouri or Kansas would follow the *ProCD/Hill* decisions, the Court declared that the consumer was not required to accept the terms of the shrink-wrap agreement, but rather that Gateway's decision to ship the computer to the consumer indicated a "definite and seasonable expression of acceptance" of the purchaser's offer to buy a computer.

B. Browse-Wrap Agreements

The term "browse-wrap agreement," used by the courts in *Specht* and *Pollstar v. Gigmania Ltd.*, 2000 WL 33266437 (E.D. Cal. 2000), refers to any substantive agreement that is accessible by means of a hyperlink from a Web site's home page.^{vii} Like the shrink-wrap agreement, browse-wrap agreements purport to bind the viewers of such Web sites to the substantive terms of a non-negotiable agreement through the user's action of accessing or using the product. Unlike the shrink-wrap, which conspicuously places a notice of the agreement on the box, a browse-wrap agreement may never have been seen by the user of the product to be governed by the agreement. Hence, a user may perform the action that purportedly bonds him to the terms of the agreement without any awareness that his actions indicate assent. In fact, he may not even be aware of the existence of the agreement.

In *Ticketmaster Corp. v. Tickets.com, Inc.*, No. CV-99-7654 (C.D. Cal. Mar. 27, 2000), a California District Court ruled that these types of agreements are not binding—even upon sophisticated commercial actors. Tickets.com, a competitor of Ticketmaster, was hyperlinking to Web pages on Ticketmaster's Web site other than the home page, in violation of the terms of use that Ticketmaster had posted on its site. This procedure is known in World Wide Web jargon as "deep-linking" and is a potential problem for commercial Web sites in that much of the advertising content that generates their revenue is contained on the home page of the Web site.

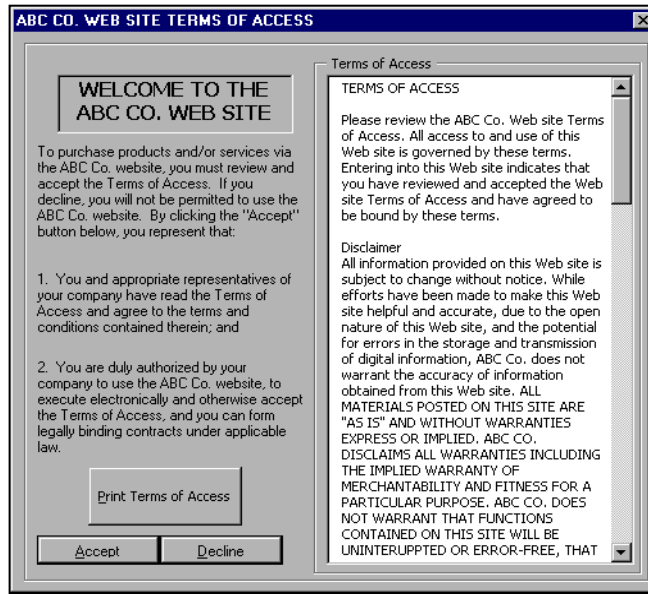
In addressing Ticketmaster's breach of contract claim, the Court stated that Ticketmaster's terms of use did not constitute a binding contract with a user of the site, noting that: "[I]t cannot be said that merely putting the terms and conditions in this fashion necessarily creates a contract with anyone using the Web site." *Id.* at 3. Rejecting Ticketmaster's argument that the principles established in *ProCD* upholding the enforcement of shrink-wraps should be applied in its case, the Court stressed two key factors. First, the Court noted that terms of use were not "open and obvious and in fact hard to miss" as shrink-wrap licenses generally are. Rather, because a Web site visitor would need to scroll down to the bottom of the home page to find and read the terms and conditions, it was more likely that a visitor would instead proceed to subsequent pages rather than read the "small print." Second, the Court noted that Ticketmaster did not require users to click on an "I agree" button before proceeding through the Web site, a common web site practice known as "click-through" screens (discussed *infra*), to ensure that visitors read, or at least are aware of, purportedly controlling terms. Although the Court ruled that no contract had been formed it did, however, give Ticketmaster leave to amend the breach of contract claim to allege facts showing Tickets.com's actual knowledge of the terms of use and its implied acceptance of them.

In *Pollstar* the Court denied the defendant's motion to dismiss the breach of contract claim, but nevertheless indicated its doubt that facts would support a finding that the browse-wrap agreement constituted a binding contract. The Court took particular note of the fact that the notice of the purportedly governing license was not sufficiently conspicuous to ensure that users were made aware of its existence. Furthermore, users were never required to utilize a click-through mechanism to evidence their assent. *Pollstar* at *5-6.

On the other hand, in *Register.com, Inc. v. Verio, Inc.*, 126 F.Supp.2d 238 (S.D.N.Y. 2000), the District Court found the browse-wrap terms of use to constitute a binding contract that was accepted by the user's utilization of the product. The Court reached this conclusion notwithstanding the fact that the user did not see the terms of use until after he had performed the action that purported to indicate acceptance of the terms, and the user was not required, after finally seeing the terms, to indicate an assent via a click-through. The Court reasoned, "Nor can Verio argue that it has not assented to Register.com's terms of use. There can be no question that by proceeding to submit a query, Verio manifested its assent to be bound by Register.com's terms of use, and a contract was formed and subsequently breached." *Id.* at 248.

Despite the fact that the browse-wrap approach creates significant risk that the purported terms and conditions will be construed to not constitute binding contracts, it still is often the only practical and way to put users on notice of certain policies and procedures. Because the use of click-through screens for every Web page is likely to be unduly cumbersome, Web site operators must make a calculated determination of whether the posting of legal/policy statements via hyperlink is sufficient. In circumstances where the legal risks are minimal (e.g., a Web site that exists for informational purposes only) and/or the Web site operator intends only to put users on notice of such Web site's practices rather

than to affirmatively bind the users (e.g., Digital Millennium Copyright Act and other



copyright notices, privacy policies, etc.), a browse-wrap approach may be appropriate.

C. Click-Wrap Agreements

"Click-wrap agreements" are the latest, and legally greatest, evolution of shrink-wrap agreements in the online context. In a click-wrap scenario, the end user must evidence her affirmative assent to viewable contractual terms in order to gain access to the licensed product. The most common mechanism to obtain the consent of the user is to include graphic buttons labeled "I Agree" and "I Do Not Agree" and require the user to mouse click on the former to obtain access. For example, see the model click-through screen below:

Another variation requires the user to type the phrase "I Agree" or something similar in a text prompt below the displayed terms. Because of this click-through requirement, courts have been much more uniform in their acceptance of click-wraps than their browse-wrap predecessors.

1. General Overview of Case Law Regarding Click-Wrap Agreements

In a recent unpublished decision from the Northern District of Illinois, the District Court ruled that properly structured click-wrap agreements are enforceable under Illinois law. In *Lieschke v. RealNetworks, Inc.*, 2000 WL 198424 (N.D. Ill. 2000), the makers of Real Player multimedia software were alleged to have violated the privacy rights of individuals who downloaded their software. In order to access the software, users were required to accept a click-through screen that indicated their assent to a license agreement, which contained a mandatory arbitration provision. The District Court granted RealNetworks motion to compel arbitration of Lieschke's dispute, reasoning that by clicking

on the "accept" button, the users had evidenced their assent and created a binding contract, thereby agreeing to arbitrate all disputes.

Likewise, in *Caspi v. Microsoft Network, L.L.C.*, 732 A.2d 528 (N.J. Super. Ct. App. Div. 1999), a New Jersey appellate court upheld the enforceability of a forum selection clause in the Microsoft Network (MSN) online subscriber agreement providing that all suits arising under the agreement were to be brought in Washington and governed by the laws of Washington. Under MSN's online contracting structure, before becoming a member, a prospective MSN subscriber is prompted to view a scrollable screen containing the MSN subscriber agreement. The screen also contains two graphical boxes stating the prospective subscriber's two options—"I Agree" or "I Don't Agree". The prospective subscriber was not charged the initial membership fee and was not provided with MSN online access until clicking "I Agree". In upholding the enforceability of the forum selection clause in the MSN contract, the court observed "no significant distinction" between an online electronic contract and the same contract in printed form. The court noted that prospective MSN members have the opportunity to scroll through the entire contract before accepting, and there was nothing different about the site or placement of the forum selection clause than most other clauses of the online agreement.

Similarly, in *Groff v. AOL*, 1998 WL 307001 (R.I. Super. Ct. 1998), the Rhode Island Superior Court granted AOL's motion to dismiss the class action complaint filed by AOL subscribers on grounds that the forum selection clause in the AOL click-wrap subscriber agreement required that all actions be brought in Virginia. In granting AOL's motion, the court stressed that "plaintiff effectively 'signed' the agreement by clicking 'I agree' not once but twice. Under these circumstances, he should not be heard to complain that he did not see, read, etc. and is bound to the terms of his agreement."^{viii}

2. *Specht v. Netscape Communications Corp.*^{ix}

Synthesizing electronic contract law in a recent high-profile case, the United States District Court for the Southern District of New York in *Specht* engaged in a thorough analysis and provided guidance regarding what characteristics are most important to the enforceability of click-wrap agreements. The Court in *Specht* stated that a user who downloads software from a Web site without taking any action that plainly manifests assent to the terms of an associated license will not be bound by the terms of a browse-wrap license agreement. The instructional value of the case, however, is not found in the fact that this type of agreement was declared invalid, but in the Court's discussion of specific deficiencies and their possible remedies.

The defendants in *Specht* were six individuals in three related cases who alleged that use of SmartDownload, Netscape's freely available software that assists users in downloading files from the Internet, transmitted private information about the user's file transfer activity to Netscape, thereby effecting an electronic surveillance of the user's activity in violation of two federal statutes, the Electronic Communications Privacy Act and the Computer Fraud and Abuse Act. Netscape sought to stay the court proceedings and compel arbitration of the Plaintiffs' claims based on an arbitration clause contained in a

License Agreement allegedly entered into between Netscape and each party affecting a download of the Smartdownload software. The threshold question before the court was whether the proposed non-negotiable license agreement posted on the Netscape Web site, which was not expressly accepted by a user of the software, nevertheless bound the user to an arbitration clause contained in the license.

In contrast to a conventional click-wrap contract, Netscape's download page for the SmartDownload software contained a single brief reference to the License Agreement, with a link to the text of the agreement. The only hint that Netscape proposed to form a contract with end users was one small box of text located at the bottom of the download page, which invited users to review the license agreement. The box of text appeared below the portion of the screen used for downloading and hence was only visible if the user scrolled to the bottom of the download page. The language of the invitation did not require the reading of the license terms or provide adequate notice that a contract was being created or that the terms of the License Agreement would bind the user. The Court determined that Netscape had failed to give the Plaintiffs sufficient notice of the existence and terms of the License Agreement, and thus the act of downloading the software did not sufficiently manifest Plaintiffs' assent to be bound by the terms of the License Agreement. Further, the Court stated that Netscape's failure to require users of the SmartDownload product to indicate assent to its license, as a precondition to downloading and using its software was fatal to its argument that a contract had been formed.

3. Uniform Computer Information Transactions Act (UCITA)

On July 29, 1999, the National Conference of Commissioners on Uniform State Laws promulgated the Uniform Computer Information Transactions Act (UCITA) for consideration by the various state legislatures for adoption. Although UCITA contains provisions addressing the enforceability of certain electronic contracts, a thorough discussion of UCITA is beyond the scope of this chapter for two primary reasons. First, UCITA does not apply to most electronic contracts. Rather, it provides a model legal structure similar to Article 2 of the Uniform Commercial Code that applies only to transactions in "computer information" (e.g., software and other copyrightable information) and has no applicability to other contracts entered into electronically. Second, UCITA has been heavily criticized by consumer and business licensee advocacy groups and, as a result, although several states (including Illinois) have introduced the legislation for consideration, only two states—Virginia and Maryland—have adopted it. In fact, one state (Iowa) has gone so far as to pass legislation that denies the application of another state's law if UCITA was the law chosen to govern the transaction, and declares the transaction null and void.

UCITA expressly provides for the enforceability of online click-wrap contracts (for software and the like) within certain parameters. Under UCITA, when an unambiguous contractual offer in an electronic message elicits an electronic response accepting that offer, a contract is formed. UCITA § 203. Assent to contract may be manifested by an offeree knowingly "authenticating" its terms after an "opportunity to review" and with the intent to adopt. UCITA § 112. An offeree is considered to have had an

"opportunity to review" the terms "only if [they] are made available in a manner that ought to call it to the attention of a reasonable person and permit review." UCITA § 112(e).

UCITA expressly validates both shrink-wrap and click-wrap software licensing practices. In such cases, the licensee is deemed to have had an "opportunity to review" the license terms if the licensor "[m]akes 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 is first." UCITA's concerns with "availability" focus on prominent display, close proximity and prompt disclosure of the terms. Hence, if these elements are met, browse-wrap agreements should also be binding. Additionally, the UCITA provision for manifesting assent expands the scope of conduct that demonstrates intent to accept an offer by expressly including a user click-through. The more consumer-friendly version of UCITA adopted by Maryland also requires that online agreements be available for review by the contracting parties before and after a purchaser grants assent.

III. Satisfying “Writing” and “Signature” Requirements

Aside from the offer and acceptance requirements for contract formation, other potential barriers to electronic contracting are the various statutory “writing” and “signature” requirements imposed on certain types of contracts (collectively referred to herein as “Statute of Frauds”). A strict interpretation of the Statute of Frauds would indicate that the "writing requirement" is not satisfied. For example, if parties negotiate an agreement via email or instant messaging^x, unless the final terms are printed out, the contract would exist only in computer memory and would not contain an ink signature of either party.

A. Judicial Uncertainty

Prior to the passage of electronic signature legislation, courts struggled to broadly construe “writing” requirements to avoid the strict application of the Statute of Frauds to invalidate electronic contracts. While the Ninth Circuit has held that loading software from a disk into a computer's memory constitutes “fixation in a tangible medium” for intellectual property purposes,^{xi} this reasoning was not extended to apply to the Statute of Frauds. In *In re RealNetworks, Inc. Privacy Litigation*, 2000 WL 631341 (N.D. Ill. 2000), the District Court ruled that the click-through online software license agreement satisfied the writing requirement and adopted a case-by-case approach to future cases, reasoning as follows:

Because electronic communications can be letters or characters formed on the screen to record or communicate ideas by visible signs and can be legible characters that represent words and letters as well as form the conveyance of meaning, it would seem that the plain meaning of the word "written" does not exclude all electronic communications. That being said, the Court does not now find that all electronic communications may be considered "written." Rather, the Court examines the contract at issue in this action and finds that its easily printable and storable nature is sufficient to render it "written." *Id.* at * 3.

B. Legislative Responses

In response to the uncertainty in court decisions and pressure from the business community, many states and more recently the federal government have enacted legislation that has largely removed the Statute of Frauds as a significant legal barrier to e-Commerce. The states have taken three general approaches to electronic contracting legislation. A small minority of states enacted laws that guarantee enforceability of electronic contracts only if the electronic communications are created and transmitted using a PKI-based encryption and authentication technology.^{xii} Other states adopted a technology neutral approach ultimately incorporated into the Uniform Electronic Transactions Act (UETA), which merely equates electronically stored documents with written documents and provides that the intent to authenticate a document is the key element of a "signature", regardless of whether such intent was manifested electronically or otherwise. A third group of states, led by Illinois^{xiii}, adopted a blended approach that is technologically neutral as to the elimination of the Statute of Frauds barrier but provides a set of (mostly rebuttable) evidentiary presumptions afforded only to electronic contracts created and transmitted using a PKI-based technology.

This lack of uniformity among the states conflicted with the need for certainty in e-Commerce laws and resulted in the preparation of the Uniform Electronic Transactions Act (UETA) and, ultimately the enactment of federal e-Commerce legislation—the Electronic Signatures in Global and National Commerce Act (E-SIGN). UETA is a model act drafted and approved by the National Conference of Commissioners on Uniform State Laws, which provides that a record or a signature "may not be denied legal effect or enforceability solely because it is in electronic form." UETA is technology neutral, in that a signature can be "an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record." Finally, UETA leaves contracting parties free to require more secure types of authentication or particular technologies where they mutually agree to do so.

Although 37 states and the District of Columbia have adopted UETA in some form, many states moved slowly in the process. Others, like Illinois, are presently considering the uniform legislation. Last year Congress passed legislation to bring down the barriers to e-Commerce in interstate commerce and ensure that slow-moving states would not continue to delay the process. On October 1, 2000, the Electronic Signatures in Global and National Commerce Act (E-SIGN) became effective. E-SIGN confirms that electronic contracts satisfy "writing" and "signature" requirements while retaining other evidentiary requirements applicable to standard contracts. E-SIGN is drafted to work in conjunction with UETA or alternative state statutes that are consistent with E-SIGN such as the ECSA. In order to encourage consistency between E-SIGN and the various state laws, E-SIGN preempts state laws that are not either: (1) enactments of UETA; or (2) consistent with E-SIGN and not technology specific (i.e., do not accord greater legal status to various forms of digital signatures).^{xiv}

Like UETA, E-SIGN gives electronic contracts the same legal standing as traditional paper documents, while retaining the formal writing and/or signature requirements

for certain sensitive documents such as wills, eviction notices, court orders or suspension of utilities, product recalls and documents pertaining to hazardous materials. Consumers must give prior consent to receiving online documents and have the right to opt of using electronic contracting and receive agreements in paper form at any time. Furthermore, firms seeking to restrict transactions to an "electronic-only" format are required to "reasonably demonstrate" that customers have the computer equipment to receive documents electronically. Companies must disclose to consumers their right to receive information in non-electronic form.

IV. Evidentiary Concerns

In addition to the traditional requirements of offer and acceptance and the potential legal barrier imposed by the Statute of Frauds, the party seeking to enforce an electronic contract must be prepared to prove the existence of the online contract, the date it was agreed upon, and the identity of the other contracting party. Without an appropriate technology solution for capturing, retaining, time-stamping, authenticating and accessing both the text of the contract and the facts surrounding its assent by the contracting party, it may be impossible for a party seeking to enforce such an agreement to meet its burden of proof. In circumstances where the likelihood and/or consequences of fraud are high, the use of a digital signature or comparable technology solution should be considered. Although, aside from Illinois' ECSA and a few similar state statutes (which may be pre-empted by E-SIGN, as discussed above), there are no statutory evidentiary presumptions that result from using such technology, the evidentiary burden with such technologies would be much more easily satisfied and practically uncontestable.

V. Conclusions and Suggestions for Practitioners

Electronic contracts are becoming a standard course of dealing in some industries and are likely to achieve widespread commercial acceptance in most areas of commerce. Recently, the law has begun to catch up to this business reality and has removed many of the potential legal barriers to electronic contracting. That said, practitioners must pay special attention to the application of traditional contract principles to electronic contracts and recommend approaches that balance the level of risk to the client with the commercial reality of the need for readable and relatively unobtrusive but enforceable online agreements.

In light of the principles discussed in this Chapter, practitioners should consider making the following recommendations when structuring and/or advising clients on the enforceability of electronic contracts:

1. If technologically and commercially feasible, use a click-through mechanism such as the Model shown above that requires users to scroll through the text of an on-line agreement and to click on a box that says "I Agree" (or similar words) in order to manifest assent to those terms.

2. Verify that no industry-specific laws or regulations impose unique requirements on your client's online agreements (e.g., healthcare).
3. Review the contract language as it appears online in order to ensure that any provisions that must be conspicuous (e.g., warranty disclaimers, consent to exclusive venue and jurisdiction, etc.) appear appropriately capitalized and/or otherwise highlighted from the other terms of the contract.
4. Include an option for users to print the agreement and access it online after their initial click-through.
5. Ensure that the links to such on-line agreements and other legal notices are prominently and logically displayed within the site, preferably placed "above the fold" (i.e., without the need to scroll).
6. Verify that your client uses technology to capture and store information about when, how and by whom each user's assent to the contract(s) occurred.
7. Where security is of paramount concern, consider using an encryption/authentication solution such as PKI digital signature technology to authenticate users and protect the integrity of information.

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ⁱⁱ This legislation is discussed in Section III.

ⁱⁱⁱ *Specht v. Netscape Communications Corp.*, 150 F. Supp. 2d 585 (S.D.N.Y. 2001).

^{iv} See Donnie L. Kidd, Jr. and William H. Daughtrey, Jr., *Adapting Contract Law to Accommodate Electronic Contracts: Overview and Suggestions*, 26 Rutgers Computer & Tech. L.J. 215, 238 (2000).

^v See also *Brower v. Gateway 2000, Inc.* 676 N.Y.S.2d 569 (N.Y. App. Div. 1998) (holding arbitration clause in shrink-wrap software license agreement enforceable); *M.A. Mortenson Company, Inc. v. Timberline Software Corp.*, 998 P.2d 305 (Wash. 2000) (enforcing warranty limitation clause of shrink-wrap software license agreement where the agreement was presented on the user's screen each time the software was accessed); *Arizona Retail Sys., Inc. v. Software Link, Inc.*, 831 F. Supp. 759 (D. Ariz. 1993) (holding that shrink-wrap agreement bound the original purchaser but not subsequent purchasers who did not have the opportunity to see the agreement.).

^{vi} See *Arizona Retail Sys., Inc. v. Software Link, Inc.*, 831 F. Supp. 759, 764 (D. Ariz. 1993) (holding shrink-wrap agreement unenforceable without the explicit assent of both parties as set forth in UCC section 2-209); *Step-Saver Data Sys., Inc. v. Wyse Tech.*, 939 F.2d 91 (3d Cir. 1991) (holding that terms and conditions in shrink-wrap contract were unenforceable under the U.C.C. as undisclosed contractual modifications); *Vault Corp. v. Quaid Software Ltd.*, 655 F. Supp. 750 (E.D. La. 1987), *aff'd*, 847 F.2d 255 (5th Cir. 1988) (holding shrink-wrap license agreement unenforceable as an adhesion contract in violation of federal copyright law).

^{vii} See Susan Y. Chao, *Casenote: Ticketmaster Corp. v. Tickets.com, Inc.*, 54 SMU L. Rev. 439 n7 (2001).

^{viii} See also *CompuServe, Inc. v. Patterson*, 89 F.3d 1257, 1260-61 (6th Cir. 1996) (affirming exercise of jurisdiction over defendant based in part upon click-wrap agreement with CompuServe providing for application of Ohio law); *Hotmail Corp. v. Van\$ Money Pie, Inc.*, 1998 WL 388389, 6 (N.D. Cal. 1998) (granting preliminary injunction to prohibit "spamming" based in part upon Hotmail's online "Terms of Service" without specifically discussing "click-wrap" issue); *Stomp, Inc. v. Neato, LLC*, 1999 WL 635460, 6 (C.D. Cal. 1999) (asserting that online merchants may enter into click-wrap agreements with customers to provide a mandatory venue for litigation).

^{ix} 150 F. Supp. 2d 585 (S.D.N.Y. 2001).

^x See *CompuServe, Inc. v. Patterson*, 89 F.3d 1257, 1260-61 (6th Cir. 1996) (involving contract negotiations by e-mail between a software developer and an Internet subscriber service).

^{xi} See *MAI Sys. Corp. v. Peak Computer, Inc.*, 991 F.2d 511, 518-19 (9th Cir. 1993).

^{xii} Public Key Infrastructure (PKI) is the leading standards-based digital signature technology, involving the use of two mathematically related cryptographic keys, referred to as a private key and a public key. The private key is kept secret by the key holder and is used to encrypt information, which information can only be decrypted with that key holder's public key. The PKI-encrypted message is considered "digitally signed" by the private key holder. Because the private key is unique to a specific key holder, digital signatures reduce the chance of unauthorized or forged electronic communications.

^{xiii} Electronic Commerce Security Act (ECSA), 5 ILCS 175/1-101 et seq (West 1999). In light of UETA (which is currently under consideration in Illinois) and the federal E-SIGN legislation, this Chapter does not discuss the ECSA in detail. For a thorough discussion of the ECSA, see R.J. Robertson, Jr. and Thomas J. Smeddinghoff, *Illinois Law Enters Cyberspace: The Electronic Commerce Security Act*, Ill. B.J. June 1999.

^{xiv} In light of this provision, the states that adopted legislation directed solely at PKI-based digitally signed documents are clearly pre-empted. It is debatable, however, whether or not Illinois' ECSA evidentiary presumptions in favor of PKI-based digital signatures render the ECSA "technology specific" for purposes of Section 101 of E-SIGN, as that section relates only to the enforceability of electronic contracts and not evidentiary concerns. Nevertheless, after the enactment of E-SIGN the Illinois legislature has introduced UETA for consideration.

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| Legal Checklist for E-Business Projects (GoodCo Version, Revision 11-20-01) |
| Prepared by Jim Jordan (Senior Counsel, E-Business, GE Power Systems, Atlanta, GA) (james.jordan@ps.ge.com) |
| Disclaimer: This checklist has been prepared for the fictional company "GoodCo". It does not necessarily reflect the policies of GE or GE Power Systems. Legal Counsel should validate this checklist and its consistency with their own company policies before applying it to any non-fictional company. |

Notes for using this checklist:

- (1) **Applicability of checklist:** This checklist should be filled out by the Project Leader for all GoodCo digitization, software and Web development projects, including internet, extranet, intranet and ERP projects. It is not just for use in projects reviewed in GoodCo-level tollgate reviews, and should be integrated into all business unit tollgate review processes for digitization, software and web development.
- (2) **Organization of the checklist:** This checklist is set up for three tollgates (A, B & C), to identify legal issues early in a project to minimize expensive and time-consuming rework of non-compliant project plans and code, and to avoid the project launch delays that can result from "last minute" legal reviews. Tollgate A items should be reviewed and completed as early as is feasible in the project and certainly prior to sharing data with or development of intellectual property by non-GoodCo workers or non-U.S. citizens. Both Tollgate A and B items should be completed prior to finalizing specifications or beginning code development. All Tollgate A, B and C items should be completed (and should be reviewed to see if any previous answers must be changed) prior to launching the application.
- (3) **Who to send this to:** When the requirements for a tollgate section are completed, e-mail this checklist to:
- Senior Counsel, E-Business [name/e-mail]; and
 - E-Business Counsel for the business units affected by the project [name/e-mail]; and
 - Export Controls Administrator for GoodCo [name/e-mail]; and
 - Intellectual Property Counsel for the appropriate business unit [name/e-mail]; and
 - Business unit legal counsel for the business unit(s) affected by your project.
- (4) **What else you should send:** At tollgate A, include with your checklist any tollgate presentation materials (e.g., PowerPoint) or other materials that will aid in the understanding of the project. At tollgate B, send a "functional specification" document if available. At tollgate C, send the URL address (if any) for the application and any necessary passwords to allow the reviewers to review the actual user interfaces and site content. Use your project name in the title of the e-mail (some of these contacts receive dozens of e-mails every day with generic titles like "Project Legal Review").
- (5) **Telephone conference:** Set up a one-hour telephone conference with each of the persons in (3) above (preferably all at once and preferably using the Outlook scheduling function to check availability). Be prepared to describe your project and discuss the checklist. This telephone conference should be scheduled to occur at least **one week** in advance of the tollgate review at which legal approval will be needed, and **two weeks** in advance of the planned launch of an application. The Legal reviews are to be completed prior to the formal project tollgate reviews, not during.
- (6) **Form of Approval:** Your ultimate Legal approval for the tollgate will come in the form of an e-mail from Senior Counsel, E-Business [name/e-mail].
- (7) **Not all items will apply to every project:** Because this is a general checklist for many types of projects, some individual items may not be relevant to your particular project, and you may mark them "NA" (Not Applicable) where that option is given. However, if there is any question in your mind about the relevance of a particular item, please consult with one of the E-Business Counsel listed in note (3) above. Some items require a "Yes" or "No" answer, so "NA" is not given as an option.
- (8) **The checklist is not exhaustive:** While this checklist has been made as comprehensive as is feasible, it is not possible to anticipate and include in a checklist all legal issues that may arise in all projects. Therefore, it is important that you have the telephone conference described in note (5) above so that you can explain your project to Legal counsel so that any other legal issues may be identified.

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| Project Name: | |
| Project Leader(s): | |
| Names of Affected Business Units and Functions: | |
| Nation in which the application server will be located: | |

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| | Tollgate A (complete as early as feasible and before involving any workers who are non-GoodCo or non-U.S. Citizens) |
| __Yes__ No __Unsure | A1 Access Restrictions for Nuclear Information. Will this project (or any software application that is part of this project) provide access to any nuclear-related technical information? |
| __Yes__ No__ NA __Unsure | A2 If "Yes" to A1, is the information subject to export or import controls (in the U.S. or elsewhere)? If the information is nuclear-related, assume that it is export-controlled unless the Export Control Administrator for your business has advised that it is not. If you need assistance in this determination, you should review the nuclear information policies of the business component whose information is involved (e.g., [URL]), and consult with the Export Control Administrator for the business component whose information is involved [name/e-mail]. There are criminal sanctions for violating export and import control laws. |
| __Yes__ No__ NA | A3 If "Yes" to A1 & A2, do you understand: |

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| <p>__Unsure</p> | <p>(1) That this information, if electronically stored, must be: (a) stored on a secure U.S.-based and U.S.-administered server approved by the GoodCo IT Security Manager [name/e-mail]; and (b) protected with access controls (potentially including the use of a "hard token" random number generator by users if required by the GoodCo IT Security Manager) to ensure that the technical information may only be accessed by: (i) U.S. citizens, and (ii) citizens and permanent residents of certain other permitted countries for which an appropriate written export assurance has been executed, all in strict compliance with GoodCo Export Policy (which can be found at [URL]; and (2) Persons who are not included in categories (b)(i)-(ii) above should not have any administrative control over the site or be involved in systems support or the control or re-issuance of passwords; and (3) In order to provide guidance to GoodCo employees regarding leaving the U.S. with a laptop computer containing export controlled technical information, a "Log-off Notice" (in a form approved by the GoodCo Export Controls Administrator [name/e-mail]) should be posted on the log-off screen of GoodCo internal employee-only applications containing export controlled technical information; and (4) The current version of the "Log-off Notice" is as follows: ***** WARNING: Employees who are entitled to have access to export controlled technical information while in the U.S. are allowed to leave the U.S. with a laptop computer containing such information so long as they maintain custody and control of the laptop computer at all times. However, if an employee loses control of the laptop computer, GoodCo may be required to disclose that fact to the U.S. Government. Therefore, it is recommended that you delete all non-essential export controlled technical information from your laptop computer prior to taking it outside of the U.S. This includes not only files you have proactively saved to a folder on your laptop, but also those stored in your browser "cache" (which Microsoft® Explorer® calls the "Temporary Internet Files Folder"), or cache files used by other access software.</p> <p>To view the files stored in your browser cache: Click on the "Tools" dropdown menu. Click on "Internet Options." Click the "Settings" button under the "General" tab. Click the "View Files" button.</p> <p>To delete specific files stored in your browser cache: Click on the file to highlight it. Click on the "File" dropdown menu. Click on "Delete."</p> <p>To delete all the files stored in your browser cache: Click on the "Tools" dropdown menu. Click on the "Internet Options." Click the "Delete Files" button under the "General" tab.</p> <p>If you are using a browser other than Microsoft® Explorer®, or you are using software other than a browser for access to export-restricted information, contact the GoodCo Helpdesk for assistance. *****; and</p> <p>(5) Additional requirements, including other notices, may apply and therefore you must obtain the express approval of the site by the GoodCo Export Control Administrator; and (6) These limitations may prohibit participation by certain persons in your project or the development or maintenance of your application, including some of GoodCo's own employees, as well as some individual employees of U.S. vendors; and (7) Because the GoodCo intranet is accessible to a large number of people, some of whom are not GoodCo employees and many of whom will be prohibited from accessing this information, this information should at least be password-protected (such as in a secure QuickPlace) rather than placed unrestricted on the intranet, users should not be allowed to use "default" passwords (such as "ChangeMePlease"), and (as mentioned in section (1)(b) above) the GoodCo IT Security Manager may require hard tokens; and (8) When setting up QuickPlaces, TeamRooms and SameTime meetings containing such information, you should (a) password protect the site or meeting (using session-specific, non-default passwords), (b) not use "anonymous" in the Reader, Author, or Manager permission list, and (c) in tools permitting GUEST access, do not grant GUEST access? References: U.S. Department of Energy (DOE) Regulations 10 CFR Part 810; Export Administration Regulations (EAR) 15 CFR Parts 730-774.</p> |
| <p>__Yes__ No</p> | <p>A4 Access Restrictions for Non-Nuclear U.S. Export-Controlled Technical Information. Will this project (or any</p> |

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| <p>__Unsure</p> | <p>software application that is part of this project) provide access to any non-nuclear-related technical information that is subject to U.S. export controls? If you need assistance in this determination, you should review the materials at [URL], and/or consult with the export control administrator for the business component whose information is involved [name/e-mail]. Export controlled technical information also includes (among other things) [examples from the business]. Please note some of this data may have military applications and its export may be considered a national security risk. There are criminal sanctions for violating export and import control laws.</p> |
| <p>__Yes__No__NA __Unsure</p> | <p>A5 If "Yes" to A4, do you understand:</p> <p>(1) That this information, if originating in or entering the U.S. and electronically stored, must be: (a) stored on a secure U.S.-based and U.S.-administered server approved by the GoodCo IT Security Manager [name/e-mail]; and (b) protected with access controls (potentially including the use of a "hard token" random number generator by users if required by the GoodCo IT Security Manager) to ensure that the technical information may only be accessed by: (i) U.S. citizens, and (ii) Canadian citizens (except for certain military information), and (iii) other foreign nationals while present in the U.S. and holding a valid U.S. Green Card; and (2) Persons who are not included in categories (b)(i)-(iii) above should not have any administrative control over the site or be involved in systems support or the control or re-issuance of passwords; and (3) Even persons who are included in categories (b)(i)-(iii) above should not access the information unless they are standing on U.S. territory, so the access controls should be set up to block access from outside the U.S. (if feasible) or if not feasible, a "Territory Notice" (in a form approved by the GoodCo Export Controls Administrator [name, e-mail] should be posted warning persons with access that they must not access the information unless standing on U.S. territory; and (4) The current version of the "Territory Notice" for QuickPlaces is as follows, placed on the page where the file is located: "Online access to this information from outside the U.S. is considered an export of this information"; and (5) The current version of the "Territory Notice" for other applications is as follows, posted prominently on the user interface: ***** Accessing technical data hosted on a U.S.-based application or server from outside the U.S. is considered an export of that technical data. It is your obligation to comply with all relevant U.S. export laws. For guidance on compliance with U.S. export laws: - See the "Export Control" section of the GoodCo Legal Home Page [URL]; or - Contact assigned legal counsel; or - Contact GoodCo Exports Controls Administrator [name, e-mail]" OK CANCEL *****; and (6) In order to provide guidance to GoodCo employees regarding leaving the U.S. with a laptop computer containing export controlled technical information, a "Log-off Notice" (in a form approved by the GoodCo Export Controls Administrator [name, e-mail] should be posted on the log-off screen of GoodCo internal employee-only applications containing export controlled technical information; and (7) The current version of the "Log-off notice" is as follows: ***** WARNING: Employees who are entitled to have access to export controlled technical information while in the U.S. are allowed to leave the U.S. with a laptop computer containing such information so long as they maintain custody and control of the laptop computer at all times. However, if an employee loses control of the laptop computer, GoodCo may be required to disclose that fact to the U.S. Government. Therefore, it is recommended that you delete all non-essential export controlled technical information from your laptop computer prior to taking it outside of the U.S. This includes not only files you have proactively saved to a folder on your laptop, but also those stored in your browser "cache" (which Microsoft® Explorer® calls the "Temporary Internet Files Folder"), or cache files used by other access software.</p> <p>To view the files stored in your browser cache: Click on the "Tools" dropdown menu. Click on "Internet Options." Click the "Settings" button under the "General" tab. Click the "View Files" button.</p> <p>To delete specific files stored in your browser cache: Click on the file to highlight it. Click on the "File" dropdown menu. Click on "Delete."</p> |

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| | <p>To delete all the files stored in your browser cache: Click on the "Tools" dropdown menu. Click on the "Internet Options." Click the "Delete Files" button under the "General" tab.</p> <p>If you are using a browser other than Microsoft® Explorer®, or you are using software other than a browser for access to export-restricted information, contact the GoodCo Helpdesk for assistance. *****; and</p> <p>(8) These limitations may prohibit participation by certain persons in your project or the development or maintenance of your application, including some of GoodCo's own employees and some individual employees of U.S. vendors; and</p> <p>(9) Because the GoodCo intranet is accessible to a large number of people, some of whom are not GoodCo employees and many of whom will be prohibited from accessing this information, this information should at least be password-protected (such as in a secure QuickPlace) rather than placed unrestricted on the intranet, users should not be allowed to use "default" passwords (such as "ChangeMePlease"), and (as mentioned in section (1)(b) above) the GoodCo IT Security Manager may require hard tokens; and</p> <p>(10) When setting up QuickPlaces, TeamRooms and SameTime meetings containing such information, you should (a) password protect the site or meeting (using session-specific, non-default passwords), (b) not use "anonymous" in the Reader, Author, or Manager permission list, and (c) in tools permitting GUEST access, do not grant GUEST access? References: Export Administration Regulations (EAR) 15 CFR Parts 730-774; International Traffic in Arms Regulations (ITAR) 22 CFR 120-130.</p> |
| <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unsure</p> | <p>A6 Access Restrictions to Prevent U.S. Persons from Facilitating Transactions with Certain "Sanctioned" Nations, Entities and Persons. Will any software application that is part of this project be used to enter into a binding contract, including but not limited to a contract to buy, sell, or rent goods or services or to license software?</p> |
| <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unsure</p> | <p>A7 Will any software application that is part of this project, even if it stops short of forming a binding contract, be used to directly or indirectly "facilitate" any transactions (beyond mere advertising)? This includes not only applications that process transactions directly, but also includes such things as: (1) "Configurator" tools and "Wizards" that can be used to aid product selection; and (2) Sites which provide "online quotes" or "budgetary estimates" that can later be converted into online or offline transactions; and (3) Online marketplaces and exchange sites that broker transactions or merely bring together buyers and sellers; and (4) Any site that "refers" a party seeking a transaction to another party who can assist with the transaction (other than general advertising which is covered in section A95); and (5) Credit processing tools that can be used to evaluate the creditworthiness of a customer; and (6) Help desk functions which render technical advice in support of the sale or licensing of a product.</p> |
| <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unsure</p> | <p>A8 Will any software application that is part of this project be (1) hosted on a server based in the U.S. or (2) supported in any way (including but not limited to technical and software support) by a "U.S. person"? "U.S. person" is defined to include: (a) U.S. nationals wherever located, and (b) foreign nationals employed by any U.S. incorporated company (such as GoodCo) wherever located, and (c) other foreign nationals while present in the U.S. and holding a valid U.S. Green Card. For the Cuba sanction (see A10 below), "U.S. person" is additionally defined to include: (d) foreign nationals employed by any controlled foreign subsidiary of a U.S. incorporated company (such as GoodCo) wherever located.</p> |
| <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/> Unsure</p> | <p>A9 If "Yes" to A6 or A7, will any of the transactions to be processed or facilitated involve goods or services of U.S. origin, or goods with parts of U.S. origin?</p> |
| <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/> Unsure</p> | <p>A10 If "Yes" to either A6 or A7, and also "Yes" to either A8 or A9, do you understand that: (1) U.S. law prohibits, without U.S. Government approval, a "U.S. person" from facilitating (directly or indirectly) any transaction involving a "sanctioned" country, entity or person; and (2) The nations currently "sanctioned" by the U.S. Government are: Iran, Iraq, Libya, Sudan and Cuba; and (3) The U.S. Government has also sanctioned certain individual persons and companies in other nations who are included on a U.S. government "Denied Parties" list and two other "Blacklists"; and (4) The three "Blacklists" are as follows: (a) Denied Persons List (U.S. Commerce Department; listing of individuals/companies who have violated the U.S. Commerce Department, Bureau of Export Administration, export laws and are denied exports/re-exports of any commodity, software, or technical data under the jurisdiction of the U.S. Commerce Department). http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=bx&docid=f:dpl.pdf (b) Specially Designated Nationals & Blocked Persons List (U.S. Treasury Department, Office of Foreign Assets Control Division-OFAC; listing of individuals and companies/organizations who have been identified by the U.S. Government as sponsoring terrorism and involved in international narcotics trafficking).</p> |

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| | <p>http://www.treas.gov/ofac/t11sdn.pdf (c) Entity List (U.S. Commerce Department). Listing of entities (private, government agencies/entities, and quasi-government agencies/entities) that have been identified by the U.S. Government as being involved in proliferation (nuclear, biological, chemical). http://www.bxa.doc.gov/entities/default.htm (5) You must either change your application so that you can answer "No" to either A6 or both A7 and A8, or you must implement "front end" access controls that prevent access to your application by the following persons and "back end" shipping controls that prevent shipping to the following persons: (a) persons (wherever located) listed on the Blacklists identified in item (4); and (b) persons employed by a sanctioned company (wherever located) listed on the Blacklists identified in item (4); and (c) persons who are citizens of any sanctioned nation (identified in (2) above); and (d) persons who reside in a sanctioned nation (identified in (2) above); and (e) persons employed by a company headquartered in or incorporated in a sanctioned nation (identified in (2) above); and (6) If your application allows the input of a "project location" field or other data field which will reveal directly or indirectly a connection between the transaction and a sanctioned nation, the data field must be set up so that entry of a sanctioned nation location will result in the following "Location Response": "U.S. law prevents us from facilitating any transaction connected with this location." (7) The current version of the GoodCo Single Sign On registration application (which you are required by GoodCo policy to use for your registration process) provides screening for (5)(c), (d) & (e) but does not yet provide screening for (5)(a) & (b); and (8) You must, therefore, satisfy (5)(a) & (b) with a manual screening of registrants against the Blacklists, or with a digitized process (such as that provided by the Vastera Tradesphere® software); and (9) If an attempted registrant for your site is described by (5)(a) or (5)(b) above (i.e., matches a Blacklist), either the assigned business unit counsel or GoodCo Export Controls Administrator [name/e-mail] must be contacted before proceeding. (10) You must also post on the user interface for the application a "No Facilitation" notice informing users that U.S. persons must not facilitate transactions with sanctioned nations, in a form approved by the GoodCo Export Controls Administrator [name/e-mail]; and (11) The current form of this notice is: ***** "REMINDER: U.S. law prohibits, without US Government approval, a "U.S. person" from facilitating in any transaction involving, directly or indirectly, a "sanctioned" country. The use of software applications hosted on a U.S. based server for any transaction involving, directly or indirectly, a sanctioned country may be considered "facilitation." The countries currently "sanctioned" by the U.S. Government are: Cuba, Iran, Iraq, Libya, and Sudan. "U.S. person" is defined to include: (a) U.S. nationals wherever located, (b) foreign nationals employed by any U.S. incorporated company (such as GoodCo) wherever located, (c) other foreign nationals while present in the U.S. and holding a valid U.S. Green Card, and (d) (for the Cuba sanctions only) foreign nationals employed by any controlled subsidiary of a U.S. incorporated company (such as GoodCo) wherever located. For businesses located in Canada, Mexico, or any European Union nation, anti-blocking statutes apply with respect to U.S. embargoes. Advice on complying with any relevant anti-blocking statutes should be obtained from assigned legal counsel." *****; and (12) For businesses located in Canada or any European Union nation, a national "anti-blocking statute" applies to U.S. embargoes against Cuba; for advice on this topic, consult with [name/e-mail]; and (13) For businesses located in Mexico, a national "anti-blocking statute" applies to U.S. embargoes against all nations; for advice on this topic, consult [name/e-mail];. Reference: Office of Foreign Assets Control (OFAC) 31 CFR Parts 500-597.</p> |
| <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/> Unsure</p> | <p>A11 Sanctioned Referrals. If "Yes" to A8 (regardless of the answers to A6 and A7), do you understand that the following types of materials on the site may be deemed an illegal "referral" of a sanctioned country transaction under the U.S. export laws: (1) Press releases reporting transactions or contracts closed in one of the nations sanctioned by the U.S. (Iran, Iraq, Libya, Cuba or Sudan) and the identity of the company (regardless of location) which fulfilled or facilitated the transaction; and (2) Promotion of the fact that any GoodCo business can fulfill orders in any of those nations (even one that can legally fulfill the orders because it is not a U.S. person or supported by U.S. Persons); and (3) A listing of the sales contacts in any of those nations (even for company or business unit that can legally fulfill the orders because it is not a U.S. person or supported by U.S. Persons)?</p> |
| <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/> Unsure</p> | <p>A12 Prohibited Direction of Sanctioned Country Business. If "Yes" to A8 (regardless of the answers to A6 and A7), do you understand that: (1) Information about sanctioned country transactions that is included in centralized administrative tracking and reporting</p> |

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| | <p>systems used by GoodCo's foreign affiliates and which systems/applications are housed on US-based servers, or supported by U.S. Persons, or used by U.S. persons could expose GoodCo to a violation under U.S. law if the information is used by U.S. Persons to facilitate a sanctioned country transaction; and</p> <p>(2) Your application should contain notices prohibiting the input or inclusion of detailed information about sanctioned country transactions; and</p> <p>(3) Your application should provide for methods to block access by U.S. Persons of detailed information related to sanctioned country transactions?</p> |
| <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unsure</p> | <p>A13 Access Restrictions and Markings for GoodCo Proprietary Information. Will this project (or any software application that is part of this project) provide access (for users of the application or for the vendors working on the application) to any information about GoodCo or any GoodCo-affiliated entity that is deemed "trade secret" or "proprietary" under the GoodCo Intellectual Property Policy [URL]? Note that "Proprietary information" includes virtually all information about GoodCo and its business, products and services that is not generally available to the public.</p> |
| <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/> Unsure</p> | <p>A14 If "Yes" to A13, do you understand that:</p> <p>(1) Access to GoodCo trade secret and proprietary information must be limited to persons who have a reasonable "need to know" the information and have signed an agreement with GoodCo obligating them to disclose and use the information only as reasonably necessary to perform their obligations to GoodCo; and</p> <p>(2) Additional multi-level access controls may be necessary where information has been divided into multiple access "levels" based upon "need to know" and the sensitivity of the information (for example, in GoodCo Engineering); and</p> <p>(3) Such access controls may, depending on the review of your project by the GoodCo IT Security Manager [name/e-mail], require the use of a "hard token" random number generator by users; and</p> <p>(4) All GoodCo trade secret and proprietary information must be appropriately marked (e.g., "GoodCo Proprietary Information"), including any additional markings necessary to identify multiple levels (e.g., "Sensitive Data"); and</p> <p>(5) Rules (1)-(4) above apply not only to the disclosure of information through your application but also to disclosure of information by other means to your vendors and individual contractors and employees developing your application, and you should not disclose proprietary information to any of them until they have signed an agreement obligating them to disclose and use the information only as reasonably necessary to perform their obligations to GoodCo; and</p> <p>(6) Many of the agreements with these vendors and contractors require that verbally disclosed information be identified in writing as Proprietary or Confidential within (typically) ten (10) days, so you should familiarize yourself with the requirements for verbally disclosed information and comply with them; and</p> <p>(7) Because the GoodCo intranet is accessible to a large number of people, some of whom are not GoodCo employees and many of whom will not have a "need to know" the information, proprietary information should be password-protected (such as in a QuickPlace), rather than placed unrestricted on the intranet; and</p> <p>(8) When setting up QuickPlaces, TeamRooms and SameTime meetings containing such information, you should (a) password protect the site or meeting (using session-specific, non-default passwords), (b) not use "anonymous" in the Reader, Author, or Manager permission list, and (c) in tools permitting GUEST access, not grant GUEST access?</p> |
| <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unsure</p> | <p>A15 Access Restrictions and Markings for Information From or About Companies Other than GoodCo. Will this project (or any software application that is part of this project) provide access to any information from or about a company or its business, equipment or personnel that is not a GoodCo-affiliated business and that GoodCo is required to control access to under any contract (written or otherwise)? Examples include information shared with GoodCo under a "confidentiality" or "non-disclosure" agreement.</p> |
| <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unsure</p> | <p>A16 Will this project (or any software application that is part of this project) provide access to any information from or about a non-GoodCo company or its business, equipment or personnel that is not publicly known but that is not covered by any contract to which GoodCo is a party? Examples include: (1) remote monitoring & diagnostic data from installed equipment that is not expressly covered by the contract with the customer, (2) data collected using "wearable computers" to inspect equipment that is not addressed by the contract, and (3) competitive intelligence information collected from or about third party companies.</p> |
| <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/> Unsure</p> | <p>A17 If "Yes" to A15, do you understand that:</p> <p>(1) Access to non-GoodCo information covered by a contract to which GoodCo is a party must be handled in accordance with the contract; and</p> <p>(2) You should obtain a copy of the contract for your project file and send a copy to your assigned E-Business Counsel so that you can ensure that the information is handled in accordance with contractual requirements; and</p> <p>(3) Contractual requirements typically include marking the information in a specified way (such as ABC Company Proprietary Information) and limiting access to persons who have a reasonable "need to know" the information and have signed an agreement with GoodCo obligating them to disclose and use the information only as reasonably necessary to perform their obligations to GoodCo; and</p> <p>(4) Contractual access controls may, depending on the review of your project by the GoodCo IT Security Manager [name/e-mail], require the use of a "hard token" random number generator by users; and</p> <p>(5) Contractual access controls may apply not only to the disclosure of information by the application but also to disclosure of information to your vendors and individual contractors and employees developing your application, and you should not</p> |

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| | <p>disclose proprietary information to any of them until they have signed an agreement obligating them to disclose and use the information only as reasonably necessary to perform their obligations to GoodCo; and</p> <p>(6) Many of the agreements with these vendors and contractors require that verbally disclosed information be identified in writing as Proprietary or Confidential within (typically) ten (10) days, so you should familiarize yourself with the requirements for verbally disclosed information and comply with them; and</p> <p>(7) Because the GoodCo intranet is accessible to a large number of people, some of whom are not GoodCo employees and many of whom will not have a "need to know" the information, proprietary information should be password-protected (such as in a QuickPlace) rather than placed unrestricted on the intranet; and</p> <p>(8) When setting up QuickPlaces, TeamRooms and SameTime meetings containing such information, you should (a) password-protect the site or meeting (using session-specific, non-default passwords), (b) not use "anonymous" in the Reader, Author, or Manager permission list, and (c) in tools permitting GUEST access, not grant GUEST access?</p> |
| <p>__Yes__No__NA __Unsure</p> | <p>A18 If "Yes" to A16, do you understand that:</p> <p>(1) Access to non-GoodCo information that is not covered by a contract to which GoodCo is a party may still be subject to requirements of law, including trade secrets law, personal data law (see A19 below), and unfair competition law; and</p> <p>(2) In certain countries (including Italy, Norway, Denmark, Switzerland, Luxembourg, Austria and Russia) there are data protection laws that cover not only the processing of personal data (see A19 below) but also information relating to companies; and</p> <p>(3) Even "aggregate" uses of data that are not identifiable to a particular data source are not immune to legal requirements (example: aggregated data from multiple customers showing that 65% will be performing maintenance in April may be barred from use for marketing maintenance services if there is an agreement with each of the customers not to reveal its outage plans); and</p> <p>(4) GoodCo's right to use the data in all the ways that it will be used should be established in a contract with or written consent by the company or person who (at least arguably) owns the data; and</p> <p>(5) The data should not be used in ways or for purposes other than those specifically allowed by a contract or written consent without approval by your business unit legal counsel.</p> |
| <p>__Yes__No __Unsure</p> | <p>A19 Access and Use Restrictions for "Personal Data". Will this project (or any software application that is part of this project) collect, store, process or provide access to "personal data"? "Personal data" is defined to include all data associated with an individual person (including GoodCo's own employees and the employees of GoodCo's corporate customers), including but not limited to name, physical address (home or office), e-mail address (home or office), telephone numbers (home or office), Social Security numbers, national ID numbers, other ID numbers, medical and health information, financial information, race, ethnicity, religious affiliation, affiliations with clubs and associations, and (in some jurisdictions) still or moving images in which a recognizable person appears. "Processing" is defined to include almost any form of information processing, including but not limited to collection, storage, archiving, data-mining, reporting, use, transmission, "sharing" with other parties, "transfer" outside the national boundaries where collected, and almost any use including aggregated use).</p> |
| <p>__Yes__No__NA __Unsure</p> | <p>A20 If "Yes" to A19, do you understand that:</p> <p>(1) Personal data protection laws (including the EU Data Directive) apply to "personal data" identifiable to individual "data subjects" in the following jurisdictions: the 15 EU States (Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, Sweden, United Kingdom), the 3 additional states in the European Economic Area (EEA) (Norway, Liechtenstein and Iceland), Hungary, Argentina (since 4-30-01), Australia (beginning 12-1-01), Canada (beginning 1-1-04 for non-government entities, but contains an exception for names, titles, business addresses and business telephone numbers), the province of Quebec (which has been in effect since 1994, and does not have these exceptions), Chile (applies to processing in Chile only), and Mexico (applies to consumer information only. But they are considering expanding it); and</p> <p>(2) Many other jurisdictions are actively considering adoption of similar laws; and</p> <p>(3) Some of these laws apply extraterritorially (to personal data about citizens of that jurisdiction wherever they or the data are located), including all of the EU and EEA jurisdictions, Canada, Australia, Argentina); and</p> <p>(4) These laws generally:</p> <p>(a) Apply to both offline and online data collection, storage and processing (e.g., websites, daytimers, cards collected at trade shows); and</p> <p>(b) Apply even to a company's use of personal data from its own employees; and</p> <p>(c) Generally do not differentiate between an individual operating in his personal or professional capacity (e.g., contact info for a Buyer at an EU utility is included); and</p> <p>(d) Require "Notice" (detailed disclosures to the data subject of how his data will be "processed" and for what purposes, and notice of which items of information are compulsory for certain purposes and which are optional); and</p> <p>(e) Require "Choice" ("Opt-in" consent from the data subject to that processing, processing only in compliance with that consent and for those purposes, and discontinuance of storage and processing if the data subject later revokes consent); and</p> <p>(f) Require "Security" (must take reasonable measures to keep the personal data secure from third parties); and</p> |

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| | <p>(g) Require “Access” (somewhat in tension with Security; must provide the data subject with access to his personal data upon request so that he can confirm its continuing accuracy; and</p> <p>(5) Sharing of personal data with non-GoodCo entities may not be done until special contract provisions are put in place with those parties (and the data subject has consented); and</p> <p>(6) A person in the business who is present in the local jurisdiction must be designated as the personal data “controller” in some jurisdictions (e.g., Germany, Argentina); and</p> <p>(7) Registration with the government is required in some jurisdictions if personal data is collected (e.g., Germany, Argentina)?</p> |
| __Yes__No __Unsure | <p>A21 Access and Use Restrictions for “Sensitive Personal Data”. Will this project (or any software application that is part of this project) collect, store, process or provide access to “sensitive personal data”? This is a sub-category of “personal data” that includes such information as an individual's racial or ethnic origin, political opinions, religious or philosophical beliefs, membership in a trade union, health or medical information, sexual preferences, criminal offenses, financial information, Social Security numbers (which may be used to access other types of sensitive data), and affiliations with clubs and associations.</p> |
| __Yes__No__NA __Unsure | <p>A22 If “Yes” to A21, do you understand that:</p> <p>(1) Except in a few exceptional circumstances that do not normally apply in the business context (e.g., such processing is necessary to comply with employment law obligations, to exercise or defend legal rights, to prevent a crime, or to protect an individual's vital interests), “sensitive personal data” should only be stored and processed with the express consent of the individual data subject; and</p> <p>(2) If you intend to rely upon one of the exceptions, you should confirm its applicability with your assigned business unit legal counsel.</p> |
| __Yes__No __Unsure | <p>A23 Access and Use Restrictions for Personal Data from Children Under the Age of 13. Will this project (or any software application that is part of this project): (1) collect, store, process or provide access to “personal data” (defined similarly to “personal data” in A19) from or about children under the age of 13, or (2) be a website or online service that is “directed” to children under the age of 13? Note: GoodCo websites with general access and the standard GoodCo Privacy Policy posted do not normally fall into this category (2) because the Privacy Policy states that the Site is not directed to anyone under 18 years of age, but the knowing collection of such information can result in requirements under category (1).</p> |
| __Yes__No__NA __Unsure | <p>A24 If “Yes” to A23, do you understand that:</p> <p>(1) A U.S. federal statute call COPPA (Children’s Online Privacy Protection Act) imposes requirements on the collection storage of use of personal data about children under 13 that are different from or in additions to those described in A19-A23 above, and unlike A19-23 above, it applies to personal data of U.S. citizens; and</p> <p>(2) COPPA requires the posting of a prominent link labeled “Privacy Policy” on the site’s home page and near all points of collection of information from children under 13; and</p> <p>(3) The Privacy Policy must state:</p> <p>(a) The name, address, telephone number and e-mail address of all operators collecting or maintaining children’s personal information through the site; and</p> <p>(b) The type of information collected and the method by which collected (including passive methods such as cookies); and</p> <p>(c) Description of third parties with whom the information is shared and their information practices; and</p> <p>(d) Statement of the parent’s right to consent to collection and use by the operator but not sharing with third parties; and</p> <p>(e) A statement of the operator’s obligation not to collect more information than is reasonably necessary for the child to participate in the activity; and</p> <p>(f) The procedures necessary for a parent to review the information collected and to request deletion and/or the cessation of collection of further information; and</p> <p>(4) No information may be collected from the child under 13 until consent has been obtained from his parents (except that the parent’s e-mail address may be collected in order to pursue the consent); and</p> <p>(5) The fact that the consent has come from the child’s parent must be verified with a credit card number, signed form from the parent, call from the parent to a toll free number, e-mail with a PIN or password, or e-mail with a digital signature?</p> |
| __Yes__No __Unsure | <p>A25 Access and Use Restrictions for “Non-Public Personal Information” Maintained by “Financial Institutions”. Will this project (or any software application that is part of this project) collect, store, process or provide access to “non-public personal information” that has been collected by a “financial institution” (as defined in the Gramm-Leach-Bliley Act (GLBA))?</p> <p>GLBA defines “non-public personal information” broadly and similarly to “personal data” in A17, (and includes items such as credit reports, transaction history and information collected with “cookies”) and personal information is presumed to be “non-public” if received from the individual data subject, unless the institution has taken reasonable steps to ascertain that the information is available to the general public, and if the individual has the ability to direct that the information not be made publicly available, he has not exercised it (e.g., telephone numbers are public if listed in the telephone directory). GLBA defines “financial institution” as any institution that is “significantly engaged” in “financial activity”.</p> |

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| | <p>GLBA defines "financial activity" as activities that are financial in nature or incidental to such activities, as described in section 4(k) of the Bank Holding Company Act of 1956 (BHCA)," and this includes:</p> <ol style="list-style-type: none"> (1) Retailers that issue their own credit cards (but the acceptance of credit cards issued by others is not considered significantly engaged"); and (2) Extending credit (but if this is only "occasional" it is not considered significantly engaged"); (3) Issuing stored-value cards, (4) Brokering or servicing loans; and (5) Leasing real or personal property; and (6) Appraising real or personal property; and (7) Selling money orders or offering some other financial product or service; and (8) Providing financial data processing and transmission services, facilities (including hardware, software, documentation or operating personnel), databases, advice, or access to these by technological means; and (9) Ending, exchanging, transferring, investing for others, or safeguarding money or securities; and (10) Insuring, guaranteeing, or indemnifying against loss, harm, damage, illness, disability, or death, or providing and issuing annuities; and (11) Providing financial, investment, or economic advisory services, including advising an investment company; and (12) Issuing or selling instruments representing interest in pools of assets permissible for a bank to hold directly; and (13) Underwriting, dealing in, or making a market in securities; and (14) Check guaranty, collection agency, credit bureau, and real estate settlement services; and (15) Providing financial or investment advisory activities, including providing financial career counseling; and (16) Courier services for banking instruments; and (17) Printing and selling checks and related documents; and (18) Community development or advisory activities; and (19) Selling money orders, savings bonds, or traveler's checks. |
| <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/> Unsure</p> | <p>A26 If "Yes" to A25, do you understand that:</p> <ol style="list-style-type: none"> (1) GLBA imposes (since it became effective on 7-1-01) requirements on the collection, storage of use of non-public personal information (NPPI) maintained by financial institutions that are different from or in addition to those described in A19-A23 above, and unlike A19-23 above, it applies to NPPI of U.S. citizens who are "Customers" or "Consumers"; and (2) "Customers" are individuals who have applied for or purchased financial products and services offered by the financial institution involved; and (3) "Consumers" are individuals who use financial products and services, but not of the financial institution involved; and (4) A financial institution's only GLBA obligation to a "Consumer" who is not a "Customer" is to offer him the opportunity to opt-out before disclosing any of his NPPI to a nonaffiliated third party; and (5) A financial institution has the following obligations under the GLBA to a "Customer": <ol style="list-style-type: none"> (a) Offer him the opportunity to opt-out of any disclosure of the Customer's NPPI to a nonaffiliated third party; and (b) Develop a Privacy Policy and disclose it to all "Customers" at the outset of the customer relationship and annually thereafter; and (c) The Privacy Policy must describe the categories of NPPI that the institution collects and discloses, as well as the categories of affiliated and non-affiliated parties to which it discloses that information; and (6) Even "aggregate" uses of NPPI that are not identifiable to a particular data subject are not immune to GLBA requirements and both Customers and Consumers must be given the opportunity to opt out in advance of any sharing of that data with a non-affiliated third party; and (7) GLBA contains several exceptions to the opt-out requirements, including a "joint marketing exception" providing that an institution need not provide consumers with the right to opt out of the disclosure of nonpublic personal information if the information is being disclosed to a service provider or to a joint marketer, but you should confirm the applicability of such exceptions with your assigned legal counsel prior to relying upon them? |
| <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unsure</p> | <p>A27 Access and Use Restrictions for "Protected Health Information". Will this project (or any software application that is part of this project) collect, store, process or provide access to "protected health information" (PHI) as that term is defined in the U.S. Healthcare Insurance Portability & Accounting Act of 1996 (HIPAA)?</p> <p>"Protected health information" (PHI) is information created or received by a covered entity in any form (oral, written or electronic) that: (i) relates to the past, present or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (ii) identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual.</p> <p>"Covered entities" (CEs) include health plans, health care providers, health care clearinghouses, affiliate entities, hybrid entities, and employers with self-funded group health benefit plans, which may be construed to cover some activities within GoodCo.</p> <p>Health information that does not identify an individual and with respect to which there is no reasonable basis to believe that the information can be used to identify an individual is not individually identifiable health information. PHI may be</p> |

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| | <p>considered "de-identified" if: (a) all individual identifiers are removed and the covered entity does not have actual knowledge that the information could be used alone or in combination with other information to identify an individual who is a subject of the information; or (b) an appropriately qualified statistician verifies the de-identification.</p> |
| <p>__Yes__No__NA __Unsure</p> | <p>A28 If "Yes" to A27, do you understand that:</p> <ol style="list-style-type: none"> (1) Beginning 4-14-2003, HIPAA regulations will require all "covered entities" (CEs) and their "business associates" (BAs) to comply with complex regulations regarding the collection and processing of "protected health information" (PHI); and (2) The detailed regulations regarding HIPAA are more than 1,500 pages long, but are summarized briefly below; and (3) A BA is a company that receives PHI in the course of performing services on behalf of a covered entity (such as a company performing payment processing services for a health care plan); and (4) Each CE is required to adopt a privacy policy, designate a privacy officer, establish procedures for responding to individuals regarding access and requests for amendment of information (including compliance hotlines), and train employees with respect to its privacy policies and procedures; and (5) Each CE is required to enter into "business associate contracts" with BAs that stipulate that the BAs will act and organize itself as if it were a directly regulated CE, and CEs that fail to do so will be held vicariously liable for any privacy breaches of its BAs regarding the shared PHI; and (6) CEs (and BAs under their contracts) must obtain the prior written consent of the patient before undertaking treatment, payment activities or health care operations; and (7) Most uses and disclosures of PHI other than for treatment must use only the minimum necessary information; and (8) Any uses or disclosures of PHI for purposes other than treatment, payment or health care operations (including most uses for company operations purposes) will require a prior detailed written authorization from the individual; and (9) Individuals are given the rights to access their PHI, to receive notice of the privacy policies of each covered entity, to request amendments of their PHI, to receive an accounting of disclosures made, and to file complaints regarding use or disclosure of their PHI; and (10) Knowingly accessing or using PHI inappropriately is punishable by criminal penalties of up to ten years in prison; and (11) Even violations caused by ordinary negligence are punishable with civil fines; and (12) The design of your software application must support these requirements before 4-14-2003? |
| <p>__Yes__No __Unsure</p> | <p>A29 Other Access Restrictions. Are you aware of a need for any other access controls or restrictions beyond those already discussed that will be necessary in your application (such as access controls built into the offline process you are digitizing or the legacy application you are replacing)? If so, you should discuss these with E-Business Counsel.</p> |
| <p>__Yes__No __Unsure</p> | <p>A30 Cross-Border Encrypted & Compressed Communications. Will you be using any encrypted communications (including encrypted and/or compressed data transmissions) in your application that cross national boundaries? (Example: remote monitoring & diagnostic projects that transmit technical data from installed equipment).</p> |
| <p>__Yes__No__NA __Unsure</p> | <p>A31 If "Yes" to A30, do you understand that:</p> <ol style="list-style-type: none"> (1) Depending upon the hardware and software you are using to accomplish the encrypted or compressed communications, and the location of the parties who will be engaging in the encrypted communications, and the nature of the data to be transmitted, you may need to: <ol style="list-style-type: none"> (a) obtain import or export licenses or export assurance documents; or (b) escrow encryption "keys" with a government agency; and (2) Some governments regulate compression as a form of encryption; and (3) You should discuss these issues with your assigned E-Business Counsel? |
| <p>__Yes__No __Unsure</p> | <p>A32 Webcams, Videoconferences, Cameras and Microphones. Will your project or any application implemented as part of your project record, store or transmit any audio or video recordings or still images?</p> |
| <p>__Yes__No__NA __Unsure</p> | <p>A33 If "yes" to A32, do you understand that:</p> <ol style="list-style-type: none"> (1) Depending upon the content of the images/recordings, the images/recordings may be subject to the requirements of A2-3 (nuclear information), A5 (non-nuclear export restricted information), A14 (GoodCo proprietary information), A16-18 (non-GoodCo information), A20 (personal data, as some jurisdictions deem images depicting identifiable persons as personal data), A22 (sensitive personal data), A24 (personal data from children under 13), A26 (non-public personal information), A28 (protected health information), and A31 (encrypted and compressed communications), and you must comply with those sections; and (2) Even jurisdictions that do not have personal data laws sometimes have statutes or privacy statutes requiring that persons in range of a camera or microphone be notified; and (3) Therefore, you may be required to inform all persons who are within the range of a camera of the facts concerning the presence of the camera, the entities to whom the images will be distributed, and the intended processing of the images (depending on the camera placement and the jurisdiction in which it is placed, signage at points of entrance and exit may be sufficient or individual signed consent forms may be necessary) (consult with E-Business Counsel); and (4) The presence of the camera or microphone should also be made known to: <ol style="list-style-type: none"> (a) Unions with members who work on a camera or microphone site; and (b) HR personnel with responsibility for any employees on a camera or microphone site; and |

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| | <p>(5) Recording (particularly with microphones) may be subject to particular requirements in state and/or federal surveillance or wiretap laws and should be discussed with E-Business Counsel; and</p> <p>(6) A contract (such as the GoodCo WebCam Installation Agreement) should be put in place with the entity owning or controlling the facility upon which the camera or microphone is installed:</p> <p>(a) Obtaining permission to keep the camera or microphone there and operate it; and</p> <p>(b) Reserving the right to enter the facility at reasonable times to perform maintenance on the camera or microphone; and</p> <p>(c) Reserving to GoodCo and assigning to GoodCo the copyright ownership in all images/recordings made with the camera or microphone, but licensing back usage rights as reasonable and necessary; and</p> <p>(7) A contract should be put in place with persons who select the timing or parameters of images/recordings (and therefore have claims as a copyright owner), assigning copyrights in the recordings to GoodCo, but licensing back usage rights as reasonable and necessary, and prohibiting the creation or use of images or sounds that are "inappropriate" (embarrassing to people, lewd, invasive of privacy, etc.); and</p> <p>(8) A contract (or enforceable Terms of Use) should be put in place with the persons who have access to the recordings:</p> <p>(a) limiting uses to those that are allowed by contract, by consent from the persons depicted or otherwise recorded, and by consent from any other person or entity with a claim on the information content of the recordings; and</p> <p>(b) disclaiming liability for the content of the recordings.</p> |
| __Yes__No __Unsure | <p>A34 Downloadable Software (Software & Export Licenses). Will your application allow downloading of any executable software code (whether owned by GoodCo or others)?</p> <p>Note: Merely providing a text link to the Adobe® Acrobat®, Netscape® Navigator®, or Microsoft® Explorer® download sites from which these products may be downloaded is not considered a software download from the GoodCo site, and if that is all you are doing you may answer "No" to this question. However, see section A89 regarding linking.</p> |
| __Yes__No__NA __Unsure | <p>A35 If "Yes" to A34, is the downloaded software owned in whole or in part by a person or company other than GoodCo?</p> |
| __Yes__No__NA __Unsure | <p>A36 If "Yes" to A34, will the software to be downloaded have the ability to encrypt files or other information?</p> |
| __Yes__No__NA __Unsure | <p>A37 If "Yes" to A34, do you understand that:</p> <p>(1) It will be necessary to obtain the downloading party's agreement to a software license (even for GoodCo-owned software downloaded only to GoodCo employees); and</p> <p>(2) The form and wording of the agreement must be approved by E-Business Counsel; and</p> <p>(3) A "clickwrap" or "pop-up on install" license may not be adequate depending upon the circumstances, such as which nation's laws are likely to apply to the download (clickwraps are not enforced in all countries); and</p> <p>(4) You are required by GoodCo Policy to disclose to your manager any ownership or other business interest you have in the proposed vendor and any familial or personal relationship with owners or key personnel, of the proposed vendor; and</p> <p>(5) You should remind your vendors that all press releases and promotions regarding their relationship with GoodCo (including but not limited to listing GoodCo as a customer on the vendor's website) must be approved by GoodCo, and internally must be personally approved by the GoodCo CIO [name, e-mail]?</p> |
| __Yes__No__NA __Unsure | <p>A38 If "Yes" to both A34 and A35, do you understand that, in addition to the requirements of A37:</p> <p>(1) Prior to using the software code you must obtain signed, written license agreements with each of the non-GoodCo software owners, allowing all uses of the software that you plan in your application, as well as the right to sublicense to your downloading users all uses that they will be allowed, and provide this agreement to E-Business Counsel for approval before signing (the agreement will normally be obtained through the GoodCo IT Sourcing Manager[name, e-mail]; and</p> <p>(2) If you will need any maintenance or support from the licensor, you must (by GoodCo policy) investigate the financial viability of the licensor to ensure that there is not an unreasonably high risk of licensor financial failure during the time period that you expect to need maintenance and support from the licensor; and</p> <p>(3) If the software is mission critical and not easily replaceable with other software, you must (by GoodCo policy) secure in the license agreement a source code escrow provision requiring the licensor to provide regular, updated deposits of source code (and annotations) for the licensed code with a mutually agreeable escrow agent (or, alternatively, direct deposits to GoodCo of same), and demonstrate to you that the deposited source code can be compiled by you to working object code if necessary in the event of licensor's financial failure?</p> |
| __Yes__No__NA __Unsure | <p>A39 If "Yes" to both A34 and A36, do you understand that:</p> <p>(1) Transmission of software from a server in Nation A to a client in Nation B is generally deemed an "export" in Nation A and an "import" in Nation B; and</p> <p>(2) Some nations (notably the U.S. and the U.K) have export controls on some types of encryption software, and other nations (notably France) have import controls on encryption software; and</p> <p>(3) You may need to obtain an export license from the U.S. government or an export assurance from the downloading party, and/or an export or import license from another government, to provide such downloads; and</p> <p>(4) You may need to escrow encryption "keys" with a government agency (for example, Part III of the UK's Regulation of Investigatory Powers Act ("RIPA") which grants law enforcement authorities the power to demand decryption keys from</p> |

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| | <p>companies and individuals, is set to be implemented on 1-1-2002)?</p> <p>Note 1: Netscape® Navigator® and Microsoft® Explorer® have encryption capabilities, and allowing download of those products directly from a GoodCo site would invoke export controls (as well as some software copyright issues). This is not permitted without express approval by E-Business Legal Counsel. However, merely providing a text link to the Netscape® Navigator® and Microsoft® Explorer® sites from which these products may be downloaded does not require an export license (those have been obtained by Netscape and Microsoft) and you may do so as described in A89.</p> <p>Note 2: For other software applications, the vendor may have obtained a "retail license" under which GoodCo can "piggyback" without obtaining its own export license. Consult with assigned E-Business Counsel before relying on this arrangement.</p> |
| <p>__Yes__No __Unsure</p> | <p>A40 Licensed Software. Will you be using any software code in your application that is owned in whole or in part by a person or company other than GoodCo (aside from the downloadable software already covered in A32-A39 above)?</p> |
| <p>__Yes__No__NA __Unsure</p> | <p>A41 If "Yes" to A40, do you understand that:</p> <p>(1) Prior to using the software code you will need to obtain signed, written license agreements with each of the non-GoodCo software owners, allowing all uses of the software that you plan in your application (including but not limited to sufficient numbers of "seats" and "servers" where applicable, and "sublicense" agreements where applicable), and provide this agreement to E-Business Counsel for approval (the agreement will normally be obtained through the GoodCo IT Sourcing Manager [name, e-mail]; and</p> <p>(2) If you will need any maintenance or support from the licensor, you must (by GoodCo policy) investigate the financial viability of the licensor to ensure that there is not an unreasonably high risk of licensor financial failure during the time period that you expect to need maintenance and support from the licensor; and</p> <p>(3) If the software is mission critical and not easily replaceable with other software, you must (by GoodCo policy) secure in the license agreement a source code escrow provision requiring the licensor to provide regular, updated deposits of source code (and annotations) for the licensed code with a mutually agreeable escrow agent (or, alternatively, direct deposits to GoodCo of same), and demonstrate to you that the deposited source code can be compiled by you to working object code if necessary in the event of licensor's financial failure; and</p> <p>(4) You are required by GoodCo Policy to disclose to your manager any ownership or other business interest you have in the proposed vendor and any familial or personal relationship with owners or key personnel, of the proposed vendor; and</p> <p>(5) You should remind your vendors that all press releases and promotions regarding their relationship with GoodCo (including but not limited to listing GoodCo as a customer on the vendor's website) must be approved by GoodCo, and internally must be personally approved by the GoodCo CIO [name, e-mail]?</p> |
| <p>__Yes__No __Unsure</p> | <p>A42 Developed Software. Will any new software code be developed in your project?</p> |
| <p>__Yes__No__NA __Unsure</p> | <p>A43 If "Yes" to A42, do you understand that:</p> <p>(1) Unless there is a signed, written agreement expressly providing otherwise, the intellectual property rights in the software code that GoodCo pays to have developed may end up being legally owned by the individual who develops it (or his vendor-employer) instead of GoodCo (because copyright ownership starts with the author and only transfers by written assignment or by an imperfect "work for hire" doctrine which applies only sparingly to non-employees); and</p> <p>(2) Unless there is a signed, written agreement expressly providing otherwise, the worker may also be free to use and disclose GoodCo proprietary information (because implied confidentiality obligations are not always given credence in the courts, particularly outside the U.S.); and</p> <p>(3) It is, therefore, extremely important to ensure that each worker on your project has signed a document agreeing:</p> <p>(a) to assign intellectual property ownership in the works he develops on your project (or GoodCo projects generally) to either (i) GoodCo or (ii) his employer; and</p> <p>(b) to use and disclose GoodCo proprietary information only as reasonably necessary to perform his obligations to GoodCo; and</p> <p>(4) It is also extremely important to ensure that the employer of each worker on your project has signed a document agreeing:</p> <p>(a) to assign intellectual property ownership in the works developed for your project (or for GoodCo projects generally) to GoodCo, and</p> <p>(b) to use and disclose GoodCo proprietary information only as reasonably necessary to perform obligations to GoodCo; and</p> <p>(5) For GoodCo employees, the requirements of (3) and (4) above may be met by confirming with GoodCo HR that the employee has signed the "Employee Innovation & Proprietary Information Agreement" (EIPIA) found at [URL]; and</p> <p>(6) For workers from [Existing Vendor], the requirements of (4) above may be met by issuing a Task Order for your project under the Software Services Agreement (SSA) already in place, and the requirements of (3) above may be met by obtaining a copy of the Secrecy and Inventions Agreement that the worker has signed; and</p> <p>(7) For workers from other vendors, the requirements of (4) above may be met by confirming (with the GoodCo IT Sourcing Manager [name, e-mail] that there is a current Master Services Agreement (MSA) in place with the vendor, and by issuing a Statement of Work (SOW) for your project under the MSA, and the requirements of (3) above may be met by obtaining a</p> |

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| | <p>copy of the MSA "Schedule C" that the worker has signed; and</p> <p>(8) Many of the agreements with these vendors and contractors require that verbally disclosed information be identified in writing as Proprietary or Confidential within (typically) ten (10) days, so you should familiarize yourself with the requirements for verbally disclosed information and comply with them; and</p> <p>(9) You are required by GoodCo policy to ensure that the employer of each worker on your project (or the worker himself if an Independent Contractor) has signed a document (this may be in the SSA or MSA) agreeing (a) to periodically deliver updated source code (and annotations) to GoodCo or to periodically escrow updated source code (and annotations) to an escrow agent approved by GoodCo, and (b) to demonstrate to you that the delivered and/or deposited source code can be compiled by you to working object code; and</p> <p>(10) You are required by GoodCo Policy to disclose to your manager any ownership or other business interest you have in a proposed vendor on your project and any familial or personal relationship with owners or key personnel, of a proposed vendor on your project; and</p> <p>(11) You should remind your vendors that all press releases and promotions regarding their relationship with GoodCo (including but not limited to listing GoodCo as a customer on the vendor's website) must be approved by GoodCo, and internally must be personally approved by the GoodCo CIO [name, e-mail]; and</p> <p>(12) You should check the agreement with the vendor to see whether there is any provision in it which limits your ability to hire the vendor's workers (such as a "non-solicitation" provision) and ensure the you comply with that provision?</p> |
| <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/> Unsure</p> | <p>A44 Support for Developed Software. If "Yes" to A42, will you need vendor support for any new software code to be developed in your project?</p> |
| <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/> Unsure</p> | <p>A45: If "Yes" to A44, do you understand that:</p> <p>(1) The agreement with the vendor must provide for such support; and</p> <p>(2) You must (by GoodCo policy) investigate the financial viability of the vendor/employer to ensure that there is not an unreasonably high risk of vendor financial failure during the time period that you expect to need maintenance and support from the vendor/employer?</p> |
| <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unsure</p> | <p>A46 Equity in Vendor. Do you expect to spend more than [threshold amount] in any one-year period with any one vendor on the combined cost of software licenses, maintenance, support, development and consulting services?</p> |
| <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/> Unsure</p> | <p>A47 If "Yes" to A46, have you informed the GoodCo Equity Investment Manager [name, e-mail] so that an evaluation can be made of obtaining an equity position (company stock or warrants) in the vendor?</p> |
| <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unsure</p> | <p>A48 Contingent Workers. Will any "Contingent Workers" be working on your project?</p> <p>Notes: "Contingent worker" includes anyone other than a current full-time GoodCo employee, including (in order of preference): Contract Workers, Leased Employees, Independent Contractors and GoodCo Pensioners. "Contract Workers" are employees of a company that has a contract with GoodCo under which the company performs defined tasks for GoodCo, which may be performed by any qualified employee of the contracting company's choosing. "Leased Workers" are employees of a company that has a contract with GoodCo under which the company leases employees selected by GoodCo to GoodCo, for tasks that are less specifically described in the contract. "Independent Contractors" are self-employed individuals paid through 1099s who have direct contracts with GoodCo (these workers are sometimes also referred to as "Consultants"). "GoodCo Pensioners" are former GoodCo employees now drawing a GoodCo pension.</p> |
| <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/> Unsure</p> | <p>A49 If "Yes" to A48, do you understand that:</p> <p>(1) Contingent Workers (CWs) should only be engaged when a qualified GoodCo employee is not available for the task; and</p> <p>(2) CWs must be pre-approved by the GoodCo IT HR Manager [name, e-mail]; and</p> <p>(3) To avoid potential "co-employment" liability that may result from a CW being deemed a "common law employee" of GoodCo:</p> <p>(a) CWs should not supervise GoodCo employees; and</p> <p>(b) CW training should be limited to that needed for safety and minimal familiarization with GoodCo policies and procedures; and</p> <p>(c) CWs should not be given GoodCo awards or recognition; and</p> <p>(d) CWs should not be included in GoodCo company events, activities, "all employee" meetings and "general business" meetings; and</p> <p>(e) CWs should not represent themselves as GoodCo employees (e.g., business cards, letterhead and e-mail signatures should reflect CW relationship rather than appearing to be from a GoodCo employee).</p> |
| <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/> Unsure</p> | <p>A50 Contingent Workers – Contract Workers. If "Yes" to A48, will any of these persons working on your project be "Contract Workers"? (See A48 for definitions).</p> |
| <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/> Unsure</p> | <p>A51 If "Yes" to A50, do you understand that:</p> <p>(1) The selected Contract Worker's employer must:</p> <p>(a) receive income by performing work or providing services during same time period to customers other than GoodCo;</p> <p>(b) employ individuals other than the owner of the company and his/her family members; and</p> <p>(c) not be owned by a former GoodCo employee, or by an employee of a leasing firm that provided services to GoodCo; and</p> |

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| | <p>(2) The selected Contract Worker's employer must:</p> <ul style="list-style-type: none"> (a) perform work not otherwise performed by GoodCo employees; and (b) provide his own tools, equipment and materials required to perform work or services to GoodCo; and (c) not receive day-to-day direction or supervision from GoodCo concerning the manner & method of performing the work; and (d) not need or receive training from GoodCo to perform the work or provide the services; and <p>(3) You must obtain or confirm the existence of (through the GoodCo IT Sourcing Manager [name, e-mail] a signed, written contract between GoodCo and each Contract Worker's employer; and</p> <p>(4) You must obtain or confirm the existence of a "Statement of Work" or "Task Order" document that covers the work to be performed on your project, if required by the contract; and</p> <p>(5) You must obtain copies of the "Secrecy and Invention Agreement" or other document regarding intellectual property and confidentiality that has been signed by the individual workers for your project; and</p> <p>(6) You are required by GoodCo Policy to disclose to your manager any ownership or other business interest you have in the proposed Contract Worker's employer and any familial or personal relationship with the Contract Worker or the owners or officers of the proposed Contract Worker's employer; and</p> <p>(7) You should remind your Contract Workers and their employers that all press releases and promotions regarding their relationship with GoodCo (including but not limited to listing GoodCo as a customer on a website) must be approved by GoodCo, and internally must be personally approved by the GoodCo CIO [name, e-mail]; and</p> <p>(8) The contract, Task Order, and/or Statement of Work should provide for a specified service or end product, not for the labor of certain individuals (otherwise the worker will be viewed as a "Leased Worker"); and</p> <p>(9) Control over all hiring, pay, promotions, benefits, training, hours, supervision, discipline and discharge should be left to the vendor; and</p> <p>(10) Where temporary assignments are replaced with GoodCo permanent positions, you must post the position within GoodCo; and</p> <p>(11) Prior to hiring a Contract Worker for a GoodCo permanent position, you must: (a) obtain approval from the GoodCo IT HR Manager [name, e-mail], (b) confirm that there is no "non-solicitation" provision in the contract between GoodCo and the Contract Worker's employer, (c) confirm that the hiring will not induce any breach of a contractual obligation that the Contract Worker has to his current employer (such as an obligation not to compete, not to work for clients, or not to use trade secret information in another job), (d) confirm that GoodCo is hiring the person for his skills and not for the purpose of benefiting from his specific knowledge of the trade secrets of his current employer (which might expose GoodCo to a theft of trade secrets claim under the "inevitable disclosure doctrine")?</p> |
| <p><u>Yes</u> <u>No</u> <u>NA</u> <u>Unsure</u></p> | <p>A52 Contingent Workers – Leased Workers. If "Yes" to A48, will any of these persons be a "Leased Worker"? (See A28 for definitions).</p> |
| <p><u>Yes</u> <u>No</u> <u>NA</u> <u>Unsure</u></p> | <p>A53 If "Yes" to A52, do you understand that:</p> <ul style="list-style-type: none"> (1) To request a Leased Worker, you should go to the GoodCo Sourcing homepage at [URL], click on "Contracts," click on "Leased Worker Request Form" and complete the form, after which the site will indicate the correct supplier for the job title in question and how to route the request to that supplier; and (2) Leased Worker assignments must be approved in advance by the GoodCo IT Sourcing Manager [name, e-mail] and the GoodCo IT HR Manager [name, e-mail]; and (3) Former GoodCo employees should not normally be used as Leased Workers, and when used a minimum six-month break in service is required; and (4) If the Leased Worker is working in the U.S. in H-1(b) nonimmigrant visa status, U.S. Dept. of Commerce regulations prohibit laying off a U.S. worker from a job that is "essentially equivalent" to a position that will be filled by a professional worker in H-1(b) nonimmigrant visa status; and (5) You should refrain from discussing pay rates with potential Leased Workers; and (6) Do not set up Leased Worker interview slates for purposes of choosing the best candidate...use the interview only to assess if the Leased Worker can do the job; and (7) You should make no promises to the Leased Worker about future permanent job prospects; and (8) If the arrangement is approved, you must obtain or confirm the existence of (through the GoodCo IT Sourcing Manager [name, e-mail] a signed, written contract between GoodCo and the approved Leased Worker's employer; and (9) You must obtain or confirm the existence of a "Statement of Work" or "Task Order" document that covers your project, if required by the contract; and (10) You must obtain copies of the "Secrecy and Invention Agreement" or other document regarding intellectual property and confidentiality that has been signed by each Leased Worker on your project; and (11) You are required by GoodCo Policy to disclose to your manager any ownership or other business interest you have in the proposed Contract Worker's employer and any familial or personal relationship with the Contract Worker or the owners or officers of the proposed Contract Worker's employer; and (12) You should remind your Leased Workers and their employers that all press releases and promotions regarding their relationship with GoodCo (including but not limited to listing GoodCo as a customer on the employer's website) must be |

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| | <p>approved by GoodCo, and internally must be personally approved by the GoodCo CIO [name, e-mail]; and</p> <p>(13) Approval from the GoodCo VP for Human Resources [name, e-mail] will be needed prior to keeping a Leased Worker on assignment with GoodCo for longer than 12 months, and this approval will not normally be granted in the absence of special circumstances; and</p> <p>(14) You must allow the Leased worker's employer to notify the Leased Worker of assignment end; and</p> <p>(15) You must let the Leased Worker's employer control all hiring, pay, discipline and discharge decisions; and</p> <p>(16) You must contact Leased worker's employer to change leased worker status or to raise performance or worker misconduct issues; and</p> <p>(17) Where temporary assignments are replaced with GoodCo permanent positions, you must post the position; and</p> <p>(18) Prior to hiring a Leased Worker for a GoodCo permanent position, you must: (a) obtain approval from the GoodCo IT HR Manager [name, e-mail], (b) confirm that there is no "non-solicitation" provision in the contract between GoodCo and the Leased Worker's employer, (c) confirm that the hiring will not induce any breach of a contractual obligation that the Leased Worker has to his current employer (such as an obligation not to compete, not to work for clients, or not to use trade secret information in another job), (d) confirm that GoodCo is hiring the person for his skills and not for the purpose of benefiting from his specific knowledge of the trade secrets of his current employer (which might expose GoodCo to a theft of trade secrets claim under the "inevitable disclosure doctrine")</p> |
| <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/> Unsure</p> | <p>A54 Contingent Workers – Independent Contractors. If "Yes" to A48, will any of these persons working on your project be an "Independent Contractor"? (See A48 for definitions).</p> |
| <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/> Unsure</p> | <p>A55 If "Yes" to A54, do you understand that:</p> <p>(1) Direct contracts between GoodCo and individual workers are not a preferred method of contracting for professional services in GoodCo, and should be used only for limited assignments involving unique expertise that cannot be obtained through a GoodCo employee, Contract Worker, or Leased Worker; and</p> <p>(2) If feasible, the Independent Contractor should be paid by the job, not by the hour; and</p> <p>(3) The Independent Contractor should have other clients; and</p> <p>(4) The Independent Contractor should maintain his own Workers Compensation coverage; and</p> <p>(5) If the person is working in the U.S. in H-1(b) nonimmigrant visa status, U.S. Dept. of Commerce regulations prohibit laying off a U.S. worker from a job that is "essentially equivalent" to a position that will be filled by a professional worker in H-1(b) nonimmigrant visa status; and</p> <p>(6) Independent Contractor arrangements must be approved in advance by the GoodCo IT Sourcing Manager [name, e-mail] and the GoodCo IT HR Manager [name, e-mail]; and</p> <p>(7) If the arrangement is approved, you will need to obtain (through the GoodCo IT Sourcing Manager [name, e-mail] signed, written agreements with each of these Independent Contractors, providing among other things that he will assign to GoodCo all intellectual property he creates within the scope of his engagement, and that he will use and disclose GoodCo proprietary information only as reasonably necessary to perform his obligations to GoodCo; and</p> <p>(8) Approval from the GoodCo VP for Human Resources [name, e-mail] will be needed prior to keeping an Independent Contractor under contract with GoodCo for longer than 12 months, and this approval will not normally be granted in the absence of special circumstances; and</p> <p>(9) You are required by GoodCo Policy to disclose to your manager any familial, business or personal relationship with the proposed Independent Contractor before the contract is signed; and</p> <p>(10) You should remind your Independent Contractors that all press releases and promotions regarding their relationship with GoodCo (including but not limited to listing GoodCo as a customer on a website) must be approved by GoodCo, and internally must be personally approved by the GoodCo CIO [name, e-mail]; and</p> <p>(11) Where temporary assignments are replaced with GoodCo permanent positions, you must post the position?</p> |
| <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/> Unsure</p> | <p>A56 Contingent Workers – GoodCo Pensioners. If "Yes" to A48, will any of these persons working on your project be a "GoodCo Pensioner"? (See A48 for definitions).</p> |
| <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/> Unsure</p> | <p>A57 If "Yes" to A56, do you understand that:</p> <p>(1) You should avoid making any re-employment "understandings" with a GoodCo Pensioner at the time of his retirement; and</p> <p>(2) You should wait at least six months following a GoodCo Pensioner's retirement to use him on a project; and</p> <p>(3) You must obtain a GoodCo company officer's approval for the engagement via a "Pensioner Temporary Employment Agreement" submitted to the GoodCo IT HR Manager [name, e-mail] for further routing; and</p> <p>(4) The GoodCo Pensioner should be added back to the GoodCo payroll as a GoodCo Pensioner; and</p> <p>(5) Assignments to the GoodCo Pensioner should be kept under 1000 hours in a calendar year?</p> |
| <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unsure</p> | <p>A58 Trademark Clearances. Will your application have a "name" (such as "GoodCo Widget Mart") or a slogan (such as "Not just a transaction ... A lifetime commitment!") or a logo that will be promoted to customers (such as on an extranet site) or to the general public (such as on an Internet site)? Note 1: if to be used only internally within GoodCo, check "No".</p> |
| <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/> Unsure</p> | <p>A59 If "Yes" to A58, do you have a compelling business reason to adopt and use a mark other than "GoodCo plus a generic term," in view of the following facts: (1) GoodCo does not encourage free adoption of secondary marks without a compelling business reason (See GoodCo Identity Program at [URL]), (2) clearance of the mark will cost about \$3,000, (3)</p> |

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| | even if cleared (which won't catch every possible prior use worldwide), each mark will still create a risk of being sued for infringement and having to change your application's name after launch, and (4) worldwide registration of the mark in all developed nations may cost over \$100,000? |
| __Yes__No__NA __Unsure | A60 If "Yes" to A58, have you performed a "U.S. registered mark" search on the (free) TESS database (at http://tess/uspto.gov) and determined that your chosen mark or slogan is not confusingly similar to an existing federally registered mark? |
| __Yes__No__NA __Unsure | A61 If "Yes" to A58, have you performed a "domain name search" in the Register.com database at http://www.register.com and determined that your chosen mark is not confusingly similar to an unregistered mark being used on a website under that domain name? |
| __Yes__No__NA __Unsure | A62 If "Yes" to A58, have you performed an "Internet search" of our mark by entering it as a search terms in an Internet search engine such as Google (http://www.google.com) and determined that your chosen mark or slogan is not confusingly similar to an existing mark on a website? |
| __Yes__No__NA __Unsure | A63 If "Yes" to A58 through A62, have you reported the results of your search to GoodCo Trademark Counsel [name, e-mail] and requested that he order from GoodCo Corporate HQ a "common law clearance search" on the marks (which will take about 10 days) and GoodCo Corporate HQ approval for the adoption of secondary trademarks? |
| __Yes__No__NA __Unsure | A64 Domain Name Registrations. If "Yes" to A58, have you e-mailed to the GoodCo Domain Name Coordinator [name, e-mail] lists of registered domain names that are identical to or confusingly similar to your chosen mark with a request that she register them to prevent others from registering them and potentially causing confusion with your mark? |
| __Yes__No __Unsure | A65 Are there any other domain names that will be useful to your project (including "country code" top level domain names (e.g., co.fr, co.de) for the countries targeted by the website)? |
| __Yes__No__NA __Unsure | A66 If "Yes" to A65, have you e-mailed these names to the GoodCo Domain Name Coordinator [name, e-mail] with a request that she register them to prevent others from registering them and potentially causing confusion with your mark? |
| __Yes__No __Unsure | A67 Patent Clearances. Have you run patent clearance searches at [URL] to check whether your application will infringe existing patents of non-GoodCo parties? |
| __Yes__No__NA __Unsure | A68 If "Yes" to A67, have you discussed the results of your patent clearance searches with IP Counsel [name, e-mail]? |
| __Yes__No __Unsure | A69 Have you determined (with advice from IP Counsel) that your application does not create an "unreasonable risk" of a patent infringement claim? |
| __Yes__No __Unsure | A70 Have you discussed the functionality of your application and the methods used in it with IP Counsel [name, e-mail] in an attempt to identify any patentable subject matter (for which GoodCo could file a patent application)? |
| __Yes__No __Unsure | A71 Patent Applications. Have you identified any patentable subject matter in your software application for which GoodCo could file a patent application? |
| __Yes__No__NA __Unsure | A72 If "Yes" to A71, have you prepared an "Invention Disclosure Form" for the invention and e-mailed it to IP Counsel [name, e-mail] with copies to Senior Counsel, E-Business [name, e-mail]? Note: the Invention Disclosure Form may be found at [URL]. |
| __Yes__No __Unsure | A73 Breadth of Access. Will your entire application (aside from a simple log-in screen with no substantive "content") be access-controlled and accessible only to a screened group of less than 500 GoodCo employees? |
| __Yes__No __Unsure | A74 Will your entire application (aside from a simple log-in screen with no substantive "content") be access-controlled and accessible only to a screened group of more than 500 GoodCo employees (i.e. but not the entire GoodCo intranet)? |
| __Yes__No __Unsure | A75 Will all or part of your application be access-controlled but accessible to both GoodCo employees and persons other than GoodCo employees (regardless of total number)? (e.g., an extranet site) |
| __Yes__No __Unsure | A76 Will all or part of your application be accessible to all or most GoodCo employees with no passwords or other access controls beyond what is available to a majority of GoodCo employees (including the open portions of the GoodCo intranet)? |
| __Yes__No __Unsure | A77 Will all or part of your application be accessible to the general public with no passwords or other access controls (including the World Wide Web, FTP, toll free telephone number, or other system that can be accessed by anyone with generally available hardware and software who knows the access address or telephone number)? |
| __Yes__No__NA __Unsure | A78 If "Yes" to A73, A74 or A75, does the application have a registration and access control process that includes GoodCo Single Sign On registration? |
| __Yes__No__NA __Unsure | A79 Extranet and Internet Site "Terms of Use" and "Privacy Policy". If "Yes" to A75 or A77 (going beyond GoodCo employees), do you understand that: (1) You will need to display prominent links to the GoodCo standard "Terms of Use" and "Privacy Policy" document for GoodCo internet and extranet sites found at [URL] [or for an example of what GE Power Systems is using, see http://www.gepower.com/dhtml/corporate/en_us/aboutgeps/legal/terms.jsp] and http://www.gepower.com/dhtml/corporate/en_us/aboutgeps/legal/policy.jsp]; and (2) If you need to modify the terms of these documents for your particular site, you must obtain approval from GoodCo E-Business Counsel; and (3) Some sites will need to modify the terms, because users may complain that the main documents give them no |

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| | <p>promises about protection of proprietary information and copyrighted materials; and</p> <p>(4) The method for modifying the terms of these documents is to display prominent links to "Supplemental Terms of Use" and "Supplemental Privacy Policy" next to the links to the standard documents, and including the appropriate terms in these "supplemental" documents; and</p> <p>(5) While requiring a user to "click to accept" the "Terms of Use" and "Privacy Policy" is not yet required by GoodCo Legal for public internet sites, doing so is encouraged and will result in a greater likelihood of success in enforcing the documents against a user; and</p> <p>(6) Requiring a user to "click to accept" the "Terms of Use" and "Privacy Policy" at least once on at the time of registration is required by GoodCo Legal for extranet sites and other applications with a registration process, and if you use GoodCo SSO for your registration process it is automatically taken care of because the registrant is required to click to accept the GoodCo standard "Terms of Use" and "Privacy Policy" when they register through SSO; and</p> <p>(7) While requiring a user to "click to accept" the "Supplemental Terms of Use" and "Supplemental Privacy Policy" for your site is not yet required by GoodCo Legal (because they are incorporated by reference in the main "Terms of Use" and "Privacy Policy", doing so is encouraged and will result in a greater likelihood of success in enforcing the documents against a user?</p> |
| <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/> Unsure</p> | <p>A80 Intranet Site "Terms of Use" and "Privacy Policy". If "Yes" to A73, A74 or A76 (limiting the application to GoodCo employees), do you understand that:</p> <p>(1) Links to the GoodCo standard "Terms of Use" and "Privacy Policy" documents should not normally be displayed because they are written for non-GoodCo employees and are not entirely appropriate for this type of application; and</p> <p>(2) Instead, links to the GoodCo standard "Intranet Terms of Use" and "Intranet Privacy Policy" documents should be displayed; and</p> <p>(3) If different or additional terms are needed for your intranet site, the method for modifying the terms of these documents is to display prominent links to "Supplemental Terms of Use" and "Supplemental Privacy Policy" next to the links to the standard documents, and including the appropriate terms in these "supplemental" documents; and</p> <p>(4) These "Supplemental" terms must be reviewed and approved by GoodCo E-Business Counsel?</p> |
| <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unsure</p> | <p>A81 Content - Use of GoodCo Names and Trademarks. Will you be using any GoodCo business names, product names or other potentially trademarked words or phrases (other than GoodCo marks) on your site (including uses in domain names and meta tags)?</p> |
| <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/> Unsure</p> | <p>A82 If "Yes" to A81, do you understand that:</p> <p>(1) If the GoodCo monogram logo or any other GoodCo name or mark is to be used on the Site, very specific rules governing their use and appearance must be complied with (found in the GoodCo Identity Guidelines at [URL]; and</p> <p>(2) The appearance of the GoodCo logo is very controlled and it should not be animated or modified without permission from Trademark Counsel at GoodCo Corporate [name, e-mail]; and</p> <p>(3) Trademarks should normally be used as adjectives to modify nouns, not as nouns; and</p> <p>(4) Trademarks should be distinguished from surrounding text by using an initial capital letter (or all capital letters), bold or italic font, quotation marks or similar distinguishing mark; and</p> <p>(5) Trademarks should be consistent in form; and</p> <p>(6) If the trademark is protected by a U.S. federal registration, the ® symbol should be used to identify it; and</p> <p>(7) If the trademark is not yet protected by a U.S. federal registration, then either the ™ symbol (if it is a trademark) or the ℠ symbol (if it is a service mark) should be used to identify it (if these symbols are used by the owner on its own site); and</p> <p>(8) These symbols need not necessarily be used every time the trademark is displayed on a web site; rather, they may be used generally upon the first instance of the mark's display?</p> |
| <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unsure</p> | <p>A83 Content - Use of Third Party Names and Trademarks. Will you be using any company names, product names or other potentially trademarked words or phrases (other than GoodCo marks) on your site (including uses in domain names and meta tags)?</p> |
| <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/> Unsure</p> | <p>A84 If "Yes" to A83, do you understand that:</p> <p>(1) Names and trademarks of competitors and other third parties may not be included in "meta tags" (such as "keyword" or "description" tags) without specific approval from GoodCo E-Business Counsel; and</p> <p>(2) Names and trademarks of competitors and other third parties may not be registered as "domain names" without specific approval from GoodCo E-Business Legal Counsel; and</p> <p>(3) The logos of companies other than GoodCo may not be included on the site without specific approval from GoodCo E-Business Legal Counsel and from the GoodCo CIO [name, e-mail]; and</p> <p>(4) When using the trademarks of third parties on the Site, make clear that the marks are owned by that party, and that the party is not affiliated with GoodCo (unless it is), to avoid claims of consumer confusion under the Lanham Act (a notice on the page may be appropriate, such as "Rolls-Royce® and Avon® are trademarks claimed by Rolls-Royce plc, which is not affiliated with GoodCo.); and</p> <p>(5) You can find out whether it is appropriate to use the ® (registered mark) symbol or not by checking the company's website or by searching http://tess.uspto.gov; and</p> <p>(6) You must otherwise avoid using the trademarks of others on your Site in such as way that a "likelihood of confusion"</p> |

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| | <p>may exist as to "affiliation, connection, or association," or as to "origin, sponsorship or approval"?</p> |
| <p>__Yes__No __Unsure</p> | <p>A85 Content - Copyright Notices and Permissions. Will you be using on your site any copyrighted works, other than software code already covered in sections A34-43? Copyrighted works include a broad range of materials including text works (including PDF, RTF and DOC files), music and sound effects (including WAV files), still images, photographs and graphic works (including JPEG and GIF files), and audiovisual works (including MPEG or other video or audio clips).</p> |
| <p>__Yes__No__NA __Unsure</p> | <p>A86 If "Yes" to A85, do you understand that:</p> <p>(1) Copyrighted works that are owned by GoodCo, including attached PDF, Word, Excel and Powerpoint files, and should be marked as such with a copyright notice as follows on every page of the site and on at least the cover page of every attached electronic document: "© xxxx-yyyy GoodCo. All Rights Reserved" where xxxx is the year of first publication of the oldest-published material on the page (or file) and yyyy is the year of first publication of the newest-published material on the page (or file) and "GoodCo" is the owner of the copyrights for the page (or file); and</p> <p>(2) Copyright registrations, while rarely pursued in GoodCo and not necessary in order to preserve copyright protection, confer some advantages that will not be preserved if the registration applications are filed more than 3 months after first publication of the work (such as eligibility in infringement litigation for evidentiary presumptions, statutory damages and attorney fees) and it should be discussed with IP Counsel [name, e-mail] whether copyright registrations (U.S. or otherwise) are worthwhile for software or other copyrightable subject matter involved in the project; and</p> <p>(3) For any work that you cannot prove is solely-owned by GoodCo, including attached PDF, Word, Excel and Powerpoint files, and all photos and other works that may be contained in them, it is mandatory that you obtain permission from all copyright owners (and co-owners) to use the works in all the ways you intend to use them, because (a) there are criminal sanctions for willful copyright infringement, and (b) U.S. judges are empowered to impose "statutory" damages up to \$20,000 per copyright infringement even for "innocent" infringements that do not cause any demonstrable harm to the copyright owner, meaning that even a single intranet page with 10 infringing photos on it could result in over \$200,000 in liability for GoodCo; and</p> <p>(4) If you do not know who the owner is in order to seek permission, do not use the work (but you should check to see if it is in the Copyright Clearance Center collection as described in section (9) below; and</p> <p>(5) You should assume that virtually any copyrightable work is in fact protected by copyright because:</p> <p>(a) Lack of notice or registration does not waive copyright because any "original work of authorship" is protected by copyright from the moment it is recorded, without any need to file for a copyright registration or put a copyright notice on the work; and</p> <p>(b) The fact that a work is "old" does not mean that its copyright has expired, because the term of copyright protection can be very long (100 years and longer); and</p> <p>(c) The mere fact that a work is publicly available on the Internet does not waive copyrights or give anyone an implied right to use the work (other than to view it where it sits); and</p> <p>(d) You cannot avoid a copyright infringement claim merely by giving attribution to the author in the copy you make, because copyright law gives the copyright owner the exclusive right to copy, display, perform, and distribute the work, and to prepare derivative works based upon the work, and to license others to do these things; and</p> <p>(e) You cannot avoid a copyright infringement claim merely by making minor modifications to the original work, because making a "derivative work" is also a copyright infringement; and</p> <p>(f) While there is a "fair use" doctrine under which limited uses of small portions of a copyrighted work may be made without the copyright owner's permission, this is a complicated and fact-specific determination that you should not rely upon without consultation with GoodCo Legal Counsel; and</p> <p>(g) While there is also an "idea/expression dichotomy" rule that allows you use the facts and ideas in a work if your expression of them is substantially different, so for example you might be able to derive facts from a news article and write a new article containing these facts without the original author's permission, but you should not rely upon this use doctrine without consultation with GoodCo Legal Counsel; and</p> <p>(h) Your individual subscription to an electronic newsletter or other publication does not necessarily give you the right to copy the content elsewhere so that others may view it; and</p> <p>(6) Works originally created by a full time, exempt GoodCo employee within the scope of his/her employment are deemed "works made for hire" and GoodCo as the employer is considered the author and copyright owner, and all GoodCo employees are required to sign an agreement assigning to GoodCo intellectual property that they create in the course of working for GoodCo, but works created by a GoodCo employee outside of the scope of this employment with GoodCo may not fall within his assignment agreement or the work made for hire doctrine, so to avoid dispute you should obtain a signed "Confirmatory Assignment" form (available from E-Business Counsel) from the employee for works used in the application, such as a photo taken by the employee; and</p> <p>(7) Works originally created by Contract Workers, Leased Workers and Independent Contractors are unlikely to be considered "works made for hire" under copyright law, and even though these workers are usually required to sign an agreement assigning to GoodCo intellectual property that they create in the course of their work for GoodCo, to avoid dispute you should obtain a signed "Confirmatory Assignment" form (available from E-Business Counsel) from them; and</p> |

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| | <p>(8) If you are using a "collective work" or other "compilation" that incorporates within it previously existing works, or a "derivative work" adapted from a previously existing work (such as an abridgment or translation), you will also need permission from the owner of the copyrights for the previously existing works; and</p> <p>(9) The process for obtaining permission for use of a copyrighted work not covered by a "Confirmatory Assignment" is as follows:</p> <p>(a) For intranet posting or other "internal electronic uses," you may search the Copyright Clearance Center ("CCC") Digital Repertory, and if the work is included in the collection, you have permission under a GoodCo "Electronic License" which allows U.S.-based employees of U.S.-based GoodCo subsidiaries to make electronic copies of certain works in the Electronic Repertory (see www.copyright.com/Search/DigitalRepertory.asp); and</p> <p>(b) If the work is not in the CCC collection or you need to make an "external" use of the work, obtain a writing signed by the copyright owner granting permission to use the work in all the ways you intend to use it and for as long as you intend to use it, using one of the forms which can be obtained from GoodCo E-Business Legal Counsel; or</p> <p>(c) if (b) is not practical due to time considerations or for some other reason, you may seek approval from E-Business Counsel to obtain permission in an e-mail from the copyright owner providing the same content as (b) but without the paper or signature; or</p> <p>(d) if neither (b) nor (c) is practical due to time considerations or for some other reason, you may seek approval from E-Business Counsel to obtain permission by sending an e-mail to the copyright owner confirming a verbally granted permission to use the work with the same content as (a) (and where such verbal permission has actually been granted)?</p> |
| <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unsure</p> | <p>A87 Content - Framing. Will you be "framing" material on a non-GoodCo site so that it appears in a frame or window on a GoodCo site?</p> |
| <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/> Unsure</p> | <p>A88 If "Yes" to A87, do you understand that:</p> <p>(1) "Framing" material on a non-GoodCo site so that it appears in a frame or window on a GoodCo site may not done without specific approval from GoodCo E-Business Counsel; and</p> <p>(2) Framing can give rise to claims for copyright infringement, unfair trade practices, and other legal claims; and</p> <p>(3) Lawsuits have been filed by parties whose content has been "framed" on another Web site?</p> |
| <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unsure</p> | <p>A89 Content - Linking. Will you be "linking" from your site to pages or materials on other sites that are not operated by a GoodCo affiliate?</p> |
| <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/> Unsure</p> | <p>A90 If "Yes" to A89, do you understand that:</p> <p>(1) For any link that is "promotional" in nature (even on the intranet), you must obtain approval from the GoodCo CIO [name, e-mail], and any link that includes text or graphics beyond a simple text directory reference will be presumed promotional; and</p> <p>(2) Logos of non-GoodCo entities, in addition to being presume "promotional" under section (1) above and requiring approval from the GoodCo CIO [name, e-mail], may expose GoodCo to liability for trademark infringement, and may not be used as links (or even as non-linked logos) without obtaining the approval of GoodCo E-Business Legal Counsel and permission in writing or e-mail from a person with at least the apparent authority to speak for the entity (i.e., it is reasonable to believe based upon his position with the company that he has authority to grant the company's permission to use a logo); and</p> <p>(3) You may link to the Adobe® Acrobat® Reader™ download page as a text-only link in the following form: "Download Adobe® Acrobat® Reader™ from <u>Adobe Systems Incorporated</u>" (where "Adobe Systems Incorporated" is underlined and linked to http://www.adobe.com/products/acrobat/readstep2.html or the current download page if different), but (a) do not download the software directly from your site, (b) do not use any Adobe logos, and (c) do not "click to accept" on any Adobe trademark or copyright licensing terms that may impose contractual obligations on GoodCo beyond those generally imposed by law; and</p> <p>(4) You may link to the Microsoft® Explorer® browser download page as a text-only link in the following form: "Download Explorer from <u>Microsoft Corporation</u>" (where "Microsoft Corporation" is underlined and linked to http://www.microsoft.com/windows/ie/default.htm or the current Explorer browser download page if different), but (a) do not download the software directly from your site, (b) do not use any Microsoft logos, and (c) do not "click to accept" on any Microsoft trademark or copyright licensing terms that may impose contractual obligations on GoodCo beyond those generally imposed by law; and</p> <p>(5) You may provide a link to the Netscape® Navigator® browser download page as a text-only link in the following form: "Download Navigator from <u>Netscape Communications Corporation</u>" (where "Netscape Communications Corporation" is underlined and linked to http://home.netscape.com/download/index.html?cp=djudep2 or the current Netscape browser download page if different) but (a) do not download the software directly from your site, (b) do not use any Adobe logos, and (c) do not "click to accept" on any Adobe trademark or copyright licensing terms that may impose contractual obligations on GoodCo beyond those generally imposed by law; and</p> <p>(6) With regard to sites not specifically discussed in (3)-(5) above, although the law is unsettled as to whether it is necessary to obtain permission to link to a non-GoodCo website, and is also unsettled as to whether restrictions on linking in a site's Terms of Use are enforceable, GoodCo policy is to make a reasonable effort to obtain permission as follows:</p> <p>(a) Review the Terms of Use for the site to which you would like to link; if it expressly allows a link of the type you are</p> |

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| | <p>making, you may create the link and skip steps (b) and (c);</p> <p>(b) If the Terms of Use (or other posted policy) on the site imposes specific requirements for the approval of links, contact E-Business Counsel to discuss how to proceed;</p> <p>(c) If neither (a) nor (b) applies (e.g., the site's Terms of Use are silent on the matter), send an e-mail to the webmaster for the site stating "We intend to create a link from our website at [URL of page linked from] to your site at [URL of page linked to] on [date at least three business days away]. If you have any objection to that link, please send a message to [e-mail address]." If no response is received by the due date, you may create the link. If a response making an objection is received at any time before or after the date, contact GoodCo E-Business Legal Counsel for an opinion about whether to proceed with the link; and</p> <p>(7) You may not link to materials which are inconsistent with GoodCo integrity policies, including but not limited to: (a) links to materials that are derogatory to persons based upon race, gender, age or sexual preference, (b) links to gambling sites, and (c) links to pornography or indecent materials; and</p> <p>(8) You should not link to PDF files or other attached documents unless the content of those documents has also been reviewed for legal issues as described in this checklist?</p> |
| <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unsure</p> | <p>A91 Content - "Meta" Tags and Invisible Ink. Will you be using on your site (a) "meta" Tags " (such as "keyword" or "description" tags) or (b) invisible ink (e.g., font same color as background)?</p> |
| <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/> Unsure</p> | <p>A92 If "Yes" to A91, do you understand that:</p> <p>(1) Trademarks, business names and product names of competitors or other third parties may not be included in "meta tags" (such as "keyword" or "description" tags) without specific approval from GoodCo E-Business Counsel, because doing so will make it appear that we are trying to draw to the GoodCo site persons who are using a search engine to try to find our competitors; and</p> <p>(2) Trademarks, business names and product names of competitors or other third parties may not be included in "invisible ink" without specific approval from GoodCo E-Business Counsel, because doing so will make it appear that we are trying to draw to the GoodCo site persons who are using a search engine to try to find our competitors?</p> |
| <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unsure</p> | <p>A93 Content - Depicting and Discussing People and Companies (Defamation, Invasion of Privacy, Rights of Publicity). Will you be including on your site any pictures of or comments about people or companies (regardless of whether intended to be complimentary)?</p> |
| <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/> Unsure</p> | <p>A94 If "Yes" to A93, do you understand that:</p> <p>(1) You may expose GoodCo to liability for "defamation" if your site publishes statements which:</p> <p>(a) the speaker or publisher knew or should have known were false; and</p> <p>(b) which tend to injure the plaintiff's reputation and expose the plaintiff to public hatred, contempt, ridicule, or degradation; and</p> <p>(2) If the statement involves a private citizen, that plaintiff need only show that the defendant was negligent in determining the truth or falsity of the statement, but if the statement concerns a public official or public figure, the plaintiff must show that the defendant knew that the statement was false or made it with a reckless disregard for the truth; and</p> <p>(3) If you obtain information from a source (e.g., a conversation, correspondence, publication, a White Paper, the Internet), take the time to verify it for truth and accuracy to ensure that you will not be found negligent or reckless; and</p> <p>(4) The defenses to a defamation claim are privilege, truth, and opinion, and since you are not likely to be covered by a privilege, you are left to defend by proving that the statement was true or was merely a statement of opinion; and</p> <p>(5) Even defamation claims that are ultimately unsuccessful will most likely be expensive to defend and will create bad press for GoodCo, so a cautious approach is prudent; and</p> <p>(6) Even if material relating to an individual is not defamatory, it may be actionable if it invades personal privacy, including publicity which places the person in a "false light," (such as a photo of the person standing next to a known criminal as if they were out together when it is known that the physical proximity was entirely random), publicly discloses embarrassing private facts (even if true), or intrudes upon solitude or seclusion (such as photos with a long distance lens); and</p> <p>(7) Even if the material on your site is not defamatory or invasive of privacy, it could be actionable if it violates rights of publicity, such as creating the impression that there is an affiliation between the person and the operator of the site or a sponsorship or endorsement by the person of the site, the site operator, or goods or services offered on the site; and</p> <p>(8) The potential liabilities described in sections (1) and (6) above also apply to depiction and discussion of companies?</p> |
| <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unsure</p> | <p>A95 Content - Depicting and Discussing GoodCo and Its Products and Services (Advertising Rules). Will you be including on your site any pictures of or comments about GoodCo or its products and services?</p> |
| <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/> Unsure</p> | <p>A96 If "Yes" to A95, do you understand that:</p> <p>(1) It is important to be certain that your comments about GoodCo and its products and services are true and accurate, and supported by reliable testing to support the truth of the claim before the claim is made (see sections (3) and (4) below); and</p> <p>(2) Online advertising and promotions in the U.S. are subject to the Federal Trade Commission ("FTC") Act, which is intended to protect the public from unfair and deceptive acts and practices (15 U.S.C. § 41-58), and the FTC has also promulgated detailed Administrative Guides and Rules interpreting the Act (16 C.F.R. ch I, §§ 1-999), and based upon</p> |

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| | <p>these the FTC itself may take direct action; and</p> <p>(3) The FTC requires that if an advertiser makes a claim about a product or service which, if untrue or misleading, may deceive a consumer into purchasing the offending product or service, the advertiser is obligated to have a "reasonable basis," such as reliable tests, to support the truth of the claim <i>prior to dissemination</i>; and</p> <p>(4) Documentation of a claim after dissemination, even if it validates the claim, <i>will not avoid liability</i>; and</p> <p>(5) Claims may be implied from graphic or pictorial representations if they provide the "net impression" of statements about product quality or performance; and</p> <p>(6) "Free" offers must really be free under the FTC Act, and any limitations or strings attached must be presented at least as prominently as the free offer itself; and</p> <p>(7) If, in commercial advertising or promotion, you misrepresent the nature, characteristics, qualities, or geographic origin of your or another's goods, services or commercial activities, you may be sued for false advertising or unfair competition under 15 U.S.C. § 1125(a) (Section 43(a) of the Lanham Act); and</p> <p>(8) Unlike the FTC Act, Lanham Act claims are private causes of action and can be filed in court by your competitors who claim damage from your activity; and</p> <p>(9) In addition, there are unfair and deceptive trade practice statutes in most U.S. states; and</p> <p>(10) While comparative advertising (comparing a GoodCo product to a competitor's product) is generally allowable in the U.S., as long as the representations are accurate, there are more restrictive limitations on comparative advertising in other jurisdictions, including the Distance Selling Directive in the EU, and it should be avoided on websites that are available globally; and</p> <p>(11) "Superlatives", "absolutes", and "guarantees" about GoodCo products and services that do not violate advertising laws may still create potential liability as unintended warranties; for example, the FTC may view may the following statement as mere "puffery" but a customer disappointed in the performance of the product may say that we have extended him a warranty that goes beyond what is spelled out in our Ts&Cs: "GoodCo pumps are the most durable in the industry"?</p> |
| <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unsure</p> | <p>A97 Content - French Language Requirements in Quebec. Will your project develop a site that advertises for any business that (a) has an office or place of business located in Quebec, Canada and (b) sells product or services in Quebec?</p> |
| <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/> Unsure</p> | <p>A98 If "Yes" to A97, do you understand that:</p> <p>(1) Under section 52 of the "Charter of the French Language", a Quebec provincial law which is administered by the Office of the French Language, a business which (a) has an office or place of business located in Quebec and (b) which sells product or services in Quebec, must advertise such products or services in French, but can also advertise them in English, so long as the French version is given prominence; and</p> <p>(2) GoodCo has been able to handle this in the past by building a French/English "bubble" page and providing both French and English versions of the website; and</p> <p>(3) If the site were access controlled and made an extranet site, it would:</p> <p>(a) no longer be an "advertisement" and no longer be subject to the statute; and</p> <p>(b) be subject to clickwrap Terms of Use under which all parties agree that the site may be in English?</p> |
| <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unsure</p> | <p>A99 Content - French Language Requirements in France. Will your project develop a site that targets customers in France?</p> |
| <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/> Unsure</p> | <p>A100 If "Yes" to A99, do you understand that:</p> <p>(1) Under the "Loi Toubon", when a "consumer or end-user" accesses a web site in France, independent of whether the site is hosted in France or not, its contents must be presented either in French or have an adjoining French translation so that the consumer or end-user is able to access the contents of the web site in his/her mother tongue; and</p> <p>(2) While it is arguable that GoodCo sites are not directed to a "consumer or end-user" as contemplated by the law, the safest practice is to translate into French public internet sites that are targeted at French customers; and</p> <p>(3) If the site were access controlled and made an extranet site, it would:</p> <p>(a) no longer be an "advertisement" and no longer be subject to the statute; and</p> <p>(b) be subject to clickwrap Terms of Use under which all parties agree that the site may be in English?</p> |
| <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unsure</p> | <p>A101 Content - Portuguese Language Requirements in Brazil. Will your project develop a site that targets customers in Brazil?</p> <p>Note: A website which is reachable through a Brazilian country code domain name (ending in ".br") is considered by local Brazilian authorities to be "targeted" at Brazilians.</p> |
| <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/> Unsure</p> | <p>A102 If "Yes" to A101, do you understand that:</p> <p>(1) Under Brazilian law, websites "targeted" at Brazilians must be translated into Portuguese, but they have only enforced this so far on consumer oriented sites; and</p> <p>(2) While it is arguable that the law is limited to "consumer" sites that GoodCo sites are not "consumer" sites, the safest practice is to translate into Portuguese public internet sites that are targeted at French customers; and</p> <p>(3) If the site were access controlled and made an extranet site, it would:</p> <p>(a) no longer be an "advertisement" and no longer be subject to the statute; and</p> <p>(b) be subject to clickwrap Terms of Use under which all parties agree that the site may be in English?</p> |

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| __Yes__No __Unsure | A103 Content - Other Language Requirements. Will your project develop a site that targets customers in any other nation or that is reachable through a country code domain name? |
| __Yes__No__NA __Unsure | A104 If "Yes" to A103, do you understand that: (1) You should discuss with E-Business Counsel whether there are translation requirements; and (2) In Spain, no specific rules exist as to which language a web site should be in, but some Spanish authorities have taken that position that "consumer" internet sites should be translated into Spanish; and (3) In Germany, there are no statutory linguistic requirements for websites, but the German Court's language is German, so the contracts will need to be translated into German if they ever have to be reviewed in Court, which presents a translation risk; and (4) In Italy, the basic rules regarding marketing and advertising are laid down in Law 25/1/1992 no. 74 (as modified by Law 25/2/2000 no. 67), which implements the EC directives on 'misleading advertising', but there is no specific provision or mention regarding the use of the Italian language, and there are no penalties and fines beyond the obligation to stop using the advertisement; and (5) In the Netherlands, no rules exist as to which language a web site should be in? |
| __Yes__No __Unsure | A105 Content - Third Party Content and Advertising and "Online Communities". Will this project create any "Online Communities" (such as chatrooms, discussion groups, and other areas where users may upload or post messages or content that others may see)? |
| __Yes__No__NA __Unsure | A106 If "Yes" to A105, Will any of the participants in the "Online Communities" (either viewers or posters) be people who do not work for GoodCo? |
| __Yes__No __Unsure | A107 Will there be any other advertising or other content viewable in your application that is created by be people who do not work for GoodCo? (e.g. advertisements, press releases, product information, etc.) |
| __Yes__No__NA __Unsure | A108 If "Yes" to 107, will the content be posted without review by people who do work for GoodCo? |
| __Yes__No__NA __Unsure | A109 If "Yes" to 107, do you understand that: (1) Third party advertising is not normally allowed on GoodCo sites and must be approved by the GoodCo CIO [name, e-mail], as well as your business unit counsel; and (2) Appropriate contracts regarding third party advertising should be entered into with the advertisers, including procedures for ad placements and approvals; and (3) These contracts and approval processes should be reviewed by your business unit legal counsel? |
| __Yes__No__NA __Unsure | A110 If "Yes" to both A105 or both 107 and 108, do you understand that: (1) Online Communities and third party content often generate legal liability that is disproportionate to the value they add to the site, because Users may accuse one another of defamation, fraud, invasion of privacy, copyright infringement or other perceived wrongs and sue the site operator on vicariously liability theories for providing the mechanism by which the perceived wrongs have occurred; and (2) Even for GoodCo employee-only sites, these issues exist and expose GoodCo to potential liability; and (3) Third party materials, even if reviewed by GoodCo content managers, create some of the same to potential liability; and (4) Allowing third parties to post product information, press releases or other information may create the impression of an affiliation or sponsorship between GoodCo and the third party poster; and (5) All such online communities and third party postings must be discussed with and approved by E-Business Counsel? |
| __Yes__No __Unsure | A111 Content - Avoiding Problematic Competition Law Language. Will the content in your application include discussions about price, pricing decisions, competitors' strengths and weaknesses, GoodCo's "market share" or similar issues that may invite antitrust or competition law scrutiny? |
| __Yes__No__NA __Unsure | A112 If "Yes" to A111, do you understand that, If it is necessary to discuss such matters at all: (1) You should avoid themes such as the following: (a) GoodCo is raising prices "across the board"; and (b) GoodCo has instituted a "pricing initiative"; and (c) GoodCo' pricing is following the competition; and (d) The industry will suffer if we continue to compete on price; and (e) The industry will suffer if we compete for market share; and (f) We will all go out of business if we do not get the price up; and (2) You should not make other statements that could be construed as signals to GoodCo's competitors of its future plans and viewed as an invitation to join GoodCo in an effort to influence price, capacity and market share across the industry (i.e. unlawful collusion); and (3) You should stress themes such as the following: (a) GoodCo is selling value and GoodCo focuses on providing solutions for its customers that meet their needs and at the same time produce an acceptable return for the company; and (b) GoodCo makes independent pricing decisions and determines price by balancing its customer's needs and the company's minimum return requirements; and (4) You should not define "markets" in an overly narrow way that may make it appear that GoodCo has too large a |

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| | <p>percentage of a "market"; and</p> <p>(5) For segments smaller than the broad market, you should use terms such as "product lines" or "segments"; and</p> <p>(6) You should not carelessly state that there is a "high barrier to entry" or that potential competitors will have a "difficult time" entering a market, whether due to reputation, technology, distribution or other competitive advantages of existing competitors, because this may cause a government regulator to believe that the industry is prone to collusion or unilateral anti-competitive conduct; and</p> <p>(7) You should not make bold statements to the effect that GoodCo will be well-positioned to "dominate" or to obtain exceptionally high profit margins by eliminating or limiting a competitor; and</p> <p>(8) You should not overly inflate or deflate a competitors' strengths and weaknesses; and</p> <p>(9) You should not use loaded legal terms that imply that you have reached factual conclusions about competition law issues, such as "dominant", "concentrated", "oligopoly", "monopoly power" and the like; and</p> <p>(10) Instead of military terms, you should use plain, straightforward language.</p> |
| <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unsure</p> | <p>A113 Content – Avoiding Legal Advice or Opinions. Will your application have any content that appears to be a legal opinion or to constitute legal advice?</p> |
| <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/> Unsure</p> | <p>A114 If "Yes" to A113, do you understand that:</p> <p>(1) Even though GoodCo sites contain appropriate disclaimers, it is best for both attorneys and non-attorneys to avoid giving legal advice and opinions, because the advice may be wrong or incomplete and a site user could rely upon the advice to his detriment, and it may also be deemed to be unauthorized practice of law by a bar organization?</p> |
| <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unsure</p> | <p>A115 Content – Avoiding GoodCo "Positions". Will your application have any content that appears to be the expression of the GoodCo "position" on any issue?</p> |
| <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/> Unsure</p> | <p>A116 If "Yes" to A115, do you understand that:</p> <p>(1) You should avoid including in content discussions of GoodCo's (or subsidiaries' or affiliates') positions on issues, because it is possible you have misinterpreted the company's position and your statement may be inconsistent with similar statements made by others; and</p> <p>(2) In future litigation, it is quite possible that the content of a GoodCo site, including answers to FAQs, and e-mails and answers displayed in chat rooms or bulletin boards will be the subject of discovery?</p> |
| <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unsure</p> | <p>A117 Content - FAQs (Frequently Asked Questions). Will you be including any "Frequently Asked Questions (FAQs)" sections or other "Guidelines" or "Help" pages on your site?</p> |
| <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/> Unsure</p> | <p>A118 If "Yes" to A117, do you understand that:</p> <p>(1) In FAQs and similar sections of the site, avoid including in discussions of GoodCo's (or subsidiaries' or affiliates') positions on issues, for the reasons given in section A116 above?</p> |
| <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unsure</p> | <p>A119 Content - Accessibility for the Visually Impaired. Is it probable that someone who is visually impaired will need access to your site?</p> |
| <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/> Unsure</p> | <p>A120 If "Yes" to A119, do you understand that:</p> <p>(1) Because of the graphic elements on most web sites, including such important features as navigational tools, people with visual impairments may have difficulty interacting with a web site as it is intended; and</p> <p>(2) Software known as "screen readers" provides the visually impaired with greater access to web sites by providing audible information wherever text is present; but where a graphic element is used in lieu of text, the screen reader software may not be able to function as intended; and</p> <p>(3) Already, guidelines are in place requiring U.S. government web sites to take steps to make sure content is accessible to the disabled; and</p> <p>(4) While these guidelines are not yet legally required for non-government websites, they may one day be, and you should consider the feasibility of implementing the following federal Electronic And Information Technology Accessibility Standards when designing content:</p> <p>(a) A text equivalent for every non-text element shall be provided (e.g., via "alt", "longdesc", or in element content); and</p> <p>(b) Equivalent alternatives for any multimedia presentation shall be synchronized with the presentation; and</p> <p>(c) Web pages shall be designed so that all information conveyed with color is also available without color, for example from context or markup; and</p> <p>(d) Documents shall be organized so they are readable without requiring an associated style sheet; and</p> <p>(e) Redundant text links shall be provided for each active region of a server-side image map; and</p> <p>(f) Client-side image maps shall be provided instead of server-side image maps except where the regions cannot be defined with an available geometric shape; and</p> <p>(g) Row and column headers shall be identified for data tables; and</p> <p>(h) Markup shall be used to associate data cells and header cells for data tables that have two or more logical levels of row or column headers; and</p> <p>(i) Frames shall be titled with text that facilitates frame identification and navigation; and</p> <p>(j) Pages shall be designed to avoid causing the screen to flicker with a frequency greater than 2 Hz and lower than 55 Hz; and</p> <p>(k) A text-only page, with equivalent information or functionality, shall be provided to make a web site comply with the</p> |

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| | <p>provisions of this part, when compliance cannot be accomplished in any other way, and the content of the text-only page shall be updated whenever the primary page changes; and</p> <p>(l) When pages utilize scripting languages to display content, or to create interface elements, the information provided by the script shall be identified with functional text that can be read by assistive technology; and</p> <p>(m) When a web page requires that an applet, plug-in or other application be present on the client system to interpret page content, the page must provide a link to a plug-in or applet that complies with (a) through (l) above; and</p> <p>(o) When electronic forms are designed to be completed on-line, the form shall allow people using assistive technology to access the information, field elements, and functionality required for completion and submission of the form, including all directions and cues; and</p> <p>(p) A method shall be provided that permits users to skip repetitive navigation links; and</p> <p>(q) When a timed response is required, the user shall be alerted and given sufficient time to indicate more time is required?</p> |
| __Yes__No__NA __Unsure | A121 Transactions - Consumers. If "yes" to A6, will your application be selling to "consumers" (individual persons who do not have a DUNS number and are buying on their own behalf)? |
| __Yes__No__NA __Unsure | A122 If "Yes" to A121, do you understand that: (1) There is voluminous law in the U.S. and other nations which applies to consumer transactions that does not apply to transactions with business customers; and (2) Substantial and expensive legal research may need to be done to prepare your business for consumer transactions that has likely not been done if your business has not previously entered into consumer transactions; and (3) The financial risks associated with adding individual consumers to your customer base may outweigh the financial gains of doing so; and (4) You should discuss these issues with your business unit legal counsel? |
| __Yes__No__NA __Unsure | A123 Transactions – Third Party Products. If "yes" to A6, will your application be selling goods or services in which the Seller is a party other than GoodCo or an affiliate of GoodCo? |
| __Yes__No__NA __Unsure | A124 If "Yes" to A123, do you understand that: (1) Care must be exercised to make clear to Buyers: (a) From whom they are buying the goods and services; and (b) Who is (and is not) warranting the goods and services; and (c) What GoodCo's role is in the sale (broker, intermediary, seller, etc); and (2) An agreement should be entered into with the Seller to make clear these issues and the relationship generally; and (3) You should discuss these issues with your business unit legal counsel? |
| __Yes__No__NA __Unsure | A125 Transactions – GoodCo Affiliates and Transfer Pricing Rules. If "yes" to A6 or A7, will your application be selling products or services in which the Seller is a GoodCo affiliate but is a separate legal entity from the party that is operating the site? |
| __Yes__No__NA __Unsure | A126 If "yes" to A125, will the separate legal entity be headquartered or incorporated in a different nation (or tax jurisdiction) than the legal entity operating the site? |
| __Yes__No__NA __Unsure | A127 If "Yes" to A126, do you understand that: (1) The taxing authorities in the jurisdiction where the legal entity extending the benefit (the operating entity) is located, headquartered or incorporated may view the services as a taxable transfer of value from the operating entity to the benefiting entity, and may wish to impose a tax against the operating entity on the "fair market value" of those services, arguing the that operating entity should be charging fair market value to the benefiting entity; and (2) You should discuss these issues with your business unit legal counsel? |
| __Yes__No__NA __Unsure | A128 Transactions - Posting and Use of an "E-Business Rider." If "Yes" to A6 (forming a contract on the site), do you understand that: (1) In many jurisdictions outside the U.S., electronic contracts are of dubious enforceability without a written contract (signed with ink on a piece of paper); and (2) Even in the U.S., there is federal electronic contract legislation, but there are process requirements in the law must be satisfied, and a simple to "click here to accept" may not be adequate (consult with E-Business Legal Counsel); and (3) If the contract is unenforceable, GoodCo may be unable to enforce the liability limitations in the standard Ts&Cs which prevent GoodCo from paying the millions of dollars in consequential damages that may result from the failure of a \$10,000 part; and (4) Therefore, unless an exception is expressly approved by GoodCo E-Business Counsel for your site, it is imperative (and required by GoodCo Legal) that you obtain an ink signature on a paper E-Business Rider, EDI Agreement or other document approved for use on your site by GoodCo E-Business Counsel and applicable business unit counsel before entering into electronic transactions; and (5) Where an exception is approved, an acceptable clickwrap process for your site must be approved that does not require signed paper (at the present time, this will normally be limited to U.S. customers); and (6) An electronic version of the E-Business Rider, EDI Agreement or document approved by GoodCo Legal should also be linked from each page of the site through which electronic transactions are being conducted, so that the user will always |

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| <p>__Yes__No__NA __Unsure</p> | <p>have that document available to him.</p> <p>A129 Transactions – Language Issues for Contracts. If “Yes” to A6 (forming a contract on the site), do you understand that:</p> <p>(1) In Italy, there are no language requirements for B2B contracts, but 1469-<i>quater</i> of the Italian Civil Code states that the clauses of contracts in B2C relationships have to be drawn up in a “clear and comprehensible” language, and standard terms addressed to Italian consumers in a language other than Italian when the base contract was in Italian can easily be deemed to be ineffective for lack of comprehensibility; and</p> <p>(2) In Germany, there are no statutory linguistic requirements for contracts, but the German Court’s language is German, so the contracts will need to be translated into German if they ever have to be reviewed in Court, which presents a translation risk; and</p> <p>(3) In France, vis-à-vis “consumers or end-users”, the French language is mandatory for the following: designation, offer, presentation of the products, goods or services, description of warranty, invoices and receipts (Article 2 of the “Loi Toubon”), but generally the parties are free to choose the language of the contract; and</p> <p>(4) In the Netherlands, there are no linguistic requirements for contracts, but they have to be in the language the addressees understand; and No rules exist as to which language a web site should be in.</p> <p>(5) In Spain, none of the national laws and regulations dealing with consumers or the regulations on general terms and conditions specifically deal with language requirements, and Article 10 of the Spanish Consumers Law only states that the contract has to be drawn up in a clear and simple language, but from the general principles of consumer protection, it could be argued that a set of general terms and conditions specifically addressed to Spanish consumers only in English would not fulfill the general obligation to draft such provisions in a plain and intelligible language; and</p> <p>(6) In Spain, with regard to consumer contracts, regional laws and regulations need also to be considered, since there are three other official languages in Spain: Catalan, Basque and Galician, and Article 15 of Law 1/1998 on the Catalan language states that the general terms and conditions to be used in Catalonia will have to be drafted in the language that the consumer requests (either Spanish or Catalan) and a set of such terms must be available in both languages at the consumer’s request?</p> |
| <p>__Yes__No__NA __Unsure</p> | <p>A130 Transactions – Other Business Model Issues. If “yes” to A6 or A7, have you discussed your business model, transactional and promotional processes in detail with your business unit counsel, and identified applicable legal issues, including but not limited to:</p> <p>(1) Which entities will be the Seller(s) and Buyer(s) on the site; and</p> <p>(2) Will the Buyer(s) on the Site be buying directly from each Seller, or will they be buying from an Intermediary which takes title and passes it on to the Buyer(s); and</p> <p>(3) Will the site Operator identified in the site Terms of Use (and who therefore has the contractual relationship with the User for site use purposes) be the same as the Seller or the intermediary; and</p> <p>(4) Will the server locations and entities selected for the various roles avoid creating a “tax nexus” between GoodCo and a jurisdiction in which GoodCo does not desire one; and</p> <p>(4) Will the contract structure be tax efficient, and avoid unnecessary foreign or local taxation (for example, by mixing locally provided services (locally taxable) with delivered goods (perhaps untaxable)); and</p> <p>(5) Will each Seller have a unique set of Ts&Cs for sale or will the Sellers have a common set of Ts&Cs; and</p> <p>(6) Have the Ts&Cs been drafted (or modified for online use if they were written as “offline” Ts&Cs; and</p> <p>(7) How will the Ts&Cs be presented to the user of the site; and</p> <p>(8) What processes will you use for “authenticating” the identity of parties who will be entering into binding contracts on the site so that no third party can “spoo” their identity and the contract cannot be reasonably repudiated by the parties to be bound; and</p> <p>(9) What archiving and record keeping processes will you use to capture the text of offers when they are made, the text of acceptances and the text of contracts when they are accepted, so that the content of the final binding agreement may be reasonably proven in a court of law; and</p> <p>(10) Have any other document retention requirements been satisfied; and</p> <p>(11) What other processes will you use in forming binding contracts (including the use of “clickwrap” agreements); and</p> <p>(12) Will those processes satisfy the requirements for forming a binding contract in each jurisdiction in which you will enter into transactions; and</p> <p>(13) Will your processes include an “EDI Agreement” or “E-Business Rider” or other paper contract which contemplates later electronic transactions; and</p> <p>(14) Will your site’s structure or practice run afoul of antitrust or competition law rules against “monopoly” (which may apply to aggregated selling), “monopsomy” (which may apply to aggregated buying), “tying” (which may apply to bundled offerings of goods and services), “price fixing” or “price signaling” (which may apply when access to pricing and transaction information is given to competitors); and</p> <p>(15) If your application be selling products online in territories where you already have distributors, will that activity breach existing distributor contracts; and</p> <p>(16) If your application will be transacting with government agencies, will it run afoul of the U.S. Federal Acquisitions</p> |

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| | <p>Regulations (FARs) or other U.S. or overseas government contracting rules; and</p> <p>(17) Have you implemented processes to avoid having your application used for “money laundering” activities, which generally prohibit the acceptance or processing of the proceeds of criminal activities (e.g., narcotics trafficking, bribery, fraud); and</p> <p>(18) If your application will use credit cards or electronic payment systems, have the appropriate agreements and safeguard been put in place for those (including but not limited the GLBA personal data requirements of section A25; and</p> <p>(19) Use of and regulations applying to non-traditional pricing mechanisms such as auctions and reverse auctions, which may be subject to differing laws and regulations in each of the 50 U.S. states and many foreign countries; and</p> <p>(20) “Cross linking” and “click alliance” arrangements with third parties that will require formal written agreements with the third parties and linking approvals from GoodCo management; and</p> <p>(21) Advertising on your application’s website for third parties that will require formal written agreements with the third parties and linking approvals from GoodCo management; and</p> <p>(22) Environmental, Health & Safety (EHS) issues which may arise in your manufacturing, services, design or fulfillment activities; and</p> <p>(23) Industry-specific regulations that may apply, such as nuclear industry regulations; and</p> <p>(24) Controllership processes to ensure compliance with applicable laws, regulations & company policies, including integrity in communications to ensure accuracy in reporting of actual and forecasted financial information; and</p> <p>(25) The Federal Trade Commission (FTC) has a rule called the “Mail or Telephone Order Merchandise Rule” (aka Mail Order Rule) (see <http://www.ftc.gov/bcp/online/pubs/buspubs/mailordr/mailrule.htm>) which the FTC also applies to online orders, which requires merchants to ship orders to buyers within the time stated on the website, or, if no time is stated, within 30 days?</p> |
| <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unsure</p> | <p>A131 Promotions - Promotional E-Mail messages. Will you be sending e-mail messages outside the GoodCo internal e-mail system to promote your application?</p> |
| <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/> Unsure</p> | <p>A132 If “yes” to A131, do you understand that:</p> <p>(1) Persons in Germany, Austria, Italy, Denmark and Finland may only be sent e-mail messages that are:</p> <ul style="list-style-type: none"> (a) "necessary to an existing contract or proposal"; or (b) in direct response to an e-mail from that person; or (c) within the scope of a written consent from that person to send them other types of messages; and <p>(2) Persons in other jurisdictions may be sent e-mail messages with any reasonable business content, provided that if a message is “promotional” in nature you must comply with the following:</p> <ul style="list-style-type: none"> (a) All transmission information, including sender information and return address, must be correct; and (b) The “subject” line must not be misleading as to the contents of the e-mail, which must be "readily identifiable as promotional"; and (c) The first three letters of the “subject” line must be "ADV" (short for "advertisement"); and (d) The first text in the message body must provide a reply e-mail address and/or toll-free number that the recipient may contact to “opt out” of further promotional e-mails from the sender (e.g., “If you would like to opt out of receiving future messages of a promotional nature from [BUSINESS], send a message to _____@_____ with the words OPT OUT in the subject line [or call 1-800-000-0000]”), noting what you fill in for [BUSINESS] is the entity that will be responsible for complying with the opt-out election, so [BUSINESS] should not normally be as broad as all of GoodCo; and (e) The message body must include the name and complete street address of the sending [BUSINESS] in a “conspicuous location”; and (f) The complete contents of the message should be reviewed and approved by your business unit counsel and by E-Business Counsel prior to sending it; and (g) The sending [BUSINESS] must put implement a process (such as a “opt out list”) to ensure that no more e-mails of a promotional nature will be sent to any recipient who opts out? |
| <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unsure</p> | <p>A133 Promotions - Sweepstakes and Contests. Will your application or any promotions for your application include “sweepstakes” or “contests” or other promotions in which prizes are awarded?</p> |
| <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/> Unsure</p> | <p>A134 If “yes” to A133, do you understand that:</p> <p>(1) In all 50 U.S. states (and in many other jurisdictions), a “lottery” is illegal unless state-sanctioned; and</p> <p>(2) A “lottery” is typically defined as a promotion that includes 3 elements: consideration, prize, and chance; and NY and FL require registration of promotions if total value of all prizes to be awarded exceeds \$5,000; and</p> <p>(10) NY requires 30-day advance registration, and FL requires 7-day advance registration; and</p> <p>(11) NY & FL require bonding for full value of all prizes; and</p> <p>(12) RI requires registration of contests at “retail establishments” awarding \$500 or more in prizes, but it is unclear whether this applies online; and</p> <p>(13) Other states require disclosure of particular items (e.g., no purchase necessary, how to enter, prize descriptions, prize retail values, winner list availability) so you should obtain from GoodCo E-Business Counsel the contest rules which are drafted to comply with all 50 states; and</p> <p>(14) There are no rules available to GoodCo for international contests and these would require substantial outside counsel</p> |

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| | <p>research; and</p> <p>(15) Promotions and advertisements about the contest must include rules or reference (link) to where complete rules can be found; and</p> <p>(16) promotion must be conducted exactly as the rules provide; and</p> <p>(17) An "Affidavit & Release of Liability" must be signed by all winners affirming compliance with the rules and releasing liability for matters, claims, damages relating to prize; and</p> <p>(18) An additional release should be obtained from any companion to a trip or other person that is part of acceptance of any prize; and</p> <p>(19) An underage winner requires consent of parent or guardian?</p> |
| __Yes__ No __Unsure | A135 Promotions – "Free" Offers. Will your application or any promotions for your application offer something for "free"? |
| __Yes__ No __NA __Unsure | A136 If "yes" to A131, do you understand that: (1) "Free" offers must really be free under the Federal Trade Commission ("FTC") Act, and any limitations or strings attached must be presented at least as prominently as the free offer itself? |
| __Yes__ No __Unsure | A137 Promotions - Vendor Press Releases. Do your vendors who are working on the project or whose software is being used in the project intend to make press releases in connection with the project launch? |
| __Yes__ No __NA __Unsure | A138 If "yes" to A137, do you understand that: (1) You will need to remind your vendors that all press releases and promotions regarding the application and any aspect of their relationship with GoodCo must be approved by GoodCo, including but not limited to listing GoodCo as a customer on the vendor's website; and (2) Vendor press releases mentioning GoodCo are normally not approved by GoodCo unless GoodCo has equity in the vendor, and the GoodCo CIO [name, e-mail] must personally approve all such press releases or promotions; and (3) Vendors which are publicly traded companies may be required to make some disclosures in public filings with the SEC but the amount that securities law requires in a press release is very limited? |

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| | Tollgate B (complete before coding and after functional specification is completed). |
| __Yes__ No __NA __Unsure | B1 Access Restrictions for Nuclear Information: If "Yes" to A1& A2 (or the answers to both have changed to "Yes"), does your specification provide for: (1) Storage on a secure U.S.-based and U.S.-administered server as described in section A3; and (2) Access controls as described in section A3; and (3) Project personnel with data access only as described in section A3; and (4) Password and other protection for any QuickPlaces, TeamRooms and SameTime meetings as described in section A3; and (5) "Log-off notices" as described in section A3; and (6) Other appropriate notices warning users about these rules; and (7) The express approval of the Export Control Coordinator or Administrator for your business? |
| __Yes__ No __NA __Unsure | B2 Access Restrictions for Non-Nuclear U.S. Export-Controlled Technical Information. If "Yes" to A4 (or the answer has changed to "Yes"), does your specification provide for: (1) Storage on a secure U.S.-based and U.S.-administered server as described in section A5; and (2) Access controls as described in section A5; and (3) Project personnel with data access only as described in section A5; and (4) Password and other protection for any QuickPlaces, TeamRooms and SameTime meetings as described in section A5; and (5) "Territory notices" as described in section A5; and (6) "Log-off notices" as described in section A5; and (7) Other appropriate notices warning users about these rules? |
| __Yes__ No __NA __Unsure | B3 Access Restrictions to Prevent U.S. Persons from Facilitating Transactions with Certain "Sanctioned" Nations, Entities and Persons. If "Yes" to either A6 or A7, and also "Yes" to either A8 or A9 (or the answers have changed to "Yes"), does your specification provide for: (1) SSO screening of registrants for affiliations with sanctioned nations as described in section A10 (5)(c), (d) & (e) or the equivalent "front end" screening; and (2) Manual "front end" screening of registrants against the Blacklists as described in section A10 (5)(a) & (b) (or an automatic method such as Vastera Tradesphere® software) before they are allowed access to the application; and (3) Manual "back end" screening of registrants against the Blacklists as described in section A10 (5)(a) & (b) (or an automatic method such as Vastera Tradesphere® software) before shipping occurs; and (4) (where applicable) the "Location Response" described in section A10 (6); and (5) The "No Facilitation" notice described in section A10 (11)? |
| __Yes__ No __NA | B4 Sanctioned Referrals. If "Yes" to A8 (or the answer has changed to "Yes"), is your specification free of the types of |

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| __Unsure | materials described in section A11? |
| __Yes__No__NA __Unsure | B5 Prohibited Direction of Sanctioned Country Business. If "Yes" to A8 (or the answer has changed to "Yes"), and your application is a centralized administrative tracking and reporting system as described in section A12, do your specifications provide for: (1) Notices prohibiting the input or inclusion of detailed information about sanctioned country transactions; and (2) Methods to block access by U.S. Persons of detailed information related to sanctioned country transactions? |
| __Yes__No__NA __Unsure | B6 Access Restrictions and Markings for GoodCo Proprietary Information. If "Yes" to A13 (or the answer has changed to "Yes"), do your specifications provide for: (1) A process to obtain or confirm signed agreements from each user obligating them to disclose and use the information only as reasonably necessary to perform their obligations to GoodCo; and (2) Access controls to limit access to GoodCo trade secret and proprietary information to persons who have a reasonable "need to know" the information and have signed the agreements above; and (3) Additional multi-level access controls where information has been divided into multiple access "levels"; and (4) Marking of all GoodCo trade secret and proprietary information; and (5) Password protection for any QuickPlaces, TeamRooms and SameTime meetings as described in section A13? |
| __Yes__No__NA __Unsure | B7 Access Restrictions and Markings for Information From or About Companies Other than GoodCo. If "Yes" to A15 (or the answer has changed to "Yes"): (1) Have you obtained a copy of the applicable contracts with the third parties for your project file, and sent a copy to your assigned E-Business Counsel; and (2) Have you provided in your specifications for access controlling, handling and marking the information in accordance with contractual requirements? |
| __Yes__No__NA __Unsure | B8 If "Yes" to A16 (or the answer has changed to "Yes"): (1) Have you obtained contracts with contract with or written consent by any companies or persons who (at least arguably) owns the data you want to use, securing the rights to use the data in all the ways that it will be used in your application, and sent a copy to your assigned E-Business Counsel; and (2) Provided in your specifications for access controlling, handling, marking and using the information in accordance with contractual requirements? |
| __Yes__No__NA __Unsure | B9 Access and Use Restrictions for "Personal Data". If "Yes" to A19 (or the answer has changed to "Yes"), does your specification provide for: (1) Notice to the "data subjects" (in each applicable nation in section A20) describing all collection and processing of "personal data" that will occur in the application; and (2) Obtaining the consent of the "data subjects" for all processing of "personal data" that will occur in the application, and any sharing of the data with non-GoodCo affiliates, and any transfers across national boundaries; and (3) Access controls and notices reasonably designed to prevent processing of the data beyond the consent given; and (4) Reasonable security measures to keep the personal data secure from third parties; and (5) Procedures to provide the data subject with access to his personal data upon request; and (6) Procedures requiring special contract provisions with non-GoodCo affiliates prior to any sharing of personal data; and (7) Appointment of a personal data "controller" in jurisdictions where it is required; and (8) Registration with the government in jurisdictions where it is required? |
| __Yes__No__NA __Unsure | B10 Access and Use Restrictions for "Sensitive Personal Data". If "Yes" to A21 (or the answer has changed to "Yes"): (1) Does your specification provide for everything required in B9 (1) through (8) above for non-sensitive personal data; and (2) Additionally, are there notices in your application warning administrators not to collect or maintain any "sensitive personal data" that is not necessary to a legitimate business function? |
| __Yes__No__NA __Unsure | B11 Access and Use Restrictions for Personal Data from Children Under the Age of 13. If "Yes" to A23 (or the answer has changed to "Yes"), do your specifications provide for: (1) The posting of a prominent link labeled "Privacy Policy" on the site's home page and near all points of collection of information from children under 13; and (2) A Privacy Policy meeting the requirements of A24(3); and (3) A process to prevent collection of personal data from any child under 13 until consent has been obtained from his parents (except that the parent's e-mail address may be collected in order to pursue the consent); and (4) A process to verify the fact that the consent has come from the child's parent (credit card number, signed form from the parent, call from the parent to a toll free number, e-mail with a PIN or password, or e-mail with a digital signature)? |
| __Yes__No__NA __Unsure | B12 Access and Use Restrictions for "Non-Public Personal Information" Maintained by "Financial Institutions". If "Yes" to A25 (or the answer has changed to "Yes"), do your specifications include: (1) A Privacy Policy that describe the categories of NPPI that will be collected and disclosed, as well as the categories of affiliated and non-affiliated parties to which NPPI will be disclosed; and (2) A process for disclosing that Privacy Policy to all "Customers" at the outset of the customer relationship and annually |

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| | <p>thereafter; and</p> <p>(3) A process for offering each "Customer" and "Consumer" the opportunity to opt-out before disclosing any of his NPPI to a nonaffiliated third party?</p> |
| <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/> Unsure</p> | <p>B13 Access and Use Restrictions for "Protected Health Information". If "Yes" to A27 (or the answer has changed to "Yes"), and the entity operating your application will be a "covered entity" (CE), do your specifications include:</p> <p>(1) A Privacy Policy that describe the categories of PHI that will be collected and disclosed, as well as the categories of affiliated and non-affiliated parties to which PHI will be disclosed; and</p> <p>(2) A process for disclosing that Privacy Policy (prior to 4-14-2003) to all persons whose "protected health information" (PHI) will be processed or shared; and</p> <p>(3) Procedures for responding to individuals regarding access and requests for amendment of information (including compliance hotlines); and</p> <p>(4) Procedures for obtaining the prior written consent of the patient before undertaking treatment, payment activities or health care operations after 4-14-2003; and</p> <p>(5) Procedures for ensuring that only the minimum necessary PHI will be used and disclosed other than for treatment; and</p> <p>(6) Procedures for ensuring that any uses or disclosures of PHI for purposes other than treatment, payment or health care operations will require a prior detailed written authorization from the individual; and</p> <p>(7) Procedures for providing individuals with:</p> <p>(a) access to their PHI and to request amendments of their PHI; and</p> <p>(b) an accounting of disclosures made of their PHI; and</p> <p>(c) the opportunity to file complaints regarding use or disclosure of their PHI; and</p> <p>(8) A "business associate contract" to be put in place with each BA (prior to 4-14-2003) that stipulates that the BA will act and organize itself as if it were a directly regulated CE; and</p> <p>(9) Training employees with respect to privacy policies and procedures?</p> |
| <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/> Unsure</p> | <p>B14 Other Access Restrictions. If "Yes" to A29 (or the answer has changed to "Yes"):</p> <p>(1) Have you discussed the access controls or restrictions with E-Business Counsel; and</p> <p>(2) Do your specifications provide for compliant access controls?</p> |
| <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/> Unsure</p> | <p>B15 Cross-Border Encrypted & Compressed Communications. If "Yes" to A30 (or the answer has changed to "Yes"):</p> <p>(1) Have you applied for necessary import and export licenses; and</p> <p>(2) Do your specifications include a process for obtaining export assurances from the participating parties; and</p> <p>(3) Have you made preparations to escrow encryption "keys" with a government agency?</p> |
| <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/> Unsure</p> | <p>B16 Webcams, Videoconferences, Cameras and Microphones. If "Yes" to A32 (or the answer has changed to "Yes"):</p> <p>(1) Have you complied with any applicable provisions of sections B1 (nuclear information), B2 (non-nuclear export restricted information), B6 (GoodCo proprietary information), B7 (non-GoodCo information), B9 (personal data, as some jurisdictions deem images depicting identifiable persons as personal data), B10 (sensitive personal data), B11 (personal data from children under 13), B12 (non-public personal information), B13 (protected health information), and B15 (encrypted and compressed communications); and</p> <p>(2) Have you alerted GoodCo HR personnel with responsibility for any employees on a camera or microphone site, and reminded them that they must notify unions with members who work on a camera or microphone site; and</p> <p>(3) Is a contract (such as the GoodCo WebCam Installation Agreement) as described by section A33(5) being negotiated with the entity owning the facility upon which the camera or microphone is installed; and</p> <p>(4) Do your specifications include a process for disclosing to persons who are within the range of a camera or microphone:</p> <p>(a) the location of the camera or microphone; and</p> <p>(b) the entities to whom the images/recording will be distributed; and</p> <p>(c) the intended processing of the images/recordings; and</p> <p>(5) Do your specifications include a process for obtaining a contract with persons who will select the timing or parameters of images/recordings (and therefore have claims as a copyright owner) as described by section A33(6); and</p> <p>(6) Do your specifications include a contract (or enforceable Terms of Use) as described by section A33(7) and a process for making it binding upon persons who have access to the images/recordings?</p> |
| <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/> Unsure</p> | <p>B17 Downloadable Software (Software & Export Licenses). If "Yes" to A34 (or the answer has changed to "Yes"):</p> <p>(1) Do your specifications include a software license and a process for making it binding upon the downloading party that have been approved by E-Business Counsel; and</p> <p>(2) Have you reminded your vendors that all press releases and promotions regarding their relationship with GoodCo (including but not limited to listing GoodCo as a customer on the vendor's website) must be approved by GoodCo?</p> |
| <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/> Unsure</p> | <p>B18 If "Yes" to both A34 and A35 (or the answers have both changed to "Yes"):</p> <p>(1) Is a written license agreement being negotiated with each of the non-GoodCo software owners that:</p> <p>(a) allows all uses of the software that you plan in your application, as well as the right to sublicense to your downloading users all uses that they will be allowed; and</p> <p>(b) if the software is mission critical and not easily replaceable with other software, includes a source code escrow provision requiring the licensor to provide regular, updated deposits of source code (and annotations) for the licensed code</p> |

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| | <p>with a mutually agreeable escrow agent (or, alternatively, direct deposits to GoodCo of same), and demonstrate to you that the deposited source code can be compiled by you to working object code if necessary in the event of licensor's financial failure; and</p> <p>(2) Have you investigated and confirmed the financial viability of all such licensors from whom you will need any maintenance or support, to ensure that there is not an unreasonably high risk of licensor financial failure during the time period that you expect to need maintenance and support from the licensor; and</p> <p>(3) Have you reminded your vendors that all press releases and promotions regarding their relationship with GoodCo (including but not limited to listing GoodCo as a customer on the vendor's website) must be approved by GoodCo, and internally must be personally approved by the GoodCo CIO [name, e-mail]?</p> |
| __Yes__No__NA __Unsure | <p>B19 If "Yes" to both A34 and A36 (or the answers have both changed to "Yes"):</p> <p>(1) Have you applied for necessary import and export licenses, and/or confirmed the existence of retail licenses upon which GoodCo can "piggyback" without obtaining its own license; and</p> <p>(2) Do your specifications include a process (online or offline) for obtaining export assurances from the downloading party; and</p> <p>(3) Have you made necessary preparations to escrow encryption "keys" with a government agency?</p> |
| __Yes__No__NA __Unsure | <p>B20 Licensed Software. If "Yes" to A40 (or the answer has changed to "Yes"):</p> <p>(1) Has a written license agreement been signed with each of the non-GoodCo software owners that:</p> <p>(a) allows all uses of the software that you plan in your application (including but not limited to sufficient numbers of "seats" and "servers" where applicable, and "sublicense" agreements where applicable); and</p> <p>(b) if the software is mission critical and not easily replaceable with other software, includes a source code escrow provision requiring the licensor to provide regular, updated deposits of source code (and annotations) for the licensed code with a mutually agreeable escrow agent (or, alternatively, direct deposits to GoodCo of same), and demonstrate to you that the deposited source code can be compiled by you to working object code if necessary in the event of licensor's financial failure; and</p> <p>(2) Have you investigated and confirmed the financial viability of all such licensors from whom you will need any maintenance or support, to ensure that there is not an unreasonably high risk of licensor financial failure during the time period that you expect to need maintenance and support from the licensor; and</p> <p>(3) Have you reminded your vendors that all press releases and promotions regarding their relationship with GoodCo (including but not limited to listing GoodCo as a customer on the vendor's website) must be approved by GoodCo, and internally must be personally approved by the GoodCo CIO [name, e-mail]?</p> |
| __Yes__No__NA __Unsure | <p>B21 Developed Software. If "Yes" to A42 (or the answer has changed to "Yes"):</p> <p>(1) Has the vendor signed a Master Service Agreement (MSA) (or in the case of a GDC, a Software Service Agreement) or another document which complies with section A43(3), (9) and has been approved by assigned E-Business Counsel; and</p> <p>(2) Has each worker on your project signed a Schedule C to the MSA (or in the case of a GDC, an Inventions and Secrecy Agreement) or in the case of a GoodCo employee and EIPIA form; and</p> <p>(3) Have you obtained copies of each of these worker forms for your project file; and</p> <p>(4) Have you reminded the vendor that it will be required to periodically deliver updated source code (and annotations) to GoodCo or to an escrow agent approved by GoodCo (whichever the contract provides), and to demonstrate to you that the delivered and/or deposited source code can be compiled by you to working object code; and</p> <p>(5) Have you reminded your vendors that all press releases and promotions regarding their relationship with GoodCo (including but not limited to listing GoodCo as a customer on the vendor's website) must be approved by GoodCo, and internally must be personally approved by the GoodCo CIO [Ares, Jean-Michel R (PS, IM)]; and</p> <p>(6) Have you reminded the GoodCo personnel on your project of the requirements in your contract with the vendor that verbally disclosed information be identified in writing as Proprietary or Confidential within (typically) ten (10) days; and</p> <p>(7) Have you checked the agreement with the vendor to see whether there is any provision in it which limits your ability to hire the vendor's workers and reminded your GoodCo project personnel of this restriction?</p> |
| __Yes__No__NA __Unsure | <p>B22 Support for Developed Software. If "Yes" to A44 (or the answer has changed to "Yes"):</p> <p>(1) Have you investigated and confirmed the financial viability of all such vendors from whom you will need any maintenance or support, to ensure that there is not an unreasonably high risk of vendor financial failure during the time period that you expect to need maintenance and support from the vendor; and</p> <p>(2) Does the agreement with the vendor provide for such support?</p> |
| __Yes__No __Unsure | <p>B23 Equity in Vendor. If "Yes" to A46 (or the answer has changed to "Yes"):</p> <p>(1) Has the equity deal been closed? (Legal complications may arise if the equity deal does not close simultaneously with the vendor agreements, and it is risky to proceed with coding without the vendor agreements in place).</p> |
| __Yes__No__NA __Unsure | <p>B24 Contingent Workers. If "Yes" to A48 (or the answer has changed to "Yes"):</p> <p>(1) Have your Contingent Workers (CWs) been pre-approved by the GoodCo IT HR Manager [name, e-mail]; and</p> <p>(2) Have you and your key project leaders reviewed the rules set forth in A49(3)?</p> |
| __Yes__No__NA __Unsure | <p>B25 Contingent Workers – Contract Workers. If "Yes" to A50 (or the answer has changed to "Yes"):</p> <p>(1) Does the selected Contract Worker's employer comply with the rules set forth in A51(1) and (2); and</p> |

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| | <p>(2) Have you obtained or confirmed the existence of (through the GoodCo IT Sourcing Manager [name, e-mail] a signed, written contract between GoodCo and each Contract Worker's employer; and</p> <p>(3) Have you obtained or confirmed the existence of a "Statement of Work" or "Task Order" document that covers the work to be performed on your project, if required by the contract and confirmed that it provides for a specified service or end product, not for the labor of certain individuals (otherwise the worker will be viewed as a "Leased Worker"); and</p> <p>(4) Have you obtained copies of the "Secrecy and Invention Agreement" or other document regarding intellectual property and confidentiality that has been signed by the individual workers for your project; and</p> <p>(5) Have you reminded your Contract Workers and their employers that all press releases and promotions regarding their relationship with GoodCo (including but not limited to listing GoodCo as a customer on a website) must be approved by GoodCo, and internally must be personally approved by the GoodCo CIO [name, e-mail]; and</p> <p>(6) Have you and your key project leaders reviewed the other rules set forth in A51 regarding the managing and hiring of Contract Workers?</p> |
| <p>__Yes__No__NA __Unsure</p> | <p>B26 Contingent Workers – Leased Workers. If "Yes" to A52 (or the answer has changed to "Yes"):</p> <p>(1) Has the Leased Worker been approved by the GoodCo IT Sourcing Manager [name, e-mail] and the GoodCo IT HR Manager [name, e-mail]; and</p> <p>(2) Have you obtained or confirmed the existence of a signed, written contract between GoodCo and the approved Leased Worker; and</p> <p>(3) Have you obtained or confirmed the existence of a "Statement of Work" or "Task Order" document that covers the work to be performed on your project, if required by the contract; and</p> <p>(4) Have you obtained copies of the "Secrecy and Invention Agreement" or other document regarding intellectual property and confidentiality that has been signed by the individual workers for your project; and</p> <p>(5) Have you reminded your Contract Workers and their employers that all press releases and promotions regarding their relationship with GoodCo (including but not limited to listing GoodCo as a customer on a website) must be approved by GoodCo, and internally must be personally approved by the GoodCo CIO [name, e-mail]; and</p> <p>(6) Have you and your key project leaders reviewed the other rules set forth in A53 regarding the managing and hiring of Leased Workers, including the fact that approval from the GoodCo VP for Human Resources [name, e-mail] will be needed prior to keeping a Leased Worker on assignment with GoodCo for longer than 12 months, and this approval will not normally be granted in the absence of special circumstances?</p> |
| <p>__Yes__No__NA __Unsure</p> | <p>B27 Contingent Workers – Independent Contractors. If "Yes" to A54 (or the answer has changed to "Yes"):</p> <p>(1) Has the Independent Contractor been approved by the GoodCo IT Sourcing Manager [name, e-mail] and the GoodCo IT HR Manager [name, e-mail]; and</p> <p>(2) Have you obtained or confirmed the existence of a signed, written contract between GoodCo and the Independent Contractor that includes the obligations regarding intellectual property and confidentiality described in section A55(7); and</p> <p>(3) Have you reminded your Contract Workers and their employers that all press releases and promotions regarding their relationship with GoodCo (including but not limited to listing GoodCo as a customer on a website) must be approved by GoodCo, and internally must be personally approved by the GoodCo CIO [name, e-mail]; and</p> <p>(4) Have you and your key project leaders reviewed the other rules set forth in A55 regarding the managing and hiring of Independent Contractors, including the fact that approval from the GoodCo VP for Human Resources [name, e-mail] will be needed prior to keeping an Independent Contractor under contract with GoodCo for longer than 12 months, and this approval will not normally be granted in the absence of special circumstances?</p> |
| <p>__Yes__No__NA __Unsure</p> | <p>B28 Contingent Workers – GoodCo Pensioners. If "Yes" to A56 (or the answer has changed to "Yes"):</p> <p>(1) Have you obtained a GoodCo company officer's approval for the engagement via a "Pensioner Temporary Employment Agreement" submitted to the GoodCo IT HR Manager [name, e-mail] for further routing; and</p> <p>(2) Have you and your key project leaders reviewed the other rules set forth in A57 regarding the managing of GoodCo Pensioners, including the fact that assignments to the GoodCo Pensioner should be kept under 1000 hours in a calendar year?</p> |
| <p>__Yes__No__NA __Unsure</p> | <p>B29 Trademark Clearances. If "Yes" to A58 (or the answer has changed to "Yes"):</p> <p>(1) Have you received a report from GoodCo Trademark Counsel [name, e-mail] that he has run a "common law clearance search" on the marks and approved them for use?</p> |
| <p>__Yes__No__NA __Unsure</p> | <p>B30 Domain Name Registrations. If "Yes" to A63 or A65 (or the answer has changed to "Yes"):</p> <p>(1) Have you received a report from the GoodCo Domain Name Coordinator [name, e-mail] that the domain names you have submitted for registration have been registered?</p> |
| <p>__Yes__No__NA __Unsure</p> | <p>B31 Patent Clearances. If more than 60 days have passed since you did your VPA search for tollgate A (see item A67), have you re-run the VPA search and submitted any new "hits" to your IP Counsel for evaluation and determined (with advice from IP Counsel) that your application does not create an "unreasonable risk" of a patent infringement claim?</p> |
| <p>__Yes__No__NA __Unsure</p> | <p>B32 Patent Applications. If "Yes" to A71 (or the answer has changed to "Yes"):</p> <p>(1) Have you received any response to your submitted "Invention Disclosure Form"; and</p> <p>(2) If not, have you followed up with your assigned IP Counsel? (Note that the U.S. patent application must be filed before project launch to avoid waiving patent rights in certain countries outside the U.S.)</p> |

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| __Yes__No__NA __Unsure | B33 Extranet and Internet Site “Terms of Use” and “Privacy Policy”. If “Yes” to A75 or A77 (or the answer has changed to “Yes”) (going beyond GoodCo employees): (1) Have you prepared any “Supplemental Terms of Use” and “Supplemental Privacy Policy” that you will need for your site and had them approved by GoodCo E-Business Counsel; and (2) Do your specifications call for the display of a prominent link to the “Supplemental Terms of Use” and “Supplemental Privacy Policy” as well as the GoodCo standard “Terms of Use” and “Privacy Policy” documents; and (3) If an extranet site, do your specifications call for either “Single Sign On” registration or some other mechanism which requires the user to “click to accept” the “Terms of Use” and “Privacy Policy” at least once on at the time of registration? |
| __Yes__No__NA __Unsure | B34 Intranet Site “Terms of Use” and “Privacy Policy”. If “Yes” to A73, A74 or A76 (or the answer has changed to “Yes”) (limiting the application to GoodCo employees): (1) Have you prepared any “Supplemental Terms of Use” and “Supplemental Privacy Policy” that you will need for your site and had them approved by GoodCo E-Business Counsel; and (2) Do your specifications call for the display of a prominent link to the “Supplemental Terms of Use” and “Supplemental Privacy Policy” as well as the GoodCo standard “Intranet Terms of Use” and “Intranet Privacy Policy” documents? |
| __Yes__No__NA __Unsure | B35 Content – Page Mockups in Specification. Do the specification documents contain “page mockups” or other content that can be reviewed before final pages are created? |
| __Yes__No__NA __Unsure | B36 If “Yes” to B35, have you performed the content reviews described in sections C35 to C50, which will save time at tollgate C? |
| __Yes__No__NA __Unsure | B37 Transactions - Consumers. If “Yes” to A121 (or the answer has changed to “Yes”), have you obtained approval from your business unit counsel and assigned E-Business Counsel to sell to consumers and made the necessary preparations to comply with consumer protection laws? |
| __Yes__No__NA __Unsure | B38 Transactions – Third Party Products. If “Yes” to A123 (or the answer has changed to “Yes”): (1) Do the application pages in your specifications make clear to Buyers: (a) From whom they are buying the goods and services; and (b) Who is (and is not) warranting the goods and services; and (c) What GoodCo’s role is in the sale (broker, intermediary, seller, etc); and (2) Has an agreement been entered between the Seller and GoodCo to make clear these issues and the relationship generally? |
| __Yes__No__NA __Unsure | B39 Transactions – GoodCo Affiliates and Transfer Pricing Rules. If “yes” to A6 or A7 (or one of these answers has changed to “Yes”) and “Yes” to A126 (or this answer has changed to “Yes”), have the appropriate transfer pricing arrangements been prepared with your business unit counsel working with Tax Counsel? |
| __Yes__No__NA __Unsure | B40 Transactions – Posting and Use of an “E-Business Rider.” If “Yes” to A6 (or the answer has changed to “Yes”) (forming a contract on the site), do your specifications provide for: (1) Obtaining an ink signature from each user of the site on a paper E-Business Rider, EDI Agreement or other document approved for use on your site by GoodCo E-Business Counsel and applicable business unit counsel before entering into electronic transactions; and (2) Links to an electronic version of the chosen document from each page of the site through which electronic transactions are being conducted, so that the user will always have that document available to him; and (3) Where an exception is approved, an acceptable clickwrap process for your site? |
| __Yes__No__NA __Unsure | B41 Transactions – Language Issues for Contracts. If “Yes” to A6 (or the answer has changed to “Yes”) (forming a contract on the site), do your specifications include: (1) Requirements for contracts in any required non-English languages; and (2) The actual translated contracts? |
| __Yes__No__NA __Unsure | B42 Transactions – Other Business Model Issues. If “yes” to A6 or A7, do your specification documents provide for all of the “business model issues” identified in section A130? |
| __Yes__No__NA __Unsure | B43 Promotions. Do the specification documents or other planning documents propose promotions of the application as described in sections A132-A138? |
| __Yes__No__NA __Unsure | B44 If “Yes” to B43, have you performed the promotion reviews described in sections C57 to C60 , which will save time at tollgate C? |

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| | Tollgate C (complete before launch of application). |
| __Yes__No__NA __Unsure | C1 Access Restrictions for Nuclear Information: If “Yes” to A1& A2 (or the answers to both have changed to “Yes”): (1) Is the export restricted information stored on a secure U.S.-based and U.S.-administered server as described in section A3; and (2) Are access controls as described in section A3 in place; and (3) Are “ Log-off notices ” posted as described in section A3; and (4) Are there other appropriate notices in the application warning users about these rules and the password and other requirements for linked QuickPlaces, TeamRooms and SameTime meetings; and |

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| <p>__Yes__No__NA __Unsure</p> | <p>(5) Has the Export Control Administrator for your business approved this site?</p> <p>C2 Access Restrictions for Non-Nuclear U.S. Export-Controlled Technical Information. If "Yes" to A4 (or the answer has changed to "Yes"):</p> <p>(1) Is the export-restricted information stored on a secure U.S.-based and U.S.-administered server as described in section A5; and</p> <p>(2) Are access controls as described in section A5 in place; and</p> <p>(3) Are "Territory notices" posted as described in section A5; and</p> <p>(4) Are "Log-off notices" posted as described in section A5; and</p> <p>(5) Are there other appropriate notices in the application warning users about these rules and the password and other requirements for linked QuickPlaces, TeamRooms and SameTime meetings?</p> |
| <p>__Yes__No__NA __Unsure</p> | <p>C3 Access Restrictions to Prevent U.S. Persons from Facilitating Transactions with Certain "Sanctioned" Nations, Entities and Persons. If "Yes" to either A6 or A7, and also "Yes" to either A8 or A9 (or the answers have changed to "Yes"), does the application have:</p> <p>(1) SSO screening of registrants for affiliations with sanctioned nations as described in section A10 (5)(c), (d) & (e) or the equivalent "front end" screening; and</p> <p>(2) Manual "front end" screening of registrants against the Blacklists as described in section A10 (5)(a) & (b) (or an automatic method such as Vastera Tradesphere® software) before they are allowed access to the application; and</p> <p>(3) Manual "back end" screening of registrants against the Blacklists as described in section A10 (5)(a) & (b) (or an automatic method such as Vastera Tradesphere® software) before shipping occurs; and</p> <p>(4) (Where applicable) the "Location Response" described in section A10(6); and</p> <p>(5) The "No Facilitation" notice described in section A10 (11)?</p> |
| <p>__Yes__No__NA __Unsure</p> | <p>C4 Sanctioned Referrals. If "Yes" to A8 (or the answer has changed to "Yes"), are the types of materials described in section A11 eliminated from the site, including:</p> <p>(1) Press releases reporting transactions or contracts closed in one of the nations sanctioned by the U.S. (Iran, Iraq, Libya, Cuba or Sudan) and the identity of the company (regardless of location) which fulfilled or facilitated the transaction; and</p> <p>(2) Promotion of the fact that any GoodCo business can fulfill orders in any of those nations (even one that can legally fulfill the orders because it is not a U.S. person or supported by U.S. Persons); and</p> <p>(3) A listing of the sales contacts in any of those nations (even for company or business unit that can legally fulfill the orders because it is not a U.S. person or supported by U.S. Persons)?</p> |
| <p>__Yes__No__NA __Unsure</p> | <p>C5 Prohibited Direction of Sanctioned Country Business. If "Yes" to A8 (or the answer has changed to "Yes"), and your application is a centralized administrative tracking and reporting system as described in section A12, does your application include:</p> <p>(1) Notices prohibiting the input or inclusion of detailed information about sanctioned country transactions; and</p> <p>(2) Methods to block access by U.S. Persons of detailed information related to sanctioned country transactions?</p> |
| <p>__Yes__No__NA __Unsure</p> | <p>C6 Access Restrictions and Markings for GoodCo Proprietary Information. If "Yes" to A13 (or the answer has changed to "Yes"), does your application include:</p> <p>(1) A process to obtain or confirm signed agreements from each user obligating them to disclose and use the information only as reasonably necessary to perform their obligations to GoodCo; and</p> <p>(2) Access controls to limit access to GoodCo trade secret and proprietary information to persons who have a reasonable "need to know" the information and have signed the agreements above; and</p> <p>(3) Additional multi-level access controls where information has been divided into multiple access "levels"; and</p> <p>(4) Marking of all GoodCo trade secret and proprietary information; and</p> <p>(5) Password protection for any linked QuickPlaces, TeamRooms and SameTime meetings as described in section A13?</p> |
| <p>__Yes__No__NA __Unsure</p> | <p>C7 Access Restrictions and Markings for Information From or About Companies Other than GoodCo. If "Yes" to A15 (or the answer has changed to "Yes"), does your application access control, handle and mark the information in accordance with contractual requirements?</p> |
| <p>__Yes__No__NA __Unsure</p> | <p>C8 If "Yes" to A16 (or the answer has changed to "Yes"), does your application access control, handle and mark the information in accordance with contractual requirements?</p> |
| <p>__Yes__No__NA __Unsure</p> | <p>C9 Access and Use Restrictions for "Personal Data". If "Yes" to A19 (or the answer has changed to "Yes"), does your application provide:</p> <p>(1) Notice to the "data subjects" (in each applicable nation in section A20) describing all collection and processing of "personal data" that will occur in the application; and</p> <p>(2) Procedures for obtaining the consent of the "data subjects" for all processing of "personal data" that will occur in the application, and any sharing of the data with non-GoodCo affiliates, and any transfers across national boundaries; and</p> <p>(3) Access controls and notices reasonably designed to prevent processing of the data beyond the consent given; and</p> <p>(4) Reasonable security measures to keep the personal data secure from third parties; and</p> <p>(5) Procedures to provide the data subject with access to his personal data upon request; and</p> <p>(6) Procedures requiring special contract provisions with non-GoodCo affiliates prior to any sharing of personal data; and</p> <p>(7) Has a personal data "controller" been appointed in jurisdictions where it is required; and</p> |

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| | (8) Has a registration been filed with the government in jurisdictions where it is required? |
| <p>__Yes__No__NA __Unsure</p> | <p>C10 Access and Use Restrictions for "Sensitive Personal Data". If "Yes" to A21 (or the answer has changed to "Yes"):</p> <p>(1) Does your application provide for everything required in C9 (1) through (8) above for non-sensitive personal data; and</p> <p>(2) Additionally, are there notices in your application warning administrators not to collect or maintain any "sensitive personal data" that is not necessary to a legitimate business function?</p> |
| <p>__Yes__No__NA __Unsure</p> | <p>C11 Access and Use Restrictions for Personal Data from Children Under the Age of 13. If "Yes" to A23 (or the answer has changed to "Yes"), does your application have:</p> <p>(1) A prominent link labeled "Privacy Policy" on the site's home page and near all points of collection of information from children under 13; and</p> <p>(2) A Privacy Policy meeting the requirements of A24(3); and</p> <p>(3) A process to prevent collection of personal data from any child under 13 until consent has been obtained from his parents (except that the parent's e-mail address may be collected in order to pursue the consent); and</p> <p>(4) A process to verify the fact that the consent has come from the child's parent (credit card number, signed form from the parent, call from the parent to a toll free number, e-mail with a PIN or password, or e-mail with a digital signature)?</p> |
| <p>__Yes__No__NA __Unsure</p> | <p>C12 Access and Use Restrictions for "Non-Public Personal Information" Maintained by "Financial Institutions". If "Yes" to A25 (or the answer has changed to "Yes"), does your application have:</p> <p>(1) A Privacy Policy that describe the categories of NPPI that will be collected and disclosed, as well as the categories of affiliated and non-affiliated parties to which NPPI will be disclosed; and</p> <p>(2) A process for disclosing that Privacy Policy to all "Customers" at the outset of the customer relationship and annually thereafter; and</p> <p>(3) A process for offering each "Customer" and "Consumer" the opportunity to opt-out before disclosing any of his NPPI to a nonaffiliated third party?</p> |
| <p>__Yes__No__NA __Unsure</p> | <p>C13 Access and Use Restrictions for "Protected Health Information". If "Yes" to A27 (or the answer has changed to "Yes"), and the entity operating your application will be a "covered entity" (CE), does your application include:</p> <p>(1) A Privacy Policy that describe the categories of PHI that will be collected and disclosed, as well as the categories of affiliated and non-affiliated parties to which PHI will be disclosed; and</p> <p>(2) A process for disclosing that Privacy Policy (prior to 4-14-2003) to all persons whose "protected health information" (PHI) will be processed or shared; and</p> <p>(3) Procedures for responding to individuals regarding access and requests for amendment of information (including compliance hotlines); and</p> <p>(4) Procedures for obtaining the prior written consent of the patient before undertaking treatment, payment activities or health care operations after 4-14-2003; and</p> <p>(5) Procedures for ensuring that only the minimum necessary PHI will be used and disclosed other than for treatment; and</p> <p>(6) Procedures for ensuring that any uses or disclosures of PHI for purposes other than treatment, payment or health care operations will require a prior detailed written authorization from the individual; and</p> <p>(7) Procedures for providing individuals with</p> <ul style="list-style-type: none"> (a) access to their PHI and to request amendments of their PHI; and (b) an accounting of disclosures made of their PHI; and (c) the opportunity to file complaints regarding use or disclosure of their PHI; and <p>(8) Has a "business associate contract" been put in place with each BA (prior to 4-14-2003) that stipulates that the BA will act and organize itself as if it were a directly regulated CE; and</p> <p>(9) Have employees been trained with respect to privacy policies and procedures?</p> |
| <p>__Yes__No__NA __Unsure</p> | <p>C14 Other Access Restrictions. If "Yes" to A29 (or the answer has changed to "Yes", does your application provide for compliant access controls?</p> |
| <p>__Yes__No__NA __Unsure</p> | <p>C15 Cross-Border Encrypted & Compressed Communications. If "Yes" to A30 (or the answer has changed to "Yes"):</p> <p>(1) Have the necessary import and export licenses been issued; and</p> <p>(2) Have the necessary export assurances been obtained from the participating parties; and</p> <p>(3) Have the necessary encryption key escrows been made with the appropriate government agencies?</p> |
| <p>__Yes__No__NA __Unsure</p> | <p>C16 Webcams, Videoconferences, Cameras and Microphones. If "Yes" to A32 (or the answer has changed to "Yes"):</p> <p>(1) Have you complied with any applicable provisions of sections C1 (nuclear information), C2 (non-nuclear export restricted information), C6 (GoodCo proprietary information), C7 (non-GoodCo information), C9 (personal data, as some jurisdictions deem images depicting identifiable persons as personal data), C10 (sensitive personal data), C11 (personal data from children under 13), C12 (non-public personal information), C13 (protected health information), and C15 (encrypted and compressed communications) with respect to the camera and microphone transmissions and storage; and</p> <p>(2) Have GoodCo HR personnel with responsibility for any employees on a camera or microphone site approved the camera or microphone, and notified unions with members who work on a camera or microphone site; and</p> <p>(3) Has a contract as described by section A33(5) been signed by the entity owning the facility upon which the camera or microphone is installed; and</p> |

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| | <p>(4) Does the application include a process for disclosing to persons who are within the range of a camera or microphone:</p> <p>(a) the location of the camera or microphone; and</p> <p>(b) the entities to whom the images/recording will be distributed; and</p> <p>(c) the intended processing of the images/recordings; and</p> <p>(5) Does the application include a process for obtaining a contract with persons who will select the timing or parameters of images/recordings (and therefore have claims as a copyright owner) as described by section A33(6); and</p> <p>(6) Does the application include a contract (or enforceable Terms of Use) as described by section A33(7) and a process for making it binding upon persons who have access to the images/recordings?</p> |
| __Yes__No__NA __Unsure | <p>C17 Downloadable Software (Software & Export Licenses). If "Yes" to A34 (or the answer has changed to "Yes"):</p> <p>(1) Does your application include a software license and a process for making it binding upon the downloading party that have been approved by E-Business Counsel; and</p> <p>(2) Have you reminded your vendors that all press releases and promotions regarding their relationship with GoodCo (including but not limited to application launch announcements) must be approved by GoodCo?</p> |
| __Yes__No__NA __Unsure | <p>C18 If "Yes" to both A34 and A35 (or the answers have both changed to "Yes"):</p> <p>(1) Has a written license agreement been signed by each of the non-GoodCo software owners in accordance with B18(1); and</p> <p>(2) If the software is mission critical and not easily replaceable with other software, has each non-GoodCo software owner provided an initial escrow deposit of source code (and annotations) for the licensed code and demonstrated to you that the deposited source code can be compiled by you to working object code if necessary in the event of licensor's financial failure; and</p> <p>(3) If more than 3 months have passed since you last investigated, have you re-investigated and re-confirmed the financial viability of all such licensors from whom you will need any maintenance or support, to ensure that there is not an unreasonably high risk of licensor financial failure during the time period that you expect to need maintenance and support from the licensor; and</p> <p>(4) Have you reminded your vendors that all press releases and promotions regarding their relationship with GoodCo (including but not limited to application launch announcements) must be approved by GoodCo, and internally must be personally approved by the GoodCo CIO [name, e-mail]?</p> |
| __Yes__No__NA __Unsure | <p>C19 If "Yes" to both A34 and A36 (or the answers have both changed to "Yes"):</p> <p>(1) Have the necessary import and export licenses been issued, and/or the necessary retail licenses upon which GoodCo can "piggyback" been confirmed; and</p> <p>(2) Does your application include a process (online or offline) for obtaining export assurances from the downloading party; and</p> <p>(3) Have the necessary encryption key escrows been made with the appropriate government agencies?</p> |
| __Yes__No__NA __Unsure | <p>C20 Licensed Software. If "Yes" to A40 (or the answer has changed to "Yes"):</p> <p>(1) Has a written license agreement been signed with each of the non-GoodCo software owners in accordance with C20(1); and</p> <p>(2) If the software is mission critical and not easily replaceable with other software, has each non-GoodCo software owner provided an initial escrow deposit of source code (and annotations) for the licensed code and demonstrated to you that the deposited source code can be compiled by you to working object code if necessary in the event of licensor's financial failure; and</p> <p>(3) If more than 3 months have passed since you last investigated, have you re-investigated and re-confirmed the financial viability of all such licensors from whom you will need any maintenance or support, to ensure that there is not an unreasonably high risk of licensor financial failure during the time period that you expect to need maintenance and support from the licensor; and</p> <p>(4) Have you reminded your vendors that all press releases and promotions regarding their relationship with GoodCo (including but not limited to application launch announcements) must be approved by GoodCo, and internally must be personally approved by the GoodCo CIO [name, e-mail] ?</p> |
| __Yes__No__NA __Unsure | <p>C21 Developed Software. If "Yes" to A42 (or the answer has changed to "Yes"):</p> <p>(1) Has each vendor provided an initial escrow deposit of source code (and annotations) and demonstrated to you that the deposited source code can be compiled by you to working object code if necessary in the event of vendor's financial failure; and</p> <p>(2) Have you reminded your vendors that all press releases and promotions regarding their relationship with GoodCo (including but not limited to application launch announcements) must be approved by GoodCo, and internally must be personally approved by the GoodCo CIO [name, e-mail]?</p> |
| __Yes__No__NA __Unsure | <p>C22 Support for Developed Software. If "Yes" to A44 (or the answer has changed to "Yes"), and more than 3 months have passed since you last investigated, have you re-investigated and re-confirmed the financial viability of all vendors from whom you will need any maintenance or support, to ensure that there is not an unreasonably high risk of vendor financial failure during the time period that you expect to need maintenance and support from the vendor?</p> |
| __Yes__No | <p>C23 Equity in Vendor. If "Yes" to A46 (or the answer has changed to "Yes"), have you informed the GoodCo Equity</p> |

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| __Unsure | Investment Manager [name, e-mail] of the impending application launch so that he can take any appropriate actions with respect to press releases and the equity interest in the vendor? |
| __Yes__No__NA __Unsure | C24 Contingent Workers. If "Yes" to A48 (or the answer has changed to "Yes"), remind your team that CWs should not be given GoodCo awards or recognition in connection with the launch? |
| __Yes__No__NA __Unsure | C25 Contingent Workers – Contract Workers. If "Yes" to A50 (or the answer has changed to "Yes"): (1) Have you reminded your Contract Workers and their employers that all press releases and promotions regarding their relationship with GoodCo (including but not limited to application launch announcements) must be approved by GoodCo, and internally must be personally approved by the GoodCo CIO [name, e-mail]; and (2) Have you reminded your team about the rules set forth in A51 regarding the managing and hiring of Contract Workers, including in particular: (a) Rule A51(10) regarding the posting of permanent positions that replace temporary assignments; and (b) Rule A51(11) regarding hiring a Contract Worker for a GoodCo permanent position? |
| __Yes__No__NA __Unsure | C26 Contingent Workers – Leased Workers. If "Yes" to A52 (or the answer has changed to "Yes"): (1) Have you reminded your Leased Workers and their employers that all press releases and promotions regarding their relationship with GoodCo (including but not limited to application launch announcements) must be approved by GoodCo, and internally must be personally approved by the GoodCo CIO [(Ares, Jean-Michel R (PS, IM))]; and (2) Have you reminded your team about the rules set forth in A53 regarding the managing and hiring of Contract Workers, including in particular: (a) Rule A53(14) that you must allow the Leased Worker's employer to notify the Leased Worker of assignment end; and (b) Rule A53(17) regarding the posting of permanent positions that replace temporary assignments; and (c) Rule A53(18) regarding hiring a Leased Worker for a GoodCo permanent position; and (d) Rule A53(13) regarding approval needed from the GoodCo VP for Human Resources for keeping a Leased Worker on assignment with GoodCo for longer than 12 months? |
| __Yes__No__NA __Unsure | C27 Contingent Workers – Independent Contractors. If "Yes" to A54 (or the answer has changed to "Yes"): (1) Have you reminded your Independent Contractors that all press releases and promotions regarding their relationship with GoodCo (including but not limited to application launch announcements) must be approved by GoodCo, and internally must be personally approved by the GoodCo CIO [name, e-mail]; and (2) Have you reminded your team about the rules set forth in A55 regarding the managing and hiring of Contract Workers, including in particular: (a) Rule A55(11) regarding the posting of permanent positions that replace temporary assignments; and (b) Rule A55(8) regarding approval needed from the GoodCo VP for Human Resources [name, e-mail] for keeping a Leased Worker on assignment with GoodCo for longer than 12 months? |
| __Yes__No__NA __Unsure | C28 Contingent Workers – GoodCo Pensioners. If "Yes" to A56 (or the answer has changed to "Yes"), have you discussed with the GoodCo IT HR Manager [name, e-mail] what action is necessary for any GoodCo Pensioners who were working on your project? |
| __Yes__No__NA __Unsure | C29 Trademark Clearances. If "Yes" to A58 (or the answer has changed to "Yes"), have you received a report from GoodCo Trademark Counsel [name, e-mail] that he has run a "common law clearance search" on the marks and has approved them for use? (The mark should not be used in commerce until the clearance is obtained, and this may delay launch if the use of the mark cannot be delayed until after launch). |
| __Yes__No__NA __Unsure | C30 Domain Name Registrations. If "Yes" to A63 or A65 (or the answer has changed to "Yes"): (1) Have you received a report from the GoodCo Domain Name Coordinator [name, e-mail] that the domain names you have submitted for registration have been registered? (If "cybersquatters" hear about your intent to use a domain name or a matching mark, they may beat you to the punch on registration and try to sell the name back to you). |
| __Yes__No__NA __Unsure | C31 Patent Clearances. If more than 60 days have passed since you did your last VPA search (see items A67 and B31), have you re-run the VPA search and submitted any new "hits" to your IP Counsel for evaluation and determined (with advice from IP Counsel) that your application does not create an "unreasonable risk" of a patent infringement claim? |
| __Yes__No__NA __Unsure | C32 Patent Applications. If "Yes" to A71 (or the answer has changed to "Yes"): (1) Have you received any response to your submitted "Invention Disclosure Form"; and (2) If not, have you followed up with your assigned IP Counsel? (Note that the U.S. patent application must be filed before project launch to avoid waiving patent rights in certain countries outside the U.S.) |
| __Yes__No__NA __Unsure | C33 Extranet and Internet Site "Terms of Use" and "Privacy Policy". If "Yes" to A75 or A77 (or the answer has changed to "Yes") (going beyond GoodCo employees): (1) Does your application display a prominent link to the GoodCo standard "Terms of Use" and "Privacy Policy" documents, as well as any "Supplemental Terms of Use" and "Supplemental Privacy Policy" documents that were created for this site; and (2) If an extranet site, does your application use "Single Sign On" registration or some other mechanism which requires the user to "click to accept" the "Terms of Use" and "Privacy Policy" at least once on at the time of registration? |
| __Yes__No__NA __Unsure | C34 Intranet Site "Terms of Use" and "Privacy Policy". If "Yes" to A73, A74 or A76 (or the answer has changed to "Yes") (limiting the application to GoodCo employees), does your application display a prominent link to the GoodCo |

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| | standard "Intranet Terms of Use" and "Intranet Privacy Policy" documents, as well as any "Supplemental Terms of Use" and "Supplemental Privacy Policy" documents that were created for this site? |
| __Yes__No__NA __Unsure | C35 Content – GoodCo Trademarks. If "Yes" to A81, does use of the GoodCo logos and other trademarks comply with GoodCo Identity Guidelines at [URL]? |
| __Yes__No__NA __Unsure | C36 Content – Non-GoodCo Trademarks. If "Yes" to A83: (1) Is there a clarifying notice on the page for each third party mark such as: "Rolls-Royce® and Avon® are trademarks claimed by Rolls-Royce plc, which is not affiliated with GoodCo."; and (2) Is there any "likelihood of confusion" as to "affiliation, connection, or association," between the mark owner and GoodCo or as to "origin, sponsorship or approval" of the good or service in connection with which the mark is used; and (3) Is the ® (registered mark) symbol used appropriately only for U.S. registered marks shown in http://tess.uspto.gov ; and (4) unless the marks are being used as a "nominative fair use" simply to refer to or identify the company or good or service, has permission of the company been obtained; and (5) If the third party marks are logos (links are otherwise): (a) Have they been approved by GoodCo E-Business Legal Counsel [name, e-mail] and the GoodCo CIO [name, e-mail]; and (b) Has the permission of the logo owner been obtained (nominative fair use is a weak argument for logos); and (c) Do they comply with appearance standards required by the logo owner? |
| __Yes__No__NA __Unsure | C37 Content – Copyrights. If "Yes" to A85: (1) Are GoodCo copyrighted works, including attached PDF, Word, Excel and Powerpoint files, marked with a copyright notice as follows on every page of the site and on at least the cover page of every attached electronic document: "© xxxx-yyyy GoodCo. All Rights Reserved" where xxxx is the year of first publication of the oldest-published material on the page (or file) and yyyy is the year of first publication of the newest-published material on the page (or file); and (2) Have you obtained a signed "Confirmatory Assignment" form for each copyrighted work in the application that was created by a GoodCo employee, Contract Worker, Leased Worker or Independent Contractor; and (3) Have you obtained adequate permission from the copyright owner for any other copyrighted work that you cannot prove is solely-owned by GoodCo, by using one of the methods described in section A86(9)? |
| __Yes__No__NA __Unsure | C38 Content – Framing. If "Yes" to A87, has approval been obtained from GoodCo E-Business Counsel for any "framing" of non-GoodCo material on the site so that it appears in a frame or window on a GoodCo site? |
| __Yes__No__NA __Unsure | C39 Content – Linking. If "Yes" to A89 (or the answer has changed to "Yes"): (1) If any link is a "promotional" in nature (even on the intranet), have you obtained approval from the GoodCo CIO [name, e-mail], (bearing in mind that any link that includes text or graphics beyond a simple text directory reference will be presumed promotional, and any link with text that "promotes" a non-GoodCo company, good or service will be deemed promotional); and (2) Are links to the Adobe® Acrobat® Reader™ download page text-only links as described in A89(3); and (3) Are links to the Microsoft® Explorer® browser download page text-only links as described in A89(4); and (4) Are links to the Netscape® Navigator® browser download page text-only links as described in A89 (5); and (5) For links to other sites, has the procedure of A89(6) been followed to obtain permission; and (6) Have all links that are inconsistent with GoodCo integrity policies eliminated as described in A89(7)? |
| __Yes__No__NA __Unsure | C40 Content - "Meta" Tags and Invisible Ink. If "Yes" to A91 (or the answer has changed to "Yes"), have all trademarks, business names and product names of competitors or other third parties been eliminated from "meta tags" and "invisible ink"? |
| __Yes__No__NA __Unsure | C41 Content - Depicting and Discussing People and Companies (Defamation, Invasion of Privacy, Rights of Publicity). If "Yes" to B35 and A93 (or the answer has changed to "Yes"): (1) Has all "defamatory" material been removed (as described in A94(1)-(5)); and (2) Has all material which invades personal privacy been removed (as described in A94(6)); and (3) Has all material which violates rights of publicity been removed (as described in A94(7))? |
| __Yes__No__NA __Unsure | C42 Content - Depicting and Discussing GoodCo and Its Products and Services (Advertising Rules). If "Yes" to A95 (or the answer has changed to "Yes"): (1) Are all claims about GoodCo and its products and services (including claims that may be implied from graphic or pictorial representations) true and accurate, and supported by reliable testing to support the truth of the claim before the claim is made; and (2) Are all claims about GoodCo's and other's goods, services or commercial activities free from misrepresentations regarding the nature, characteristics, qualities, or geographic origin ; and (4) Is the site free of comparative advertising (comparing a GoodCo product to a competitor's product) which is allowable in the U.S. but not in Germany and some other EU nations; and (5) Is the site free from "superlatives", "absolutes", and "guarantees" about GoodCo products and services that may create potential liability as unintended warranties ; and (6) For all " free " offers, are any limitations or strings attached presented at least as prominently as the free offer itself? |

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| __Yes__No __Unsure | C43 Content - Language Requirements. If any non-English translations are required by A97-A104, has the translation been posted along with any introductory "bubble page" that may be necessary? |
| __Yes__No __Unsure | C44 Content - Third Party Content and Advertising and "Online Communities". If "Yes" to 107 (or the answer has changed to "Yes"): (1) Has the third party advertising been approved by the GoodCo CIO [name, e-mail], as well as your business unit counsel; and (2) Have appropriate contracts been signed regarding third party advertising with the advertisers, including procedures for ad placement and approvals? |
| __Yes__No__NA __Unsure | C45 If "Yes" to both A105 or both 107 and 108, 107 (or the answers have changed to "Yes"), has the application posted appropriate disclaimers near areas of the site which include third party postings, and any other requirements which have been made by E-Business Counsel? |
| __Yes__No __Unsure | C46 Content - Avoiding Problematic Competition Law Language. If "Yes" to 111 (or the answer has changed to "Yes"), is the site free of the problematic words, phrases and statements identified in section A112? |
| __Yes__No __Unsure | C47 Content - Legal Advice or Opinions. If "Yes" to 113 (or the answer has changed to "Yes"), has the site been cleansed of any unnecessary content that appears to be a legal opinion or to constitute legal advice? |
| __Yes__No __Unsure | C48 Content - GoodCo "Positions". If "Yes" to 115 (or the answer has changed to "Yes"), has the site been cleansed of any unnecessary content that appears to be the expression of the GoodCo or an affiliate's or division's "position" on any issue? |
| __Yes__No __Unsure | C49 Content - FAQs (Frequently Asked Questions). If "Yes" to 117 (or the answer has changed to "Yes"), has the site's "Frequently Asked Questions (FAQs)" sections and other "Guidelines" and "Help" pages been reviewed for official company positions, legal advice and other problematic content? |
| __Yes__No __Unsure | C50 Content - Accessibility for the Visually Impaired. If "Yes" to 119 (or the answer has changed to "Yes"), have you implemented (where feasible) Electronic And Information Technology Accessibility Standards when designing content? |
| __Yes__No__NA __Unsure | C51 Transactions - Consumers. If "Yes" to A121 (or the answer has changed to "Yes"), do the pages in your site or other application comply with consumer protection laws? |
| __Yes__No__NA __Unsure | C52 Transactions – Third Party Products. If "Yes" to A123 (or the answer has changed to "Yes"): (1) Do the application pages make clear to Buyers: (a) From whom they are buying the goods and services; and (b) Who is (and is not) warranting the goods and services; and (c) What GoodCo's role is in the sale (broker, intermediary, seller, etc); and (2) Has an agreement been entered between the Seller and GoodCo to make clear these issues and the relationship generally? |
| __Yes__No__NA __Unsure | C53 Transactions – GoodCo Affiliates and Transfer Pricing Rules. If "yes" to A6 or A7 (or one of these answers has changed to "Yes") and "Yes" to A126 (or this answer has changed to "Yes"), have the appropriate transfer pricing arrangements been prepared with your business unit counsel working with Tax Counsel? |
| __Yes__No__NA __Unsure | C54 Transactions – Posting and Use of an "E-Business Rider." If "Yes" to A6 (or the answer has changed to "Yes") (forming a contract on the site), does your application have: (1) A process (offline) for obtaining an ink signature from each user of the site on a paper E-Business Rider, EDI Agreement or other document approved for use on your site by GoodCo E-Business Counsel and applicable business unit counsel before entering into electronic transactions; and (2) Links to an electronic version of the chosen document from each page of the site through which electronic transactions are being conducted, so that the user will always have that document available to him; or (3) Where an exception is approved, an acceptable clickwrap process? |
| __Yes__No__NA __Unsure | C55 Transactions – Language Issues for Contracts. If "Yes" to A6 (or the answer has changed to "Yes"), does your application have posted the translated contracts in any required non-English languages? |
| __Yes__No__NA __Unsure | C56 Transactions – Other Business Model Issues. If "yes" to A6 or A7, does your application provide for all of the "business model issues" identified in section A130? |
| __Yes__No __Unsure | C57 Promotions - Promotional E-Mail messages. If "Yes" to A131 (or the answer has changed to "Yes"), have you complied with the requirements of A132 for any external e-mail promotion? |
| __Yes__No __Unsure | C58 Promotions – Sweepstakes and Contests. If "Yes" to A133 (or the answer has changed to "Yes"), have you complied with the requirements of A134 (and any additional requirements identified by your business unit legal counsel) for any sweepstakes or contest? |
| __Yes__No __Unsure | C59 Promotions – "Free" Offers. If "Yes" to A135 (or the answer has changed to "Yes"), have you complied with the requirements of A136 (and any additional requirements identified by your business unit legal counsel) for "free" offers or giveaways? |
| __Yes__No __Unsure | C60 Promotions - Vendor Press Releases. If "Yes" to A137 (or the answer has changed to "Yes"), have any vendor press releases been reviewed and approved by the GoodCo CIO [name, e-mail]? |