BEL Claims – Matching of Revenues and Expenses

ATTACHMENT B - Annual Variable Margin Methodology

The methodology outlined below – "the Annual Variable Margin Methodology" - shall be applied to adjust a claimant's contemporaneous P&Ls that have been deemed not to be "sufficiently matched." This methodology will not apply to claimants who's submitted P&Ls have been deemed "sufficiently matched," which claims will be processed under the methodology set forth in Exhibit 4C of the Settlement Agreement, utilizing the contemporaneous P&Ls. This methodology will not apply to claimants in the construction, agriculture or educational industries, nor will it apply to professional services firms, for which tailored methodologies have been developed. Furthermore, this methodology does not apply to claimants who meet the definition of a Start-Up Business, Failed Business or Failed Start-up Business.

The approach outlined below does not alter the structure as to how compensation is calculated under the Settlement Agreement but does, if matching issues are identified, amend the P&Ls utilized in such calculations. The calculations of both Step 1 and 2 compensation will be consistent with that prescribed by Exhibit 4C of the Settlement Agreement.

Annual Variable Margin Methodology

1. The claimant's contemporaneous P&Ls will be analyzed by the CSSP Accounting Vendors for potential accounting errors, and indicators of insufficient matching of revenue and variable expenses. Such analysis will require, if considered necessary, explanations and additional information and documentation from the claimant.
2. If the CSSP Accounting Vendors identify an error(s)[10] in how the claimant has accounted for revenue or expenses, correcting entries will be made to the P&Ls to restate revenue and expenses to

[10] "Errors" will be defined as accounting transactions that have been identified in the ordinary course of processing to have been inappropriately recorded in the claimant's contemporaneous P&Ls and will include, but not be limited to: duplicate accounting entries; debit entries recorded as credits or vice versa; mistakes in applying applicable accounting principles based on the claimant's method of accounting; oversights or misinterpretation of the facts; input or calculation errors; and/or postings to the incorrect revenue and/or expense categories. Recognizing that the Settlement Agreement does not mandate that the P&Ls be based on GAAP or any particular basis of accounting, the

the appropriate month. Where revenue has been restated a causation analysis will be re-performed (if causation is not presumed) to confirm that the claimant meets the Revenue Pattern Test per Exhibit 4B of the Settlement Agreement.

3. If adjustments made in accord with 2. above result in restated P&Ls that are deemed to be sufficiently matched, the claim will be processed and compensation calculated under the methodology set forth in Exhibit 4C of the Settlement Agreement using such P&Ls.

4. If adjustments made in accord with 2. above result in restated P&Ls that are not deemed to be sufficiently matched, the claim will be analyzed to calculate the "Corresponding variable expenses," calculated as follows:

   a. Benchmark Period[11]:

      i. Monthly corresponding variable expenses for each Fiscal Year included in the Benchmark Period will be calculated based on the percentage relationship between the sum of all variable expenses for the three (3) respective Fiscal Years , (as provided) prior to the spill and total revenue for the same Fiscal Year. This will yield a separate variable expense percentage for each Fiscal Year included in the Benchmark Period.

      ii. This Variable Expense percentage (specific for each individual Fiscal Year included in the Benchmark Period) is applied to the specific monthly revenue amounts in each Fiscal Year included in the Benchmark Period to calculate the corresponding variable expenses for each month.

CSSP will analyze the P&Ls under the basis (e.g., accrual, cash, modified cash, income tax, etc.) of accounting used by the claimant in the normal course of business and reflected in the contemporaneous P&Ls. In general, accounting estimates now determined to be inaccurate based on subsequent events will not be considered accounting errors if the entries were made using the best available information at the time.

[11] Benchmark Period for the purpose of calculating the annual variable margin expense percentage could be either 2009; the average of 2008 and 2009; or the average of 2007, 2008 and 2009.

b. Compensation Period:

i. Monthly corresponding variable expenses during the Compensation Period will be calculated based on the percentage relationship between the sum of all variable expenses for those Fiscal Years included in the Compensation Period and total revenue for the same period.

ii. Where the claimant's Fiscal Year is not on a calendar year basis, this will result in a separate variable expense percentages for months covered by each Fiscal Year included in Compensation Period.

iii. This variable expense percentage is applied to the specific monthly revenue amounts in each Fiscal Year included in the Compensation Period to calculate the corresponding variable expenses for each month.

c. Variable Margin – (Calculated for the Benchmark Period only for Step 2 compensation calculation):

i. Sum Variable Profit from May through December of the periods selected by the claimant to be used for the Benchmark Period (i.e. Optimal Benchmark Period).

ii. Sum total revenue from May through December of the periods selected by the claimant to be used for the Benchmark Period (i.e. Optimal Benchmark Period).

iii. Calculate Variable Margin percent as Variable Profit calculated in (i) divided by total revenue calculated in (ii).

5. The P&Ls, allocated for the corresponding variable expenses calculated in Step 4 above, are utilized as the input for calculating compensation under Exhibit 4C of the Settlement Agreement:

a. Step 1 of the compensation calculation is determined as the difference in Variable Profit between the Compensation Period selected by the claimant and the Variable Profit over the comparable months of the Benchmark Period. The Compensation Period is selected by the claimant to include three or more consecutive months between May 2010 and December 2010.

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b. Step 2 of the compensation calculation is based on the claimant's growth in revenue in January 2010 through April of 2010 relative to the same months of the claimant-selected Benchmark Period. The claimant may select a six-consecutive month period between May 2010 to December 2010, unless the claimant chose a seven-consecutive-month or eight-consecutive-month period in Step 1, in which case that same period of identical consecutive months shall be used for Step 2:

   i. To compute the Claimant Specific Factor, the total revenue from January 2010 to April 2010 will be compared to January to April revenue of the Optimum Benchmark Period (i.e., 2009, average of 2008/2009, or average of 2007/2008/2009).

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Illustrative Example - Annual Variable Margin Methodology

Assume that the claimant has adopted a calendar year Fiscal Year and has an Optimal Benchmark Period of May through December of 2008 and 2009

The contemporaneous P&Ls provided by the Claimant:

2008	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Revenue	275	300	325	325	900	600	325	300	350	325	300	275	4,600
Variable expenses	(150)	(125)	(125)	(300)	(125)	(275)	(150)	(150)	(225)	(150)	(175)	(125)	(2,075)
	125	175	200	25	775	325	175	150	125	175	125	150	2,525
Variable expenses as a % of revenue	55%	42%	38%	92%	14%	46%	46%	50%	64%	46%	58%	45%	45%

2009	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Revenue	300	325	350	350	500	800	350	275	275	350	325	300	4,500
Variable expenses	(175)	(125)	(275)	(225)	(275)	(300)	(125)	(225)	(275)	(175)	(100)	(150)	(2,425)
	125	200	75	125	225	500	225	50	0	175	225	150	2,075
Variable expenses as a % of revenue	58%	38%	79%	64%	55%	38%	36%	82%	100%	50%	31%	50%	54%

2010	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Revenue	375	350	350	375	300	225	225	250	275	275	250	225	3,475
Variable expenses	(175)	(125)	(225)	(200)	(125)	(75)	(150)	(150)	(125)	(150)	(100)	(125)	(1,725)
	200	225	125	175	175	150	75	100	150	125	150	100	1,750
Variable expenses as a % of revenue	47%	36%	64%	53%	42%	33%	67%	60%	45%	55%	40%	56%	50%

To calculate the corresponding variable expenses:

Benchmark Period: Revenue 2008	4,600
Benchmark Period: Variable Expenses 2008	(2,075)
Variable expenses as a % of revenue	45%
Benchmark Period: Revenue 2009	4,500
Benchmark Period: Variable Expenses 2009	(2,425)
Variable expenses as a % of revenue	54%
Compensation Period: Revenue 2010	3,475
Compensation Period: Variable Expenses 2010	(1,725)
Variable expenses as a % of Revenue	50%

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Applying the corresponding variable expense percentages, the variable expenses reported on the P&Ls would be allocated as follows:

2008	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Revenue	275	300	325	325	900	600	325	300	350	325	300	275	4,600
Variable expenses	(124)	(135)	(147)	(147)	(406)	(271)	(147)	(135)	(158)	(147)	(135)	(124)	(2,075)
Variable expenses as a % of revenue	45%	45%	45%	45%	45%	45%	45%	45%	45%	45%	45%	45%	

2009	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Revenue	300	325	350	350	500	800	350	275	275	350	325	300	4,500
Variable expenses	(162)	(175)	(189)	(189)	(269)	(431)	(189)	(148)	(148)	(189)	(175)	(162)	(2,425)
Variable expenses as a % of revenue	54%	54%	54%	54%	54%	54%	54%	54%	54%	54%	54%	54%	

2010	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Revenue	375	350	350	375	300	225	225	250	275	275	250	225	3,475
Variable expenses	(186)	(174)	(174)	(186)	(149)	(112)	(112)	(124)	(137)	(137)	(124)	(112)	(1,725)
Variable expenses as a % of revenue	50%	50%	50%	50%	50%	50%	50%	50%	50%	50%	50%	50%	

Step 1 and Step 2 compensation would be computed as:

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	**Total**
Benchmark Period (Average 2008 & 2009)													
Revenue	288	313	338	338	700	700	338	288	313	338	313	288	4,550
Variable expenses	(143)	(155)	(168)	(168)	(338)	(351)	(168)	(142)	(153)	(168)	(155)	(143)	(2,250)
Variable Profit	145	157	170	170	362	349	170	146	159	170	157	145	2,300
Variable Profit %	50%	50%	50%	50%	52%	50%	50%	51%	51%	50%	50%	50%	51%
Compensation Period (2010/11)													
Revenue	375	350	350	375	300	225	225	250	275	275	250	225	3,475
Variable expenses	(186)	(174)	(174)	(186)	(149)	(112)	(112)	(124)	(137)	(137)	(124)	(112)	(1,725)
Variable Profit	189	176	176	189	151	113	113	126	138	138	126	113	1,750
Variable Profit %	50%	50%	50%	50%	50%	50%	50%	50%	50%	50%	50%	50%	50%

Step 1

Optimum Benchmark Period identified as May to Dec

Total variable profit May to December (Benchmark)	1,658
Total variable profit May to December (Compensation)	1,020
Step 1 Compensation (pre-RTP)	639

Step 2

Optimum Benchmark Period from May to December, 2008 and 2009

Revenue Jan 2010 to April 2010	1,450
Revenue Jan to April (average for 2008 & 2009)	1,275
Revenue increase/(decrease)	175
Revenue Increase/(decrease) Percentage	14%
Claimant Specific Growth Factor	10% [Max of 10%, Min of -2%]
General Adjustment Factor	2%

Optimum Benchmark Period Revenue (May to December, 2008 & 2009)	3,275
Incremental Revenue	393
Variable profit for benchmark period	51%
Step 2 compensation (pre-RTP)	199