

APPROPRIATE, AS TO THE WHOLE CONTRACT, LESS EXPENSES AVOIDED AS A RESULT OF THE BREACH TO THE EXTENT NOT OTHERWISE ACCOUNTED FOR UNDER THIS SECTION:

(1) DAMAGES MEASURED IN ANY COMBINATION OF THE FOLLOWING WAYS, BUT NOT TO EXCEED THE MARKET VALUE OF THE PERFORMANCE THAT WAS THE SUBJECT OF THE BREACH PLUS RESTITUTION OF ANY AMOUNTS PAID FOR PERFORMANCE NOT RECEIVED AND NOT ACCOUNTED FOR WITHIN THE INDICATED RECOVERY:

(A) WITH RESPECT TO PERFORMANCE THAT HAS BEEN ACCEPTED AND THE ACCEPTANCE NOT RIGHTFULLY REVOKED, THE VALUE OF THE PERFORMANCE REQUIRED LESS THE VALUE OF THE PERFORMANCE ACCEPTED AS OF THE TIME AND PLACE OF ACCEPTANCE;

(B) WITH RESPECT TO PERFORMANCE THAT HAS NOT BEEN RENDERED OR THAT WAS RIGHTFULLY REFUSED OR ACCEPTANCE OF WHICH WAS RIGHTFULLY REVOKED:

(I) THE AMOUNT OF ANY PAYMENTS MADE AND THE VALUE OF OTHER CONSIDERATION GIVEN TO THE LICENSOR WITH RESPECT TO THAT PERFORMANCE AND NOT PREVIOUSLY RETURNED TO THE LICENSEE;

(II) THE MARKET VALUE OF THE PERFORMANCE LESS THE CONTRACT FEE FOR THAT PERFORMANCE; OR

(III) THE COST OF A COMMERCIALY REASONABLE SUBSTITUTE TRANSACTION LESS THE CONTRACT FEE UNDER THE BREACHED CONTRACT, IF THE SUBSTITUTE TRANSACTION WAS ENTERED INTO BY THE LICENSEE IN GOOD FAITH AND WITHOUT UNREASONABLE DELAY FOR SUBSTANTIALLY SIMILAR INFORMATION WITH THE SAME CONTRACTUAL USE TERMS; OR

(C) DAMAGES CALCULATED IN ANY REASONABLE MANNER; AND

(2) INCIDENTAL AND CONSEQUENTIAL DAMAGES.

(B) THE AMOUNT OF DAMAGES MUST BE REDUCED BY ANY UNPAID CONTRACT FEES FOR PERFORMANCE BY THE LICENSOR WHICH HAS BEEN ACCEPTED BY THE LICENSEE AND AS TO WHICH THE ACCEPTANCE HAS NOT BEEN RIGHTFULLY REVOKED.

21-810. RECOUPMENT.

(A) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (B) OF THIS SECTION, AN AGGRIEVED PARTY, UPON NOTIFYING THE PARTY IN BREACH OF CONTRACT OF ITS INTENTION TO DO SO, MAY DEDUCT ALL OR ANY PART OF THE DAMAGES RESULTING FROM THE BREACH FROM ANY PAYMENTS STILL DUE UNDER THE SAME CONTRACT.

(B) IF A BREACH OF CONTRACT IS NOT MATERIAL WITH REFERENCE TO THE PARTICULAR PERFORMANCE, AN AGGRIEVED PARTY MAY EXERCISE ITS RIGHTS