

## FINAL POLICY ANNOUNCEMENT

### POLICY 495: BUSINESS ECONOMIC LOSS CLAIMS: MATCHING OF REVENUE AND EXPENSES

#### **Introduction**

The District Court has instructed the Claims Administrator “to adopt and implement an appropriate protocol or policy for handling BEL claims in which the claimant’s financial records do not match revenue with corresponding variable expenses.” (Rec. Doc. 12055, p. 37 of 43).

Based upon the U.S. 5<sup>th</sup> Circuit Court of Appeals’ decision of October 2, 2013 and the District Court’s Order & Reasons of December 24, 2013 on remand, the Claims Administrator understands that the following principles are to be applied in evaluating BEL claims under Exhibit 4C of the Settlement Agreement:

1. The Settlement Agreement contemplates that loss calculations are to be based upon accounting records that sufficiently match revenues with expenses.
2. The Settlement Agreement’s “provision for subtracting corresponding variable expenses requires that revenue must be matched with the variable expenses incurred by a claimant in conducting its business, and that does not necessarily coincide with when revenue and variable expenses were recorded.” (Rec. Doc. 12055, p. 5 of 43).
3. Some claimant-submitted contemporaneous accounting records inherently match revenues with expenses sufficiently for purposes of the Settlement Agreement. Others do not. (732 F. 3d at 334, 335).
4. For those “unmatched claims,” the claimant-submitted accounting records are to be adjusted “in light of the necessity of revenue and expense matching to realistic measurement of economic loss.” (732 F. 3d at 346 – 347).

#### **Policy Development Process**

In the process of developing this policy as directed by the Court, the Claims Administrator has conducted extensive consultations with the Court Supervised Settlement Program (“CSSP”) Accounting Vendors (PricewaterhouseCoopers and Postlethwaite & Netterville) and has received significant input from both BP and Class Counsel. The Claims Administrator’s efforts in this regard have included:

- Both BP and Class Counsel made written submissions detailing the frameworks that they propose be implemented to accomplish the “matching” required by the Court. These written submissions were reviewed in detail by the Claims Administrator and the CSSP Accounting Vendors.
- An extended Q&A session was conducted to allow the CSSP Accounting Vendors to gain a more complete understanding of the proposals submitted by both sides. There were

numerous participants in this informational session, including BP, Class Counsel, accounting experts representing both parties, CSSP Accounting Vendors, the Claims Administrator and various members of the CAO staff.

- The CSSP Accounting Vendors conducted numerous independent working sessions over a period of approximately four months.
- The Claims Administrator and the CSSP Accounting Vendors conducted several joint working sessions over a period of approximately three months.
- An initial draft of this Policy was provided to both BP and Class Counsel, after which the Claims Administrator and the CSSP Accounting Vendors presented the Policy to BP, Class Counsel, and accounting experts representing both parties. An additional extended Q&A Session was conducted at that time.
- Both BP and Class Counsel made written submissions responding to the draft Policy. These written submissions were reviewed in detail by the Claims Administrator and the CSSP Accounting Vendors. Revisions to the Policy were made based upon additional input from the parties and after further analysis by the CSSP Accounting Vendors.
- This final written policy has been adopted only after such thorough input, analysis, consideration and consultation.

### **Underlying Issues / Principles**

Based upon the CSSP's experience in reviewing claims and analyzing accounting records submitted to the CSSP since the inception of this settlement program and in light of the rulings and directives received from the Court, the Claims Administrator, in consultation with the CSSP Accounting Vendors, has arrived at the following conclusions relative to the "matching" issues at hand:

1. The claimant's method of accounting (cash vs. accrual vs. other) is not necessarily determinative of whether revenues and expenses are sufficiently "matched" as per the orders of the Court.
2. Different industries tend to present different issues and require different methodologies in terms of trying to achieve sufficient "matching."
3. In an effort to achieve sufficient "matching" in such a way that the accounting records may serve as a basis for "realistic measurement of economic loss," differing analyses are required depending upon the specifics of the particular business, including industry type and nature and duration of revenue or expense cycles.

4. It is not feasible in the context of a class-wide settlement involving thousands of different claims, with each claimant's financial information potentially spanning a time period in excess of four years, to attempt to match specific expenses to specific revenues on an individual transaction by transaction basis. The time, effort and expense required under this approach would be prohibitive. Further, it is unlikely that such individualized matching of specific expenses to specific revenues would be possible based on information and documentation available to the claimants or the CSSP.
5. If a claimant's contemporaneous P&Ls submitted to the CAO are deemed to be 'sufficiently matched' based on an assessment by the CSSP Accounting Vendors, such P&Ls will be utilized in calculating compensation under the Settlement Agreement. In utilizing such contemporaneous P&Ls, corrections will be made for any accounting "errors" identified in the ordinary course, by the CSSP Accounting Vendors.<sup>1</sup>
6. It is the CSSP's considered assessment that, for the majority of claimants, sufficient "matching" of revenue and expenses will be best accomplished through an annual variable margin methodology which totals variable expenses for each Fiscal Year<sup>2</sup> and allocates them to each month on a pro-rata basis of monthly revenues for the same period. This approach reasonably accomplishes sufficient "matching" and is the most feasible methodology in the context of a class-wide settlement.
7. Depending on the specifics of a given business, it may be appropriate to make adjustments to the claimant's financials as to the timing of the recognition of either revenues or expenses or both.

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<sup>1</sup> "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 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.

<sup>2</sup> A claimant's Fiscal Year is the twelve month period that the claimant uses for preparing its annual financial statements and, in the majority of cases, for filing its annual tax return with the Internal Revenue Service. The fiscal year may or may not be the same as a calendar year. In the event that a claimant's Fiscal Year differs from the claimant's annual tax reporting period, the tax reporting period will typically be utilized.

8. The operating characteristics of certain businesses will not lend themselves to the application of an annual variable margin methodology. The following industries in particular each warrant a customized methodology in order to achieve sufficient matching in a way that reasonably depicts economic reality for purposes of loss measurement: construction, agriculture, education and professional services.
9. In order to achieve sufficient “matching,” adjustments to the claimant’s contemporaneous accounting records are best made by the CSSP Accounting Vendors after appropriate inquiry and gathering of additional documents and/or information, if necessary, from the claimant.<sup>3</sup>
10. It is the intent of this policy to ensure both causation determination and compensation determination are both based on sufficiently matched P&Ls.
11. Consideration of whether revenues and expenses are sufficiently matched necessarily involves an element of professional judgment. The CSSP recognizes and reserves the right of the CSSP Accounting Vendors to exercise such professional judgment to achieve sufficient matching as ordered by the Court.<sup>4</sup>

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<sup>3</sup> As per Exhibit 4A of the Settlement Agreement, claimants will be required to provide contemporaneous P&L statements that identify the dates on which they were created. In addition to, but not in lieu of the contemporaneous P&Ls, claimants may also elect to submit amended P&Ls that they believe are sufficiently matched. Regardless of whether or not the claimant submits amended P&Ls, the CSSP Accounting Vendors will utilize contemporaneous P&Ls as a starting point for any claim. The CSSP Accounting Vendors will require detailed information to understand and verify the changes made by claimants to achieve sufficiently matched P&Ls. If a claimant cannot provide appropriate, reliable and complete records that support amendments made to the contemporaneous P&Ls, the CSSP Accounting Vendors will - consider only the contemporaneous P&Ls.

<sup>4</sup> The claimant’s file will be appropriately and reasonably documented to reflect the basis for the exercise of professional judgment by the CSSP Accounting Vendors as to material matters in the identification and resolution of matching issues, the correction of identified errors, the resolution of ambiguities or inconsistencies in materials supplied by the claimant, the selection of the appropriate “Matching Methodology” to be utilized, and/or the allocation of revenue and/or expenses impacting the causation calculation under Exhibit 4B of the Settlement Agreement or having a significant impact on the compensation payable.

## **Statement of Policy**

The Claims Administrator thus adopts the following “policy for handling BEL claims in which the claimant’s financial records do not match revenue with corresponding variable expenses” as ordered by the Court.

### **I. Identification of “unmatched claims.”**

A. The criteria to be used in identifying “unmatched claims,” other than with respect to Failed Businesses, Failed Start-Up Businesses and Start-Up Businesses, will be the same as those set out in the Declaration of Patrick A. Juneau, Claims Administrator, dated October 25, 2013.

The process for identifying those claims whose submitted financial records fail to sufficiently match revenues with expenses shall be the following:

If the monthly profit and loss statements submitted by a claimant, restated by the CSSP Accounting Vendors for any identified errors, meet any one of the following criteria, then the claim shall be identified for a further matching analysis as described below:

1. negative total revenue is recorded for any month included within the Benchmark Year(s), Compensation Year or 2011;
2. total revenue recorded in any month included in the Benchmark Year(s), Compensation Year or 2011 exceeds 20% of the claimant’s annual revenue for the year which includes that month;
3. the monthly profit and loss statements or other documentation submitted shows that the claimant’s business experienced a period of dormancy during the Benchmark Year(s), Compensation Year or 2011;
4. total variable expenses when summed up are negative for any month within the Benchmark Year(s) or Compensation Year;
5. total variable expenses for any month within the Benchmark Year(s) or Compensation Year exceed 25% of the claimant’s annual variable expense for the year which includes that month;
6. variable margin percentages when compared between any two months included within the Benchmark Year(s) and Compensation Year vary by more than 50 percentage points; or,
7. in any given month within the Benchmark Year(s) or Compensation Year, the variance between that month’s percentage of annual revenues as compared to that same month’s percentage of annual variable expenses exceeds 8 percentage points.

Any claim, whether based on accrual, cash or another basis of accounting books and records, that does not fall within one of the foregoing seven criteria shall be presumed to be “sufficiently matched,” provided; however, that if in the professional judgment of the CSSP Accounting Vendors, a claimant’s financial records contain other significant indicia that the claim may not be “sufficiently matched,” the CSSP reserves the right to identify such claim for further matching analysis as set forth below.

With respect to any claims where matching is determined to be an issue as set forth in this paragraph I.A. above, the CSSP Accounting Vendors will exercise their professional judgment to determine whether that claim is “sufficiently matched” based upon the evaluation of the information submitted and available to them, including, when applicable, the nature and complexity of the industry or business in question, particularly with regard to claims based upon cash-basis accounting records.

For those claims determined *to* be sufficiently matched, the CSSP Accounting Vendors will utilize claimant-submitted accounting records (adjusted for any identified accounting errors) to calculate compensation as set forth in the Settlement Agreement.

For those claims determined *not* to be sufficiently matched, the CSSP Accounting Vendors will adjust the claimant-submitted accounting records as outlined in paragraph II below in order to achieve sufficient matching as per the orders of the Court.

B. As to Failed Businesses and Failed Start-Up Businesses and as to Start-Up Businesses, identification of “unmatched claims” will be determined as set out in Attachments G and H to this policy.

**II. Adjustment of “unmatched claims . . . in light of the necessity of revenue and expense matching to realistic measurement of economic loss.”**

For those claims determined under paragraph I above *not* to be sufficiently matched, the below methodologies will be utilized to achieve sufficient matching as per the orders of the Court.

A. Determination of Applicable Methodology.

Claims will be assigned to an industry type for purposes of these methodologies using NAICS codes as outlined in **Attachment A**. To the extent that in the professional judgment of the CSSP Accounting Vendors assignment to a methodology by such NAICS code is inappropriate based on that claimant’s particular business activities, the CSSP reserves the right to revise the applicable methodology to achieve sufficient matching as ordered by the Court. All claims submitted with P&Ls that are deemed not to be sufficiently matched, will be processed under one of the Methodologies set forth below. Note: no claim will be processed under an individually tailored approach to resolve matching issues.

B. Annual Variable Margin Methodology for “Unmatched” Claims.

**See Attachment B.**

C. Construction Claims.

**See Attachment C.**

D. Agriculture Claims.

**See Attachment D.**

E. Educational Institutions Claims.

**See Attachment E.**

F. Professional Services Claims.

**See Attachment F.**

G. Failed Businesses and Failed Start-Up Businesses.

**See Attachment G.**

H. Start-Up Businesses.

**See Attachment H.**

Under the above methodologies, the guiding principle has been to utilize the claimant’s contemporaneous P&Ls where there is no indicia of a mismatch of revenue and expenses. Where matching issues have been identified the approach will be, wherever possible, to amend the P&Ls utilized as inputs to the compensation calculation and to the extent possible calculate Step 1 and Step 2 compensation in accordance with the Settlement Agreement.

Contemporaneous P&Ls submitted by the claimant will be restated if in analyzing and processing a claim, the CSSP Accounting Vendors identify either an error (as previously defined) or a mismatch of revenue and variable expenses which can be explained and supported by appropriate documentation. If matching issues remain after such restatements, revenue and/or variable expenses<sup>5</sup> will be allocated as per one of the methodologies set forth in Attachments B through H.

As it relates to adjusting the inputs to better match revenue with corresponding variable expenses, the methodologies require the reallocation of revenue, expenses or both for both the

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<sup>5</sup> In the case of a Failed Business or Failed Start-Up Business any identified allocation will include all expenses that fall within EBITDA, as defined in Exhibit 6 of the Settlement Agreement.

Benchmark and Compensation Periods. In the Attachments to this Policy, references to “variable expenses” include “variable payroll expenses,” as computed under Exhibit 4C of the Settlement Agreement. In identifying the two months between May 2010 and December 2010 with the lowest Total Payroll Expense, the CSSP Accounting Vendors will utilize the contemporaneous P&Ls after any restatement for errors (as previously defined) and/or a mismatch of revenue and payroll expenses which can be explained and supported by appropriate documentation, but prior to any allocation of revenue and/or variable expenses under the methodologies set forth in the Attachments B through H (excluding G).

Claimants may be required to provide additional information under the methodologies outlined in the attachments. This may include information prior to the Benchmark Period or subsequent to the Compensation Period (i.e., where the claimant has adopted a Fiscal Year that differs from a calendar year).



## **BEL Claims – Matching of Revenues and Expenses**

### **ATTACHMENT A - NAICS CODES ASSIGNED TO MATCHING FRAMEWORK**

In developing a methodology to address claims that have been deemed not to be ‘sufficiently matched,’ several methodologies have been developed to address unique factors common to the manner in which certain industries operate and record their financial information:

- Annual Variable Margin Methodology (otherwise referred to as “Short Revenue Cycle”) – Attachment B
- Construction – Attachment C
- Agriculture – Attachment D
- Educational Institutions – Attachment E
- Professional Services – Attachment F

This document summarizes NAICS codes that will likely fall into each methodology. However, it is important to note that a claimant with a given NAICS code will not automatically be assigned to a given methodology by virtue of the NAICS code if, in the judgment of the Claims Administrator’s office, there are factors that indicate that revenues and expenses would be more sufficiently matched by applying an alternative methodology. As a result, some businesses within a certain three-digit NAICS Subsector may be treated under a different methodology from others within the same Subsector.

In identifying those NAICS codes that would most likely fall into each methodology, there is a particular focus on the ‘specialty’ methodologies – Construction, Professional Services, Agriculture, and Educational Institutions – with all other NAICS codes defaulting to the Annual Variable Margin (Short Revenue Cycle) methodology.

Set out below is a summary of how the NAICS codes are presently assigned.

## **BEL Claims – Matching of Revenues and Expenses**

### **ATTACHMENT A - NAICS CODES ASSIGNED TO MATCHING FRAMEWORK**

#### **Construction<sup>6</sup>**

##### 236xxx - Construction of Buildings

2361XX	Residential Building Construction
2362XX	Nonresidential Building Construction

##### 237xxx - Heavy and Civil Engineering Construction

2371XX	Utility System Construction
2372XX	Land Subdivision
2373XX	Highway, Street, and Bridge Construction
2379XX	Other Heavy and Civil Engineering Construction

##### 238xxx - Specialty Trade Contractors

2381XX	Foundation, Structure, and Building Exterior Contractors
2382XX	Building Equipment Contractors
2383XX	Building Finishing Contractors
2389XX	Other Specialty Trade Contractors

##### 336xxx - Transportation Equipment Manufacturing

3361XX	Motor Vehicle Manufacturing
3362XX	Motor Vehicle Body and Trailer Manufacturing
3363XX	Motor Vehicle Parts Manufacturing
3364XX	Aerospace Product and Parts Manufacturing
3365XX	Railroad Rolling Stock Manufacturing
3366XX	Ship and Boat Building
3369XX	Other Transportation Equipment Manufacturing

##### 321xxx - Wood Product Manufacturing

3211XX	Sawmills and Wood Preservation
3212XX	Veneer, Plywood, and Engineered Wood Product Manufacturing
3219XX	Other Wood Product Manufacturing

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<sup>6</sup> A claimant with a given NAICS code will not automatically be assigned to a given methodology by virtue of the NAICS code if, in the judgment of the Claims Administrator's office, there are factors that indicate that revenues and expenses would be more sufficiently matched by applying an alternative methodology. As a result, some businesses within a certain three-digit NAICS Subsector may be treated under a different methodology from others within the same Subsector

## **BEL Claims – Matching of Revenues and Expenses**

### **ATTACHMENT A - NAICS CODES ASSIGNED TO MATCHING FRAMEWORK**

#### **Agriculture<sup>7</sup>**

##### 111xxx – Crop Production

1111XX	Oilseed and Grain Farming
1112XX	Vegetable and Melon Farming
1113XX	Fruit and Tree Nut Farming
1114XX	Greenhouse, Nursery, and Floriculture Production
1119XX	Other Crop Farming

##### 115xxx – Support Activities for Agriculture

1151XX	Support Activities for Crop Production
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<sup>7</sup> A claimant with a given NAICS code will not automatically be assigned to a given methodology by virtue of the NAICS code if, in the judgment of the Claims Administrator's office, there are factors that indicate that revenues and expenses would be more sufficiently matched by applying an alternative methodology. As a result, some businesses within a certain three-digit NAICS Subsector may be treated under a different methodology from others within the same Subsector

## **BEL Claims – Matching of Revenues and Expenses**

### **ATTACHMENT A - NAICS CODES ASSIGNED TO MATCHING FRAMEWORK**

#### **Educational Institutions<sup>8</sup>**

611xxx – Educational Services

6111XX	Elementary and Secondary Schools
6112XX	Junior Colleges
6113XX	Colleges, Universities, and Professional Schools
6114XX	Business Schools and Computer and Management Training
6115XX	Technical and Trade Schools
6116XX	Other Schools and Instruction
6117XX	Educational Support Services

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<sup>8</sup> A claimant with a given NAICS code will not automatically be assigned to a given methodology by virtue of the NAICS code if, in the judgment of the Claims Administrator's office, there are factors that indicate that revenues and expenses would be more sufficiently matched by applying an alternative methodology. As a result, some businesses within a certain three-digit NAICS Subsector may be treated under a different methodology from others within the same Subsector

## **BEL Claims – Matching of Revenues and Expenses**

### **ATTACHMENT A - NAICS CODES ASSIGNED TO MATCHING FRAMEWORK**

#### **Professional Services<sup>9</sup>**

541xxx - Professional, Scientific, and Technical Services

5411XX	Legal Services
5412XX	Accounting, Tax Preparation, Bookkeeping, and Payroll Services
5413XX	Architectural, Engineering, and Related Services
5414XX	Specialized Design Services
5415XX	Computer Systems Design and Related Services
5416XX	Management, Scientific, and Technical Consulting Services
5417XX	Scientific Research and Development Services
5418XX	Advertising, Public Relations, and Related Services
5419XX	Other Professional, Scientific, and Technical Services

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<sup>9</sup> A claimant with a given NAICS code will not automatically be assigned to a given methodology by virtue of the NAICS code if, in the judgment of the Claims Administrator's office, there are factors that indicate that revenues and expenses would be more sufficiently matched by applying an alternative methodology. As a result, some businesses within a certain three-digit NAICS Subsector may be treated under a different methodology from others within the same Subsector

## **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)<sup>10</sup> 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

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<sup>10</sup> “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

## **BEL Claims – Matching of Revenues and Expenses**

### **ATTACHMENT B - Annual Variable Margin Methodology**

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<sup>11</sup>:
    - 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.

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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.

<sup>11</sup> 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.

## **BEL Claims – Matching of Revenues and Expenses**

### **ATTACHMENT B - Annual Variable Margin Methodology**

- 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.



**BEL Claims – Matching of Revenues and Expenses**

**ATTACHMENT B - Annual Variable Margin Methodology**

- 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).

## BEL Claims – Matching of Revenues and Expenses

### ATTACHMENT B - Annual Variable Margin Methodology

#### 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:

<b>2008</b>	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)
Variable expenses as a % of revenue	55%	42%	38%	92%	14%	46%	46%	50%	64%	46%	58%	45%	45%
<b>2009</b>	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)
Variable expenses as a % of revenue	58%	38%	79%	64%	55%	38%	36%	82%	100%	50%	31%	50%	54%
<b>2010</b>	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)
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	<u>(2,075)</u>
Variable expenses as a % of revenue	45%

Benchmark Period: Revenue 2009	4,500
Benchmark Period: Variable Expenses 2009	<u>(2,425)</u>
Variable expenses as a % of revenue	54%

Compensation Period: Revenue 2010	3,475
Compensation Period: Variable Expenses 2010	<u>(1,725)</u>
Variable expenses as a % of Revenue	50%

## BEL Claims – Matching of Revenues and Expenses

### ATTACHMENT B - Annual Variable Margin Methodology

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

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
<b>2008</b>													
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%	
<b>2009</b>													
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%	
<b>2010</b>													
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
<b>Benchmark Period (Average 2008 &amp; 2009)</b>													
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%
<b>Compensation Period (2010/11)</b>													
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)	<u>1,020</u>
Step 1 Compensation (pre-RTP)	<u>639</u>

#### 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)	<u>1,275</u>
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	<u>51%</u>
Step 2 compensation (pre-RTP)	<u>199</u>

## **BEL Claims – Matching of Revenues and Expenses**

### **ATTACHMENT C - Construction Methodology**

The methodology outlined below – “the Construction Methodology” – is a deviation from the Annual Variable Margin Methodology described in Attachment B. This methodology is premised on the assumption that variable expenses of a construction claimant are more accurately recorded on monthly P&Ls than are revenues<sup>12</sup>. Percentage of completion accounting for revenue by a construction company is based on estimates that may only be updated at the end of reporting periods (e.g., at the Fiscal Year end) rather than a monthly basis. As such, matching issues may arise when significant adjustments are recorded to reflect more accurate estimates at quarter and/or year ends. The Construction Methodology calls, therefore, to reallocate revenues in order to best achieve sufficient matching of revenue and expenses.

This Construction Methodology shall be applied to adjust a construction claimant’s contemporaneous P&Ls that have been deemed not to be “sufficiently matched.” This methodology will not apply to claims whose submitted P&Ls were prepared under either a percentage of completion or completed contract basis of accounting that are deemed (after applying the criteria set forth in Section I.A. of this Policy) “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 revised methodology does not apply to a construction claimant that meets 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 amend the P&Ls utilized in such calculations. The calculations of both Step 1 and Step 2 compensation will be consistent with that prescribed by Exhibit 4C of the Settlement Agreement.

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<sup>12</sup> Prior to the application of this methodology, the CSSP Accounting Vendors will analyze the variable expenses to the extent necessary.

## **BEL Claims – Matching of Revenues and Expenses**

### **ATTACHMENT C - Construction Methodology**

As a consequence of allocating revenue based on that month's variable expenses as a percentage of annual variable expenses, the revenue recorded on the allocated P&Ls can no longer be attributed to individual customers. Accordingly, the allocated P&Ls cannot be utilized for the purpose of determining causation for any claimant required to satisfy a Customer Mix Test, per Exhibit 4B of the Settlement Agreement. Under the Construction Methodology, for any claimant required to satisfy a Customer Mix Test to demonstrate causation, the CSSP will utilize the contemporaneous P&Ls (restated for errors) for the Customer Mix Test element of the causation assessment, but will utilize the restated and allocated P&Ls for assessing the Revenue Pattern Test under Exhibit 4B of the Settlement Agreement, and in computing compensation.<sup>13</sup>

#### **Construction 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 Vendor identifies an error(s)<sup>14</sup> in how the claimant has accounted for revenue or variable expenses, correcting entries will be made to the P&Ls to restate revenue and

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<sup>13</sup> This would supersede, for construction companies only, Policy 464 as it relates to the requirement to utilize the same P&Ls for determining causation and calculating compensation. However, as per the "Addendum To Causation Requirements for Business Economic Loss Claims and Compensation Framework for Business Economic Loss Claims" while the "claimant is not required to use the same months in the Benchmark Period for purposes of establishing causation pursuant to Ex. 4B [of the Settlement Agreement] and determining compensation pursuant to Ex. 4C [of the Settlement Agreement]" the "same Benchmark Period year(s) are used for the purpose of determining both causation and compensation." Accordingly, the claimant may elect which months to utilize to demonstrate causation under the customer mix test, but must utilize the same Benchmark years as those used to calculate compensation.

<sup>14</sup> "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

## **BEL Claims – Matching of Revenues and Expenses**

### **ATTACHMENT C - Construction Methodology**

variable expenses to 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 under the Construction Methodology as follows:
  - a. Allocation based on Claimant's Fiscal Year-End<sup>15</sup>:
    - i. For each Fiscal Year included in the Benchmark and Compensation Periods (2007, 2008, 2009 and 2010 (as provided)) each month's variable expenses as a percentage of that Fiscal Year's total variable expenses will be computed.
    - ii. Where the claimant's Fiscal Year is not on a calendar year basis, this will result in a separate Variable Profit percentage for each Fiscal Year included in Benchmark and Compensation Periods.
    - iii. Annual revenue for each Fiscal Year will be allocated to individual months by multiplying total annual revenue by each month's percentage of total variable expenses (as computed in accord with i. above).
  - b. 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).

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Settlement Agreement does not mandate that the P&Ls be based on GAAP or any particular basis of accounting, the 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.

<sup>15</sup> A claimant's fiscal/tax year may require additional information/documentation that may extend prior to the Benchmark Period and subsequent to the Compensation Period.

## **BEL Claims – Matching of Revenues and Expenses**

### **ATTACHMENT C - Construction Methodology**

- 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. As a consequence of allocating monthly revenue a causation assessment under Exhibit 4B of the Settlement Agreement will be re-performed. However, given that revenue is allocated based on that month's variable expenses as a percentage of annual variable expenses, the revenue recorded on the allocated P&Ls can no longer be attributed to individual customers. Accordingly, the allocated P&Ls cannot be utilized for the purpose of determining causation for any claimant required to satisfy a Customer Mix Test, per Exhibit 4B of the Settlement Agreement. Under the Construction Methodology, for any claimant required to satisfy a Customer Mix Test to demonstrate causation, the CSSP will utilize the contemporaneous P&Ls (restated for errors) for the Customer Mix Test element of the causation assessment, but will utilize the restated and allocated P&Ls for assessing the Revenue Pattern Test under Exhibit 4B of the Settlement Agreement, and in computing compensation.
6. The P&Ls, allocated for the Corresponding Revenues calculated in accord with 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 2010 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.
  - 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 in 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:

## BEL Claims – Matching of Revenues and Expenses

### ATTACHMENT C - Construction Methodology

- 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).

#### **Illustrative Example – Construction Claims**

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

The contemporaneous P&Ls provided by the claimant:

<b>2008</b>	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Revenue	275	300	375	275	400	350	275	400	350	250	300	275	3,825
Variable expenses	(175)	(150)	(150)	(200)	(125)	(225)	(175)	(175)	(250)	(175)	(200)	(150)	(2,150)
Variable Profit	100	150	225	75	275	125	100	225	100	75	100	125	1,675
Variable Profit %	36%	50%	60%	27%	69%	36%	36%	56%	29%	30%	33%	45%	44%
<b>2009</b>	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Revenue	375	250	350	425	325	450	325	400	325	175	500	300	4,200
Variable expenses	(200)	(150)	(300)	(250)	(200)	(125)	(150)	(250)	(300)	(200)	(125)	(175)	(2,425)
Variable Profit	175	100	50	175	125	325	175	150	25	(25)	375	125	1,775
Variable Profit %	47%	40%	14%	41%	38%	72%	54%	38%	8%	-14%	75%	42%	42%
<b>2010</b>	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Revenue	325	250	400	350	275	175	300	175	325	400	150	225	3,350
Variable expenses	(225)	(200)	(275)	(250)	(125)	(100)	(125)	(175)	(300)	(175)	(125)	(150)	(2,225)
Variable Profit	100	50	125	100	150	75	175	0	25	225	25	75	1,125
Variable Profit %	31%	20%	31%	29%	55%	43%	58%	0%	8%	56%	17%	33%	34%



## BEL Claims – Matching of Revenues and Expenses

### ATTACHMENT C - Construction Methodology

Allocate revenue based on the claimant's fiscal year (calendar year in this example):

<b>2008</b>	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Revenue	311	267	267	356	222	400	311	311	445	311	356	267	3,825
Variable expenses	(175)	(150)	(150)	(200)	(125)	(225)	(175)	(175)	(250)	(175)	(200)	(150)	(2,150)
Variable Profit	136	117	117	156	97	175	136	136	195	136	156	117	1,675
Variable Profit %	44%	44%	44%	44%	44%	44%	44%	44%	44%	44%	44%	44%	44%
<b>2009</b>	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Revenue	346	260	520	433	346	216	260	433	520	346	216	303	4,200
Variable expenses	(200)	(150)	(300)	(250)	(200)	(125)	(150)	(250)	(300)	(200)	(125)	(175)	(2,425)
Variable Profit	146	110	220	183	146	91	110	183	220	146	91	128	1,775
Variable Profit %	42%	42%	42%	42%	42%	42%	42%	42%	42%	42%	42%	42%	42%
<b>2010</b>	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Revenue	339	301	414	376	188	151	188	263	452	263	188	226	3,350
Variable expenses	(225)	(200)	(275)	(250)	(125)	(100)	(125)	(175)	(300)	(175)	(125)	(150)	(2,225)
Variable Profit	114	101	139	126	63	51	63	88	152	88	63	76	1,125
Variable Profit %	34%	34%	34%	34%	34%	34%	34%	34%	34%	34%	34%	34%	34%

Step 1 and Step 2 compensation is calculated as follows:

#### Step 1 & Step 2 Compensation

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
<b>Benchmark Period (Average 2008 and 2009)</b>													
Revenue	329	263	393	394	284	308	286	372	482	329	286	285	4,013
Variable expenses	(188)	(150)	(225)	(225)	(163)	(175)	(163)	(213)	(275)	(188)	(163)	(163)	(2,288)
Variable Profit	141	113	168	169	122	133	123	160	207	141	124	122	1,725
Variable Profit %	43%	43%	43%	43%	43%	43%	43%	43%	43%	43%	43%	43%	43%
<b>Compensation Period (2010)</b>													
Revenue	339	301	414	376	188	151	188	263	452	263	188	226	3,350
Variable expenses	(225)	(200)	(275)	(250)	(125)	(100)	(125)	(175)	(300)	(175)	(125)	(150)	(2,225)
Variable Profit	114	101	139	126	63	51	63	88	152	88	63	76	1,125
Variable Profit %	34%	34%	34%	34%	34%	34%	34%	34%	34%	34%	34%	34%	34%

#### Step 1

Optimum Period identified as May to Dec

Total variable profit May to December (Benchmark)	1,133
Total variable profit May to December (Compensation)	<u>645</u>
Step 1 Compensation (pre-RTP)	<u>488</u>

#### Step 2

Optimum Period from May to December, 2008 and 2009

Revenue Jan 2010 to April 2010	1,430
Revenue Jan to April (average for 2008 & 2009)	<u>1,380</u>
Revenue Increase/(decrease)	51
Revenue Increase/(decrease) Percentage	4%
Claimant Specific Growth Factor	4% [Max of 10%, Min of -2%]
General Adjustment Factor	2%

Average Revenue for the Benchmark Period (May-Dec 2008 & 2009)	2,633
Incremental Revenue	149
Average Variable profit for Benchmark Period (May-Dec 2008 & 2009)	<u>43%</u>
Step 2 compensation (pre-RTP)	<u>64</u>

## **BEL Claims – Matching of Revenues and Expenses**

### **ATTACHMENT D – Agriculture Methodology**

The methodology outlined below – “the Agriculture Methodology” – is a slight deviation from the methodologies described previously in Attachments B and C. Given the specific characteristics of the agriculture industry, the Claims Administrator, in consultation with the CSSP Accounting Vendors, believes it necessary to allocate both revenue and variable expenses in order to achieve “revenue and expense matching to realistic measurement of economic loss” as directed by the Court. This will be accomplished by allocating revenue and expenses over the “crop season,” defined to be the months from preparing the field for sowing seed through to the harvesting of the produce.

In considering options to resolve agriculture claims that are not sufficiently matched, the allocation of both revenue and variable expenses was deemed necessary, due to the nature of an agriculture business and how this translates into matching revenue with expenses in a way that reflects economic reality. The majority of agriculture claims presented to the program to date have maintained books and records on a cash basis. The timing of revenue can vary considerably from one year to the next influenced in large part by weather patterns impacting the timing of planting and harvesting, and commodity prices that influence the decision to either sell on harvesting or holding produce in storage for sale at a future date. Recording revenue when cash is received for the produce can, therefore, result in considerable timing differences a) in the months that sales are recorded from one year to the next, and b) because of a mismatch of revenue as compared to the expenses incurred in planting, growing and harvesting such crops. Similarly, expenses may also fluctuate based on the timing of planting and harvesting, as well as decisions to purchase materials in bulk to be used over a prolonged period of time. To effectively negate these impacts, matching the revenue and variable expenses during the period from field preparation, sowing of seed through harvesting was deemed to yield results that would most closely align to economic reality. The methodology, in essence, allocates revenue and expenses to the time period over which the produce was created.

## **BEL Claims – Matching of Revenues and Expenses**

### **ATTACHMENT D – Agriculture Methodology**

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

#### **Agriculture 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 Vendor identifies an error(s)<sup>16</sup> in how the claimant has accounted for revenue or variable expenses, correcting entries will be made to the P&Ls to restate revenue and variable expenses to 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 under the Agriculture Methodology as follows:

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<sup>16</sup> "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 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.

## **BEL Claims – Matching of Revenues and Expenses**

### **ATTACHMENT D – Agriculture Methodology**

- a. Allocation of revenue:
- i. An evaluation of the nature of the crops grown by the claimant during the Benchmark and Compensation Period will be performed to understand the type of crop(s) grown, and the “crop season” in each given Fiscal Year. In addition, through discussions with the claimant and / or third parties, where considered necessary, a review of supporting documentation, the CSSP Accounting Vendors will understand whether produce from each “crop season” was sold shortly after harvesting, or held in storage for sale at a subsequent date.
  - ii. Revenue recorded on the claimant’s contemporaneous P&Ls will be analyzed to determine the “crop seasons” to which it relates. This will require the claimant to provide additional information (e.g., inventory records, yield reports, sales records) in order to break out the recorded revenue into the various “crop seasons” (e.g., allocated to each year, or different “crop seasons” where multiple crop types were planted in any one year) and identify the time period of each “crop season.”
  - iii. Based on the analysis performed at i. and ii. above, monthly revenue will be allocated on a straight line basis to those months of the “crop season.” For example:
    - A sale recorded in December 2009 for crops produced during the “crop season” running from April 2009 to September 2009 will be allocated on a straight line basis over the 6 months April 2009 to September 2009.
    - A sale recorded in February 2010 related to crops produced during the “crop season” running from April 2009 to September 2009 will be allocated on a straight line basis over the 6 months April 2009 to September 2009.
  - iv. CSSP Accounting Vendors will obtain support from the claimant with regard to the “crop season” dates, but will exercise professional judgment to determine the appropriate months to allocate revenue to. For example:
    - If work in preparing a field for planting commences on April 30, 2009, May 2009 will most likely be the first month to which revenue is allocated.

## **BEL Claims – Matching of Revenues and Expenses**

### **ATTACHMENT D – Agriculture Methodology**

- If the crop was harvested on November 3, 2010, October 2010 will most likely be the last date to which revenue is allocated.
- v. Where a crop season crosses a claimant’s Fiscal Year, or sales of crops are made in Fiscal Years subsequent to that in which the “crop season” resided, claimants may be required to provide additional years of P&L data.
- vi. On completion of steps i. through v. above, revenue will be allocated for each Fiscal Year included in the Benchmark and Compensation Periods (2007, 2008, 2009 and 2010 (as provided)).
- vii. As a consequence of revenue being restated or allocated, 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. For claimants required to satisfy the customer mix test, the allocation of revenue per step iii. above will require that the identity of individual purchases of crop be tracked with the allocation of revenue.
- b. Allocation of variable expenses:
- i. An analysis of variable expenses, considered significant in the professional judgment of CSSP Accounting Vendors, recorded in any Fiscal Year will be performed to determine if they relate to that year’s “crop season” or whether they represented bulk purchases held in inventory for future “crop seasons.” If variable expenses pertain to multiple “crop seasons” the expense will be restated to each individual “crop season.”
- ii. Remaining variable expenses during each Fiscal Year included in the Benchmark Period and the Compensation Period will be allocated to individual months based on that month’s allocated revenue as a percentage of total revenue for the same Fiscal Year period. This approach results in a consistent variable profit margin for each month of any given Fiscal Year. The calculation is as follows:
- 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 each Fiscal Year and total allocated revenue for the

## **BEL Claims – Matching of Revenues and Expenses**

### **ATTACHMENT D – Agriculture Methodology**

same Fiscal Year. This will yield a separate variable expense percentage for each Fiscal Year included in the Benchmark Period.

- This variable expense percentage (specific for each individual Fiscal Year included in the Benchmark Period) is applied to the specific monthly allocated revenue amounts in the Benchmark Period to calculate the corresponding variable expenses for each month.
  - Monthly corresponding variable expenses during the Compensation Period will be calculated based on the percentage relationship between the sum of all variable expenses for each Fiscal Year included in the Compensation Period and total revenue for the same Fiscal Year.
  - 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 Revenues and variable expenses calculated in accord with 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 2010 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.

## **BEL Claims – Matching of Revenues and Expenses**

### **ATTACHMENT D – Agriculture Methodology**

- 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 in 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).

## BEL Claims – Matching of Revenues and Expenses

### ATTACHMENT D – Agriculture Methodology

#### Illustrative Example – Agriculture Claims

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

<b>2008</b>	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Revenue	60	15	0	0	0	200	15	35	25	70	100	515	1,035
Variable expenses	(60)	(3)	(11)	(11)	(20)	(30)	(200)	(125)	(100)	(20)	(20)	(20)	(620)
Variable Profit	0	12	(11)	(11)	(20)	170	(185)	(90)	(75)	50	80	495	415
Variable Profit %	0%	80%	0%	0%	0%	85%	-1233%	-257%	-300%	71%	80%	96%	40%
<b>2009</b>	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Revenue	0	15	5	5	0	0	85	25	5	100	100	300	640
Variable expenses	0	(5)	(10)	(15)	(10)	(25)	(85)	(115)	(100)	(10)	(20)	(20)	(415)
Variable Profit	0	10	(5)	(10)	(10)	(25)	0	(90)	(95)	90	80	280	225
Variable Profit %	0%	67%	-100%	-200%	0%	0%	0%	-360%	-1900%	90%	80%	93%	35%
<b>2010</b>	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Revenue	5	0	20	0	0	10	0	0	95	270	45	30	475
Variable expenses	(75)	0	(80)	(15)	(60)	(35)	(25)	(25)	(15)	(20)	(60)	(5)	(415)
Variable Profit	(70)	0	(60)	(15)	(60)	(25)	(25)	(25)	80	250	(15)	25	60
Variable Profit %	-1400%	0%	-300%	0%	0%	-250%	0%	0%	84%	93%	-33%	83%	13%
<b>2011</b>	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Revenue	5	0	20	100	0	10	0	0	95	270	45	5	550
Variable expenses	(75)	0	(110)	(15)	(60)	(35)	(25)	(25)	(15)	(20)	(60)	(5)	(445)
Variable Profit	(70)	0	(90)	85	(60)	(25)	(25)	(25)	80	250	(15)	0	105
Variable Profit %	-1400%	0%	-450%	85%	0%	-250%	0%	0%	84%	93%	-33%	0%	19%



## BEL Claims – Matching of Revenues and Expenses

### ATTACHMENT D – Agriculture Methodology

#### Allocate revenue

##### Assumptions:

Revenue recorded prior to October in any given year represents crops generated from the previous year's "crop season."

Revenue collected between October and December represents the sale of crops from the current "crop season."

The crop season in each year ran from April through September (6 months).

##### Revenue Allocation

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
<b>2008</b>													
Revenue - Sales in Subsequent Year				23	23	23	23	23	23				140
Revenue -Sales in Current Year				114	114	114	114	114	114				685
Variable expenses	(60)	(3)	(11)	(11)	(20)	(30)	(200)	(125)	(100)	(20)	(20)	(20)	(620)
Variable Profit	(60)	(3)	(11)	127	118	108	(63)	13	38	(20)	(20)	(20)	205
Variable Profit %	-	-	-	92%	85%	78%	-45%	9%	27%	-	-	-	25%
<b>2009</b>													
Revenue - Sales in Subsequent Year				22	22	22	22	22	22				130
Revenue -Sales in Current Year				83	83	83	83	83	83				500
Variable expenses	0	(5)	(10)	(15)	(10)	(25)	(85)	(115)	(100)	(10)	(20)	(20)	(415)
Variable Profit	0	(5)	(10)	90	95	80	20	(10)	5	(10)	(20)	(20)	215
Variable Profit %	-	-	-	86%	90%	76%	19%	-10%	5%	-	-	-	34%
<b>2010</b>													
Revenue - Sales in Subsequent Year				38	38	38	38	38	38				230
Revenue -Sales in Current Year				58	58	58	58	58	58				345
Variable expenses	(75)	0	(80)	(15)	(60)	(35)	(25)	(25)	(15)	(20)	(60)	(5)	(415)
Variable Profit	(75)	0	(80)	81	36	61	71	71	81	(20)	(60)	(5)	160
Variable Profit %	-	-	-	84%	37%	63%	74%	74%	84%	-	-	-	28%

#### Allocate variable expenses:

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
<b>2008</b>													
Revenue - Sales in Subsequent Year	0	0	0	23	23	23	23	23	23	0	0	0	140
Revenue -Sales in Current Year	0	0	0	114	114	114	114	114	114	0	0	0	685
Variable expenses	0	0	0	(103)	(103)	(103)	(103)	(103)	(103)	0	0	0	(620)
Variable Profit	0	0	0	34	34	34	34	34	34	0	0	0	205
Variable Profit %	-	-	-	25%	25%	25%	25%	25%	25%	-	-	-	25%
<b>2009</b>													
Revenue - Sales in Subsequent Year	0	0	0	22	22	22	22	22	22	0	0	0	130
Revenue -Sales in Current Year	0	0	0	83	83	83	83	83	83	0	0	0	500
Variable expenses	0	0	0	(69)	(69)	(69)	(69)	(69)	(69)	0	0	0	(415)
Variable Profit	0	0	0	36	36	36	36	36	36	0	0	0	215
Variable Profit %	-	-	-	34%	34%	34%	34%	34%	34%	-	-	-	34%
<b>2010</b>													
Revenue - Sales in Subsequent Year	0	0	0	38	38	38	38	38	38	0	0	0	230
Revenue -Sales in Current Year	0	0	0	58	58	58	58	58	58	0	0	0	345
Variable expenses	0	0	0	(69)	(69)	(69)	(69)	(69)	(69)	0	0	0	(415)
Variable Profit	0	0	0	27	27	27	27	27	27	0	0	0	160
Variable Profit %	-	-	-	28%	28%	28%	28%	28%	28%	-	-	-	28%

# BEL Claims – Matching of Revenues and Expenses

## ATTACHMENT D – Agriculture Methodology

### Step 1 and Step 2 compensation

Optimum benchmark period is May to December

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
<b>Benchmark Period (Average 2008 and 2009)</b>													
Revenue	0	0	0	121	121	121	121	121	121	0	0	0	728
Variable expenses	0	0	0	(86)	(86)	(86)	(86)	(86)	(86)	0	0	0	(518)
Variable Profit	0	0	0	35	35	35	35	35	35	0	0	0	210
Variable Profit %	-	-	-	29%	29%	29%	29%	29%	29%	-	-	-	29%
<b>Compensation Period (2010)</b>													
Revenue	0	0	0	96	96	96	96	96	96	0	0	0	575
Variable expenses	0	0	0	(69)	(69)	(69)	(69)	(69)	(69)	0	0	0	(415)
Variable Profit	0	0	0	27	27	27	27	27	27	0	0	0	160
Variable Profit %	-	-	-	28%	28%	28%	28%	28%	28%	-	-	-	28%

#### Step 1

Optimum Period identified as May to Dec

Total variable profit May to December (Benchmark)	175
Total variable profit May to December (Compensation)	<u>133</u>
Step 1 Compensation (pre-RTP)	<u>42</u>

#### Step 2

Optimum Period from May to December, 2008 and 2009

Revenue Jan 2010 to April 2010	96
Revenue Jan to April (average for 2008 & 2009)	<u>121</u>
Revenue increase/(decrease)	(25)
Revenue Increase/(decrease) Percentage	-21%
Claimant Specific Growth Factor	-2% [Max of 10%, Min of -2%]
General Adjustment Factor	2%

Average Revenue for the Benchmark Period (May-Dec 2008 & 2009)	606
Incremental Revenue	0
Average Variable profit for Benchmark Period (May-Dec 2008 & 2009)	<u>29%</u>
Step 2 compensation (pre-RTP)	<u>0</u>

## **BEL Claims – Matching of Revenues and Expenses**

### **ATTACHMENT E – Educational Institutions Methodology**

The methodology outlined below – “the Educational Institutions Methodology” – is a deviation from the Annual Variable Margin Methodology described in Attachment B. The majority of educational institution claims presented to the program to date have maintained books and records on a cash basis.

While attendees at K-12 educational institutions are commonly billed for an academic year’s tuition, colleges and universities may bill an attendee on a semester or trimester basis. The timing of payments received for such tuition can vary from an upfront payment to cover the entire tuition period, or under a payment plan that permits monthly or quarterly payments, or for each semester/trimester. Matching issues arise when tuition fees are recorded and/or paid on a claimant’s P&Ls in months different from when the education is provided and expenses are incurred and/or recorded. The Educational Institutions Methodology calls, therefore, to allocate revenues in order to better achieve sufficient matching of revenue and expenses. Variable expenses will also be allocated to those periods when the revenue was earned.

This Educational Institutions Methodology shall be applied to adjust an educational institution claimant’s contemporaneous P&Ls that have been deemed not to be “sufficiently matched.” This methodology will not apply to claimants that submitted P&Ls 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 (restated for identified errors). This revised methodology does not apply to an educational institution claimant that meets 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 amend the P&Ls utilized in such calculations. The calculations of both Step 1 and Step 2 compensation will be consistent with that prescribed by Exhibit 4C of the Settlement Agreement.

## **BEL Claims – Matching of Revenues and Expenses**

### **ATTACHMENT E – Educational Institutions Methodology**

#### **Educational Institutions 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 Vendor identifies an error(s)<sup>17</sup> in how the claimant has accounted for revenue or variable expenses, correcting entries will be made to the P&Ls to restate revenue and variable expenses to 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 under the Educational Institutions Methodology as follows:

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<sup>17</sup> “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 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.

## **BEL Claims – Matching of Revenues and Expenses**

### **ATTACHMENT E – Educational Institutions Methodology**

- a. Allocation of revenue:
- i. An evaluation of the claimant's tuition fee arrangements (i.e., payments for annual tuition, an individual semester, or multiple semesters) will be performed to understand the time period for which the student tuition amount applies. In addition, the frequency of payment (i.e., advanced payment in full, or a payment plan that spreads the tuition amount over a period of time) will be understood through discussions with the claimant and / or third parties, and receipt and analysis of supporting documentation.
  - ii. Revenue recorded on the claimant's contemporaneous P&Ls will be analyzed to determine the months covered by the tuition paid. This will require the claimant to provide additional information (e.g., reports from student admission records, student enrollment information, student fee accounts, tuition sub-ledgers) in order to break out the recorded revenue into the various categories of students by payment frequency (e.g., annual payment, semester/trimester payment, monthly payment plan) and identify the time period covered by the tuition.
  - iii. Based on the analysis performed at ii. above, monthly revenue will be allocated on a straight line basis to those months covered by the tuition. For example:
    - A payment made in July 2009 for the academic year running from September 2009 to June 2010 will be allocated on a straight line basis over the 10 months September 2009 to June 2010.
    - A payment made in September 2009 for a semester that runs from September 2009 through December 2009, will be allocated on a straight line basis over the 4 month period September 2009 to December 2009.
  - iv. CSSP Accounting Vendors will obtain support from the claimant with regard to the academic year or semester dates, but will exercise professional judgment to determine the appropriate months to allocate revenue to. For example:
    - If a term commences on August 30, 2009, September 2009 will most likely be the first month to which revenue is allocated.

## **BEL Claims – Matching of Revenues and Expenses**

### **ATTACHMENT E – Educational Institutions Methodology**

- If a term ends on June 3, 2010, May 2010 will most likely be the last date to which revenue is allocated.
- v. As a consequence of allocating revenue based on an academic year (i.e., months covered by the tuition) claimants that provide 2007 P&L data, will be required to provide P&Ls and additional information related to 2006, if tuition payments received and recorded in 2006 are for classes attended in 2007.
- vi. On completion of steps i. through v. above, revenue will be allocated for each year of the Benchmark Period and Compensation Period (2007, 2008, 2009 and 2010 (as provided)).
- vii. As a consequence of revenue being restated or allocated, 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. For claimants required to satisfy the customer mix test, the allocation of revenue per step iii. above will require that the identity of individual students be tracked with the allocation of revenue.
- b. Allocation of variable expenses:
- i. Variable expenses during each Fiscal Year included in the Benchmark Period and the Compensation Period will be allocated to individual months based on that month's allocated revenue as a percentage of total allocated revenue for the same 12- month Fiscal Year. This approach results in a consistent variable profit margin for each month of any given Fiscal Year. The calculation is as follows:
- 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 Fiscal Years (as provided) and total allocated revenue for the same Fiscal Year. This will yield a separate variable expense percentage for each Fiscal Year included in the Benchmark Period.
  - This variable expense percentage (specific for each individual Fiscal Year of the Benchmark Period) is applied to the specific monthly allocated revenue amounts in the Benchmark Period to calculate the corresponding variable expenses for each month.

## **BEL Claims – Matching of Revenues and Expenses**

### **ATTACHMENT E – Educational Institutions Methodology**

- Monthly corresponding variable expenses during the Compensation Period will be calculated based on the percentage relationship between the sum of all variable expenses for each Fiscal Year included in the Compensation Period and total allocated revenue for the same period.
  - This variable expense percentage is applied to the specific monthly allocated revenue amounts for 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 Revenues and variable expenses calculated in accord with 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 2010 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.
  - 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 in 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:

## BEL Claims – Matching of Revenues and Expenses

### ATTACHMENT E – Educational Institutions Methodology

- 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).

#### **Illustrative Example – Educational Claims**

Assume that the claimant has an Optimal Benchmark Period of select months in 2008 and 2009.

The contemporaneous P&Ls provided by the claimant:

<b>2008</b>	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Revenue	300	0	0	0	0	0	300	800	800	0	0	0	2,200
Variable expenses	(100)	(125)	(125)	(100)	(25)	(100)	0	(10)	(150)	(125)	(175)	(125)	(1,160)
Variable Profit	200	(125)	(125)	(100)	(25)	(100)	300	790	650	(125)	(175)	(125)	1,040
Variable Profit %	67%	0%	0%	0%	0%	0%	100%	99%	81%	0%	0%	0%	47%
<b>2009</b>	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Revenue	400	0	0	0	0	0	800	500	200	0	0	0	1,900
Variable expenses	(125)	(125)	(150)	(125)	(150)	(125)	0	(25)	(175)	(200)	(175)	(175)	(1,550)
Variable Profit	275	(125)	(150)	(125)	(150)	(125)	800	475	25	(200)	(175)	(175)	350
Variable Profit %	69%	0%	0%	0%	0%	0%	100%	95%	13%	0%	0%	0%	18%
<b>2010</b>	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Revenue	375	0	0	0	0	0	100	500	500	100	0	0	1,575
Variable expenses	(100)	(125)	(150)	(125)	(100)	(100)	(10)	(15)	(125)	(150)	(125)	(150)	(1,275)
Variable Profit	275	(125)	(150)	(125)	(100)	(100)	90	485	375	(50)	(125)	(150)	300
Variable Profit %	73%	0%	0%	0%	0%	0%	90%	97%	75%	-50%	0%	0%	19%



## BEL Claims – Matching of Revenues and Expenses

### ATTACHMENT E – Educational Institutions Methodology

#### Allocate revenue

##### Assumptions:

January revenue relates to tuition fees for students who will attend the institution between January and April

Revenue collected between July and October represents tuition fees for students who will attend the educational institution from September to June

Revenue of \$1000 was collected between July and September 2007 that related to the academic year September 2007 to June 2008

##### Revenue Allocation

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
<b>2008</b>													
Revenue - Semester Students	75	75	75	75									300
Revenue - Yearly Students	100	100	100	100	100	100			190	190	190	190	1,360
Variable expenses	(100)	(125)	(125)	(100)	(25)	(100)	0	(10)	(150)	(125)	(175)	(125)	(1,160)
Variable Profit	75	50	50	75	75	0	0	(10)	40	65	15	65	500
Variable Profit %	43%	29%	29%	43%	75%	0%	-	-	21%	34%	8%	34%	30%
<b>2009</b>													
Revenue - Semester Students	100	100	100	100									400
Revenue - Yearly Students	190	190	190	190	190	190			150	150	150	150	1,740
Variable expenses	(125)	(125)	(150)	(125)	(150)	(125)	0	(25)	(175)	(200)	(175)	(175)	(1,550)
Variable Profit	165	165	140	165	40	65	0	(25)	(25)	(50)	(25)	(25)	590
Variable Profit %	57%	57%	48%	57%	21%	34%	-	-	-17%	-33%	-17%	-17%	28%
<b>2010</b>													
Revenue - Semester Students	94	94	94	94									375
Revenue - Yearly Students	150	150	150	150	150	150			120	120	120	120	1,380
Variable expenses	(100)	(125)	(150)	(125)	(100)	(100)	(10)	(15)	(125)	(150)	(125)	(150)	(1,275)
Variable Profit	144	119	94	119	50	50	(10)	(15)	(5)	(30)	(5)	(30)	480
Variable Profit %	59%	49%	38%	49%	33%	33%	-	-	-4%	-25%	-4%	-25%	27%

#### Allocate variable expenses

##### Variable Expense Allocation

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
<b>2008</b>													
Revenue - Semester Students	75	75	75	75	0	0	0	0	0	0	0	0	300
Revenue - Yearly Students	100	100	100	100	100	100	0	0	190	190	190	190	1,360
Variable expenses	(122)	(122)	(122)	(122)	(70)	(70)	0	0	(133)	(133)	(133)	(133)	(1,160)
Variable Profit	53	53	53	53	30	30	0	0	57	57	57	57	500
Variable Profit %	30%	30%	30%	30%	30%	30%	-	-	30%	30%	30%	30%	30%
<b>2009</b>													
Revenue - Semester Students	100	100	100	100	0	0	0	0	0	0	0	0	400
Revenue - Yearly Students	190	190	190	190	190	190	0	0	150	150	150	150	1,740
Variable expenses	(210)	(210)	(210)	(210)	(138)	(138)	0	0	(109)	(109)	(109)	(109)	(1,550)
Variable Profit	80	80	80	80	52	52	0	0	41	41	41	41	590
Variable Profit %	28%	28%	28%	28%	28%	28%	-	-	28%	28%	28%	28%	28%
<b>2010</b>													
Revenue - Semester Students	94	94	94	94	0	0	0	0	0	0	0	0	375
Revenue - Yearly Students	150	150	150	150	150	150	0	0	120	120	120	120	1,380
Variable expenses	(177)	(177)	(177)	(177)	(109)	(109)	0	0	(87)	(87)	(87)	(87)	(1,275)
Variable Profit	67	67	67	67	41	41	0	0	33	33	33	33	480
Variable Profit %	27%	27%	27%	27%	27%	27%	-	-	27%	27%	27%	27%	27%

## BEL Claims – Matching of Revenues and Expenses

### ATTACHMENT E – Educational Institutions Methodology

#### Step 1 and Step 2 compensation

Optimum benchmark period is May to December

##### Step 1 & Step 2 Compensation

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
<b>Benchmark Period (Average 2008 and 2009)</b>													
Revenue	233	233	233	233	145	145	0	0	170	170	170	170	1,900
Variable expenses	(166)	(166)	(166)	(166)	(104)	(104)	0	0	(121)	(121)	(121)	(121)	(1,355)
Variable Profit	66	66	66	66	41	41	0	0	49	49	49	49	545
Variable Profit %	29%	29%	29%	29%	28%	28%	-	-	29%	29%	29%	29%	29%
<b>Compensation Period (2010)</b>													
Revenue	244	244	244	244	150	150	0	0	120	120	120	120	1,755
Variable expenses	(177)	(177)	(177)	(177)	(109)	(109)	0	0	(87)	(87)	(87)	(87)	(1,275)
Variable Profit	67	67	67	67	41	41	0	0	33	33	33	33	480
Variable Profit %	27%	27%	27%	27%	27%	27%	-	-	27%	27%	27%	27%	27%

##### Step 1

Optimum Period identified as May to Dec

Total variable profit May to December (Benchmark)	280
Total variable profit May to December (Compensation)	213
Step 1 Compensation (pre-RTP)	<u>66</u>

##### Step 2

Optimum Period from May to December, 2008 and 2009

Revenue Jan 2010 to April 2010	975
Revenue Jan to April (average for 2008 & 2009)	930
Revenue increase/(decrease)	45
Revenue Increase/(decrease) Percentage	5%
Claimant Specific Growth Factor	5% [Max of 10%, Min of -2%]
General Adjustment Factor	2%

Average Revenue for the Benchmark Period (May-Dec 2008 & 2009)	970
Incremental Revenue	66
Average Variable profit for Benchmark Period (May-Dec 2008 & 2009)	29%
Step 2 compensation (pre-RTP)	<u>19</u>

## **BEL Claims – Matching of Revenues and Expenses**

### **ATTACHMENT F – Professional Services Methodology**

In considering options to resolve professional services claims that are not sufficiently matched, a deviation from the Annual Variable Margin Methodology described in Attachment B was required, due to the nature of a professional services firm's business and how this translates into matching revenue with expenses in a way that reflects economic reality. The methodology requires adjustments to a claimant's contemporaneous P&Ls if they are deemed not to be 'sufficiently matched.' After making such adjustments, the restated P&Ls are utilized in calculating compensation applying a methodology consistent with Exhibit 4C of the Settlement Agreement. The approach outlined below does not alter the structure as to how compensation is calculated but does, if matching issues are identified, amend the P&Ls utilized in such calculations.

The majority of professional services claims presented to the program to date have not maintained books and records on an accrual basis, but rather have been prepared predominantly on a modified cash basis. As such, the timing of revenue recognized on the claimant's P&Ls may not correlate with the timing of activities performed to earn such revenue - e.g., advance payments or retainers may be received; progress or milestone invoices may be issued for fixed price contracts; and contingent fees may be paid, for example, on the successful outcome of a litigation matter or costs savings realized from a consulting engagement. Recording revenue when cash is received in payment of such invoices can, therefore, result in considerable timing differences in the months that sales are recorded relative to when work was performed. Similarly, expenses may also fluctuate. For example, contract personnel (e.g., contract attorneys or paralegal personnel) may be hired to assist during periods of significant activity but invoices may be issued and paid several months later. Further, experts may be appointed and paid an advance retainer, with a final invoice being issued and paid subsequent to them concluding their services. To effectively negate these 'matching' impacts an understanding of the fee arrangements, the hours/activity incurred by professional staff to perform the services, the duration of such activity, and how these activities compare to the timing of payments to or by the claimant is required.

## **BEL Claims – Matching of Revenues and Expenses**

### **ATTACHMENT F – Professional Services Methodology**

The Professional Services Methodology shall be applied to adjust a claimant's contemporaneous P&Ls that have been deemed not to be "sufficiently matched." Claimants that submit P&Ls that are deemed "sufficiently matched" will be processed under the methodology set forth in Exhibit 4C of the Settlement Agreement, utilizing the contemporaneous P&Ls. Those claimants that submit P&Ls that are deemed not "sufficiently matched" will have the P&Ls adjusted to allocate revenue on a straight line basis over the period of the case/engagement, unless the claimant can submit appropriate, reliable and complete records that permit an alternative allocation of revenue based on when activity generating the revenue occurred. In professional services companies, this would correspond to periods when actual work on the matter/engagement was performed. Alternative information that the claimant may elect to present to demonstrate when effort was expended/hours were worked may include:

- Time and billing records maintained in the ordinary course of business that detail time worked by month by case/engagement are considered to be the most accurate and complete source of information.
- Other case/engagement records may provide sufficient information to 'reconstruct' when effort was expended/hours were worked in generating the revenue earned, such as: calendars, engagement letters, court filings, case summaries, trial dockets, court and deposition appearances, expert report submissions, project deliverables, transaction closure dates, contract execution dates, court approvals, and payment schedules and receipts.

It is expected that professional services claimants with time & material fee arrangements may maintain time and billing records in order to generate and support invoices presented to clients. It is recognized that some claimants retained under a fixed or contingent fee arrangement may or may not maintain detailed time records.

Variable expenses will be allocated to each month of the Benchmark Period and the Compensation Period based on that month's percentage of total annual revenue, unless alternative documentation has been provided that supports when effort actually occurred.

## **BEL Claims – Matching of Revenues and Expenses**

### **ATTACHMENT F – Professional Services Methodology**

The Professional Services Methodology does not apply to a professional services claimant that meets the definition of a Start-Up Business, Failed Business or Failed Start-Up Business.

#### **Professional Services 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 Vendor identifies an error(s)<sup>18</sup> in how the claimant has accounted for either revenue or variable expenses, correcting entries will be made to the P&Ls to restate revenue or expenses to the appropriate month.
3. If adjustments made in accord with 2. above result in restated P&Ls that are deemed sufficiently matched, the claim will be processed under the methodology set forth in Exhibit 4C of the Settlement Agreement. However, if revenue has been restated in accord with 2. above, a causation analysis will be re-performed (if causation is not presumed). If causation is presumed or satisfied, the P&Ls (restated for errors) are utilized as the input for calculating compensation under Exhibit 4C of the Settlement Agreement:

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<sup>18</sup> "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 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.

## **BEL Claims – Matching of Revenues and Expenses**

### **ATTACHMENT F – Professional Services Methodology**

- a. Step 1 of the compensation calculation is determined as the difference between Variable Profit between the 2010 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.
  - 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 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 in 2010 shall be used for Step 2.
4. If adjustments made in accord with 2. above do not resolve matching issues, the P&Ls will be revised, as set forth below, allocating both revenue and expenses.

### **Adjustments to Revenue**

#### **Allocate Revenue on a straight line basis over the duration of the case/engagement**

1. If the claimant elects not to submit additional documentation, or provides documentation that, in the judgment of the Claims Administrator, does not permit the CSSP Accounting Vendors to reasonably estimate or verify the level of effort expended/hours worked in a given month, revenue will be allocated to each month on a straight line basis over the duration of the matter.
2. An evaluation of the claimant's fee arrangements for all cases/engagements (i.e., time & materials, fixed fee, contingent fee, or a combination thereof) will be performed based on discussions and an assessment of additional records requested from the claimant.<sup>19</sup> Information will be requested that includes, at a minimum, the client name, case/engagement name, commencement date, completion date, revenue recorded, and the fee arrangement (time & materials, fixed fee, contingent fee or a

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<sup>19</sup> The process for receiving, reviewing and maintaining information considered privileged in nature, or subject to confidentiality provisions, will be covered by a separate policy.

## **BEL Claims – Matching of Revenues and Expenses**

### **ATTACHMENT F – Professional Services Methodology**

combination thereof). Given that cases/engagements may have commenced prior to the Benchmark Period or were ongoing or closed after the Compensation Period, information required from claimants may extend prior to the Benchmark Period and subsequent to the Compensation Period. Information must be provided by claimants to permit the CSSP Accounting Vendors to verify the commencement and completion date of cases/engagements.

3. A matter will be considered to have commenced from the date of execution of an engagement letter or other indicia of commencement of the undertaking, and will be active through the date that a matter has been settled, or a final project deliverable has been submitted, and payment has been received, unless other information indicates an alternative date. Other information could include, for example: evidence that work was commenced prior to the execution of an engagement letter or prior to other indicia of commencement of the undertaking, post-trial filings, appeals, a further negotiation of the amount ultimately paid, or presentations after issuance of a final report.
4. In determining revenue generated for each matter, consideration will be given to the nature of the case/engagement, but in all instances will be net of any reimbursable expenses. Revenue from time & material and fixed fee arrangements will be determined based on the engagement letter or other indicia of the nature and scope of work and invoice records. For contingent fee arrangements, revenue will be based on the amount paid to the claimant as of the date the Claims Administrator analyzes the claim. For contingent cases that remain open/unsettled as of the date the claim is being evaluated, no value will be assigned to such cases.
5. For each case/engagement (or a subset thereof if, in the professional judgment of the CSSP Accounting Vendor, some projects are deemed immaterial to the compensation calculation) the revenue allocated to each month will equal revenue (determined in accord with 4 above) divided by the number of months that the case/engagement was worked on (as determined in accord with 3 above).
6. Where revenue has been restated or allocated, 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.

## **BEL Claims – Matching of Revenues and Expenses**

### **ATTACHMENT F – Professional Services Methodology**

#### **Allocate Revenue based on Available Information**

The claimant will have the option to submit documentation to the Claims Administrator if it believes such records can more accurately estimate the level of work/hours worked in a given month, thereby permitting revenue to be allocated based on such effort, rather than a straight line basis. The CSSP Accounting Vendors will assess such records and determine whether, in their professional judgment, such records are sufficiently adequate and complete to permit a reasonable estimation and verification of the level of effort expended/hours worked in a given month as it relates to each specific case/engagement. If it is determined that such records permit a reasonable estimate of when effort was expended/hours were worked, revenue will be allocated based on such efforts. However, if not deemed sufficient to reasonably estimate when effort was expended/hours were worked, the CSSP Accounting Vendors will revert to allocating revenue to each month on a straight line basis over the duration of the matter.

In considering what additional information a claimant may elect to submit to identify when effort was expended /hours were worked, the CSSP Accounting Vendors anticipates that this will most likely include time and billing records maintained by a claimant in the ordinary course of business. In the absence of such records, other information may be utilized to estimate or 'reconstruct' when effort was expended/hours were worked. Such information may include, but not be limited to, calendars, engagement letters, court filings, case summaries, court and deposition appearances, expert report submissions, transaction close dates, contract execution dates, project deliverables, court approvals, court/trial dates, and payment schedules and receipts. The approach that will be followed is detailed below:

1. An evaluation of the claimant's fee arrangements for all cases/engagements (i.e., time & materials, fixed fee, contingent fee, or a combination thereof) will be performed based on discussions with the claimant and / or third parties and an assessment of additional records requested from the claimant. Information will be requested that includes, at a minimum, the client, case/engagement



## **BEL Claims – Matching of Revenues and Expenses**

### **ATTACHMENT F – Professional Services Methodology**

name, commencement date, completion date, revenue recorded, and the fee arrangement (time & materials, fixed fee, contingent fee or a combination thereof). Given that cases/engagements may have commenced prior to the Benchmark Period or were ongoing or closed after the Compensation Period, information required from claimants may extend prior to the Benchmark Period and subsequent to the Compensation Period.

2. Revenue will be allocated to each month of the Benchmark Period (2009, average of 2008/2009, or average of 2007/2008/2009) and Compensation Period (2010) based on when work was actually performed.
3. To identify when effort was expended/hours were worked the following steps will be performed:
  - a. A detailed inventory of all engagements performed by the claimant will be obtained, and separated by the nature of the fee arrangement.
  - b. The CSSP Accounting Vendors will, through inquiries of the claimant, and an evaluation of submitted documentation, determine if contemporaneous time and billing records were maintained by the claimant in sufficient detail to determine when effort was expended/hours were worked on individual cases/engagements, or if practical a grouping of cases/engagements that had similar characteristics (e.g., commencement and completion date, or revenue recorded and paid). If deemed sufficient, time and billing records will be utilized.
  - c. If time and billing records were not maintained by the claimant in sufficient detail to determine and verify when effort was expended/hours were worked, the CSSP Accounting Vendor will consider the adequacy and completeness of other information provided and determine if sufficient to estimate and verify when effort was expended/hours were worked and allocate revenue

## BEL Claims – Matching of Revenues and Expenses

### ATTACHMENT F – Professional Services Methodology

#### Utilizing Time and Billing records to allocate revenue

- Any billing records submitted will be analyzed for each engagement. Hours recorded by personnel for each individual case/engagement (or a subset thereof if, in the professional judgment of the CSSP Accounting Vendor, some projects are deemed immaterial to the compensation calculation) will be compared to the timing of revenue recognized. Total revenue recorded from each case will be considered net of reimbursable expenses. Total revenue recorded from each case/engagement will be allocated to each month based on the percentage of hours charged in that month relative to the total case/engagement hours. An illustration of steps 1 and 2 is provided below:

**Illustrative example**

Provided below is an example that illustrates for one case/engagement how revenue will be reallocated based on the hours charged in a given month relative to total case/engagement hours. The case/engagement commenced in January 2009 and work ceased in May 2010. Total hours incurred on the case/engagement is 2,000. Total revenue recorded was \$500,000 that was paid in September 2010.

	2009											
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Hours per Billing Records [A]	100	50	10	10	225	45	45	0	100	350	50	50
Percentage of Total Hours Billed [B = A/2000]	5%	3%	1%	1%	11%	2%	2%	0%	5%	18%	3%	3%
Revenue (As submitted by Claimant)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Revenue (As restated) [B*\$500,000]	\$ 25,000	\$ 12,500	\$ 2,500	\$ 2,500	\$ 56,250	\$ 11,250	\$ 11,250	\$ -	\$ 25,000	\$ 87,500	\$ 12,500	\$ 12,500

  

	2010											
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Hours per Billing Records [A]	50	50	75	350	440	0	0	0	0	0	0	0
Percentage of Total Hours Billed [B = A/2000]	3%	3%	4%	18%	22%	0%	0%	0%	0%	0%	0%	0%
Revenue (As submitted by Claimant)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 500,000	\$ -	\$ -	\$ -
Revenue (As restated) [B*\$500,000]	\$ 12,500	\$ 12,500	\$ 18,750	\$ 87,500	\$ 110,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -

Based upon the content and format of the time and billing records received, additional analysis may be performed including but not limited to comparison of pre-spill and post-spill: monthly hours worked in assessing lost hours, if any; billing rates per engagement/case in assessing higher/lower rates, if any; changes in the overall variable profit margin between periods, if any; utilization mix of professional staff (including owners/partners); lines and/or types of services/engagements worked on; and length of project and value of settlements reached.

- For contingent fee cases that remain open/unsettled as of the date the claim is being evaluated, no value will be assigned to such cases.

## **BEL Claims – Matching of Revenues and Expenses**

### **ATTACHMENT F – Professional Services Methodology**

3. Where revenue has been restated and/or allocated, 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.

#### **Utilizing Engagement Records to allocate revenue**

1. It is expected that claimants who bill for their services on a Time & Materials fee basis will maintain time and billing records in order to create and support the invoice to their client. Accordingly, it is assumed that the methodology set out below will most likely apply to fixed fee and contingent fee arrangements, or a combination of the two. It should be noted that if a firm has a variety of fee arrangements including some performed on a time & materials basis, for which it maintained time and billing records, the revenue may (based on the professional judgment of the CSSP Accounting Vendors) be categorized by billing basis, and different records will be utilized to identify when effort was expended/hours were worked.
2. If the claimant elects to submit documentation that the CSSP Accounting Vendors deem sufficient to estimate and verify the effort expended/hours worked in any given month, cases/engagements performed under a fixed fee or contingent fee arrangement will be evaluated utilizing other engagement documentation, as follows:
  - a. Fixed and contingent fee cases/engagements worked during the Benchmark Period and the Compensation Period
    - i. Identify the commencement and completion date for each case/engagement, including the date revenue was recorded and/or payment was received.
    - ii. In the case of a legal matter, conduct an examination of available legal and non-legal documents (e.g., pleadings and other court records, discovery requests, depositions and/or trial documents, due diligence commencement dates, transaction closure dates, submission of contract drafts, lawyer's calendars etc.) to establish proof of work/timing of effort in order to estimate the revenue that should be attributed to a given month. This process will require consultation with the claimant.

## **BEL Claims – Matching of Revenues and Expenses**

### **ATTACHMENT F – Professional Services Methodology**

- Based on the duration of the legal matter, combined with the timing of significant events, an estimate of the percentage of the total work effort expended on the case will be assigned to each month.
  - Revenue will be allocated to each month by multiplying the total contingent fee or fixed fee by that month's percentage of the total effort expended on the case.
- iii. For other professional services claimants (not law firms), conduct an examination of available documentation (e.g., budgets, project reports, draft and final deliverables, calendars, time and billing records, progress and status reports, meetings/presentations and other key milestone events) to establish proof of work/timing of effort in order to estimate the revenue that should be attributed to a given month. This process will be performed in consultation with the claimant.
- Based on the duration of the engagement, combined with the timing of significant events/milestones, an estimate of the percentage of the total effort expended on the engagement will be assigned to each month.
  - Revenue will be allocated to each month by multiplying the total contingent fee or fixed fee by that month's percentage of the total effort expended on the engagement.
3. For contingent fee cases that remain open/unsettled as of the date the claim is being evaluated, no value will be assigned to such cases.

## **BEL Claims – Matching of Revenues and Expenses**

### **ATTACHMENT F – Professional Services Methodology**

#### Variable Expenses

1. It is expected that the records maintained by some claimants will not separately identify variable expenses, as defined in Attachment A to the Settlement Agreement, by specific cases/engagements.
2. Where revenue is allocated on a straight line basis over the duration of a case/engagement, due to the claimant electing not to submit additional documentation, or where there was a lack of sufficient information to reliably estimate and verify when hours were worked/effort was expended, variable expenses incurred during each Fiscal Year included in the Benchmark Period (as provided) and the Compensation Period will be allocated to individual months based on that month's allocated revenue as a percentage of total allocated revenue for the same Fiscal Year. This approach results in a consistent variable profit margin for each month of any given Fiscal Year, but which may potentially differ from one Fiscal Year to the next. The calculation is as follows:
  - a. 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 respective Fiscal Years (as provided) and total allocated revenue for the same Fiscal Year. This will yield a separate variable expense percentage for each Fiscal Year included in the Benchmark Period.
  - b. This Variable Expense percentage (specific for each individual Fiscal Year of the Benchmark Period) is applied to the specific monthly allocated revenue amounts in the Benchmark Period to calculate the corresponding variable expenses for each month.
  - c. Monthly corresponding variable expenses during the Compensation Period will be calculated based on the percentage relationship between the sum of all variable expenses for each Fiscal Year included in the Compensation Period and total allocated revenue for the same Fiscal Year.
  - d. This variable expense percentage, unique to each Fiscal Year included in the Compensation Period, is applied to the specific monthly allocated revenue amounts in the Compensation Period to calculate the corresponding variable expenses for each month.
3. Where revenue has been restated and/or allocated on a basis other than the straight line basis, variable expenses incurred during each Fiscal Year included in the Benchmark Period and the

## **BEL Claims – Matching of Revenues and Expenses**

### **ATTACHMENT F – Professional Services Methodology**

Compensation Period will be allocated to individual months based on the total effort expended, estimated using the same information utilized in allocating revenue.

#### **Variable Margin**

1. Variable Margin will be calculated for the Benchmark Period only (and utilized in the Step 2 compensation calculation) as follows:
  - a. Sum Variable Profit from May through December of the period selected by the claimant to be used for the Benchmark Period (i.e. Optimal Benchmark Period).
  - b. Sum total revenue from May through December of the period selected by the claimant to be used for the Benchmark Period. (i.e. Optimal Benchmark Period).
  - c. Calculate Variable Margin percent as Variable Profit calculated in (a) divided by total revenue calculated in (b).

#### **Compensation Calculation**

1. The revised P&Ls resulting from the allocation of revenue and variable expenses 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.
  - b. Step 2 of the compensation calculation is based on the claimant's growth in revenue in January 2010 through April 2010 relative to the claimant-selected Benchmark Period. Claimant may select a six-consecutive month period between May 2010 and December 2010, unless 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.

## **BEL Claims – Matching of Revenues and Expenses**

### **ATTACHMENT F – Professional Services Methodology**

- 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).
2. As noted above in 'Utilizing Time and Billing records,' if this data is available and used to allocate revenues, an additional analysis described below may be performed at this step in order to identify and quantify the various components of the compensation calculation. These components can include compensation resulting from a decrease/increase in hours, a decrease/increase in rates/awards and an increase/decrease in variable profit margin. Depending upon the level of detail provided, these components may be further analyzed to identify compensation amounts associated with changes in utilization/mix of professional staff as well as changes in types of services/engagements/cases worked on.

## **BEL Claims – Matching of Revenues and Expenses**

### **ATTACHMENT G – Failed Businesses and Failed Start-Up Businesses**

Section I of the “Matching of Revenues and Expenses” policy, which addresses identification of “unmatched claims,” does not apply to Failed Businesses or Failed Start-Up Businesses. Exhibit 6 of the Settlement Agreement sets forth the Failed Business Compensation Framework that covers both Failed Businesses<sup>20</sup> and Failed Start-Up Businesses<sup>21</sup>. The causation documentation requirements and basis of computation as required in Exhibit 6 of the Settlement Agreement differ significantly from those of regular BEL claimants processed under Exhibit 4 of the Settlement Agreement. Some of the key differences in assessing causation, and computing losses, include:

- A Failed Business or Failed Start-Up Business is “excluded” from recovery under the Settlement Agreement if the claimant reports negative EBITDA (earnings before interest, income tax, depreciation, amortization and owner’s compensation) for the 12 months prior to May 1, 2010.
- Compensation for a Failed Business applies a multiple (based on the claimant’s industry and as specified in Exhibit 6 of the Settlement Agreement) of the claimant’s EBITDA for the 12 months prior to the spill. This amount is subsequently adjusted for changes in account balances of assets and liabilities of the business between the date of the spill and the date of the balance sheet closest to the date the claim was filed.
- Compensation for a Failed Start-Up Business is not directly dependent on P&Ls as in other BEL Claims categories but rather is focused on the assets and liabilities of the business as well as the business owner’s annual earnings pre and post spill.

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<sup>20</sup> A Failed Business is an “entity that commenced operations prior to November 1, 2008, and that, subsequent to May 1, 2010 but prior to December 31, 2011, either (i) ceased operations and wound down, or (ii) entered bankruptcy (through the filing of a petition for bankruptcy protection in a court of competent jurisdiction), or (iii) otherwise initiated or completed a liquidation of substantially all of its assets.” Policy 381 amended the above definition to an entity that commenced operations prior to October 20, 2008.

<sup>21</sup> A Failed Start-Up Business is defined as “an entity that commenced operations on or after November 1, 2008, and, subsequent to May 1, 2010 but prior to December 31, 2011, either (i) ceased operations and wound down, or (ii) entered bankruptcy (through the filing of a petition for bankruptcy protection in a court of competent jurisdiction), or (iii) otherwise initiated or completed a liquidation of substantially all of its assets.” Policy 381 amended the above definition to an entity that commenced operations after October 20, 2008.



## **BEL Claims – Matching of Revenues and Expenses**

### **ATTACHMENT G – Failed Businesses and Failed Start-Up Businesses**

Concerns over the mismatch of revenue and expenses are somewhat mitigated by the following factors:

- Total EBITDA for the 12-month period prior to the spill is considered; the assessment is not dependent upon the results of any one or more individual months within that period, nor do they require a comparison of monthly variable profits between years.
- Causation for both Failed Businesses and Failed Start-Up Businesses requires a comparison of revenue for the months the claimant operated between May 2010 and its last full months of operations (not to exceed beyond April 2011) relative to: a) the comparable months during the period May 2009 through April 2010 for Failed Businesses, or b) expected revenue in the same time period as demonstrated by contemporaneous financial projections for Failed Start-Up Businesses. Accordingly, causation is based on the comparison of cumulative revenue for several months, not upon the results of any individual months within that period.
- The Failed Start-Up Business methodology computation is based solely on the balance sheet, the sweat equity portion being based on the owner's annual earnings. This significantly reduces any matching concerns that may exist on a claimant's P&Ls between months.

Matching concerns could arise from:

- a mismatch of revenue and expenses at the start and end of the 12 month period prior to the spill,
- a mismatch of revenue and expenses for the period between May 2010 through the date the claimant ceased operations, utilized for the Revenue Decline Test for causation purposes, and
- balance sheets utilized in the calculations being inaccurate due to revenue or expenses not being matched.

## **BEL Claims – Matching of Revenues and Expenses**

### **ATTACHMENT G – Failed Businesses and Failed Start-Up Businesses**

#### **Identification of “unmatched claims” and Methodology for adjusting P&Ls not sufficiently matched**

1. The claimant’s contemporaneous P&Ls will be analyzed by the CSSP Accounting Vendors for potential accounting errors<sup>22</sup>, and indicators of insufficient matching of revenue and variable expenses. It should be recognized that it may be common to see unusual fluctuations in a business that is failing.
2. This matching analysis would not include the use of the Declaration Tool utilized for General BEL claimants as outlined in Section I of the “Matching of Revenues and Expenses” policy, for the reasons cited above. Such analysis will require, if considered necessary, explanations and additional information and documentation from the claimant.
3. The CSSP Accounting Vendors’ analysis will focus on potential matching issues that would impact a) the annual results for the year May 2009 to April 2010, and b) for claimants for whom causation is not presumed, the period from May 2010 through the date the business ceased, as compared to those issues that may impact a given month(s) but have no impact on the annual results. Further attention will be paid to potential matching issues that would impact balance sheets utilized for those months that impact the compensation calculation.
4. If no matching issues are identified that would impact the calculation, the claim will be analyzed and processed based on the information presented by the claimant.
5. If the CSSP Accounting Vendor identifies an error(s) in how the claimant has accounted for either revenue or expenses that form part of the EBITDA calculation, correcting entries will be made to the P&Ls to assign revenue and/or expenses to the appropriate month. Consideration will also be given

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<sup>22</sup> “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 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.

**BEL Claims – Matching of Revenues and Expenses**

**ATTACHMENT G – Failed Businesses and Failed Start-Up Businesses**

to the impact that such error(s) have on the balance sheets utilized in the calculation. If revenues are restated/allocated as a result of this analysis, causation calculation will be re-performed to ascertain eligibility within the specific guidelines outlined in Exhibit 6 of the Settlement Agreement.

6. The calculation of compensation for both Failed Businesses and Failed Start-Up Businesses will be consistent with that presently prescribed by Exhibit 6 of the Settlement Agreement.

## **BEL Claims - Matching of Revenues and Expenses**

### **ATTACHMENT H – Start-Up Businesses Methodology**

As with general BEL claimants, in considering options to resolve Start-Up Business<sup>23</sup> claims that have been deemed to be not sufficiently “matched,” it was necessary to apply distinct methodologies dependent upon the business operations and activities of individual claimants. Under the Start-Up Business Methodology described below, it is therefore necessary to classify claimants as operating as either a short earnings cycle business, construction claimant, agriculture, educational institution or a professional services entity. While the term “Start-Up Methodology” generally describes what is set out below, it should be noted that separate methods exist for Start-Up Business claimants that fall under each category. Further, it was important to tailor each of the methodologies set forth in Attachments B through F to reflect the differences between a Start-Up Business and a general BEL claimant.

#### **Comparison of general BEL claimants to Start-Up Business claimants**

Exhibit 7 of the Settlement Agreement outlines the framework for Start-Up Business claims. Under the Settlement Agreement, Start-Up Business compensation is calculated on a basis similar to that applicable to general BEL claims, in that it requires the selection of an optimal period of several months that compares variable profit between the Benchmark Period and the Compensation Period. The major exception between the two frameworks relates to a different Benchmark Period: For Start-Up Business claims the period is post spill (May 2011 to April 2012)<sup>24</sup>, whereas general BELs consider pre-spill results on a calendar year (2009 only, an average of 2008/09, or an average of 2007/08/09). For Start-Up Businesses both the Benchmark Period and the Compensation Period are post spill. Other specific differences for Start-Up Businesses that impact the Start-Up Business Methodology include:

- Benchmark and Compensation Periods are not based on calendar years but on the year May to April.

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<sup>23</sup> A “Start-up Business” is considered to be a claimant with less than 18 months of operating history at the time of the DWH Spill.

<sup>24</sup> Where a claimant elects to utilize projections, the Benchmark Period utilized per Exhibit 7 is May 2010 to April 2011.

## **BEL Claims - Matching of Revenues and Expenses**

### **ATTACHMENT H – Start-Up Businesses Methodology**

- General BEL claims can utilize up to 8 months as their Optimum Benchmark Period for the purposes of the computation, whereas Start-Up Businesses have the option to utilize a 12 month period.
- The Settlement Agreement permits claimants to utilize projections as compared to actual financial results, in computing compensation, provided such projections were prepared prior to the spill and utilized by the claimant to obtain credit from a financial institution, other entity in the primary business of lending or investing money, or non-family private investors.

#### **Effect of Differences on Start-Up Business Methodology**

The period May to April will continue to form the Benchmark and Compensation Periods under the Start-Up Business Methodology. However, any allocation of revenue and/or variable expenses to achieve better matching will do so on a claimant's Fiscal Year. The option to utilize a 3 to 12 month Optimum Benchmark Period will also continue to apply.

Under the Start-Up Business Methodology, projections may continue to be utilized provided that based upon an analysis by the CSSP Accounting Vendors the projections appear to be sufficiently matched. This can be assessed by obtaining an understanding and conducting an assessment of the assumptions underlying the projections. It is noted, however, that projections normally have fewer expense line items than actual monthly P&Ls so mapping projection line items to actual P&Ls can be more complex resulting in variable expenses (as defined by Exhibit 4D of the Settlement Agreement) being difficult to identify. Further, projections may often be prepared on an annual basis, or for a period of less than one year, thereby not permitting monthly revenue and expenses to be identified. As such, professional judgment will be applied by CSSP Accounting Vendors in assessing whether projections contain adequate, complete and appropriate information necessary to compute compensation under the Start-Up Business Methodology.

## **BEL Claims - Matching of Revenues and Expenses**

### **ATTACHMENT H – Start-Up Businesses Methodology**

#### **Identification of claims not ‘sufficiently matched’**

The criteria set out in Section I.A. of the CSSP policy on Matching of Revenues and Expenses shall be applied to Start-Up Business claimants in order to determine whether the submitted financial records are not sufficiently matched. However, executing that analysis differs for Start-Up Businesses as a consequence of different definitions of the Benchmark Period between the Start-Up Business and the general BEL frameworks.

The criteria for identifying potential matching issues for Start-Up Business claims will utilize the 7 criteria already in place for BEL claims in general. It should, however, be noted that:

- the calculations under the 7 criteria will include the Benchmark Period that extends through April 2012.
- on the basis that the Compensation Period and the Benchmark Period run from May through April, rather than a calendar year, the computation included will be performed over a May-April “annual” period. “Annual” for the purposes of criteria #2, 5 and 7 is defined as May through April. The years 2007, 2008 and 2009 will not form part of the analysis, as by definition such periods do not comprise the Benchmark Period or the Compensation Period.
- Significant increases or fluctuations in revenues and/or expenses are more common in Start-Up Businesses as compared to more mature BEL businesses. Triggers identified from the 7 criteria may therefore not relate to matching issues. This will be addressed as part of the claimant outreach performed by the CSSP.

## **BEL Claims - Matching of Revenues and Expenses**

### **ATTACHMENT H – Start-Up Businesses Methodology**

#### Methodology for adjusting P&Ls not sufficiently matched

Claimants' contemporaneous P&Ls will be analyzed by the CSSP Accounting Vendors for potential accounting errors<sup>25</sup>, and indicators of insufficient matching of revenue and variable expenses. It is recognized that it may be common to see more frequent fluctuations in a business that is a start-up.

Claimants that submit P&Ls that are deemed "sufficiently matched" will be processed under the methodology outlined in Exhibit 7 of the Settlement Agreement, utilizing the contemporaneous P&Ls. Those claimants that submit P&Ls which are not deemed "sufficiently matched" will have the P&Ls adjusted to allocate revenue and expenses to those periods when the activity generating the revenue was incurred. This will be accomplished by assigning and analyzing claims under the following methodologies:

- Start-Up Short Earnings Cycle Annual Variable Margin Methodology
- Start-Up Construction Methodology
- Start-Up Agriculture Methodology
- Start-Up Educational Institution Methodology
- Start-Up Professional Services Methodology

These are described in more detail below.

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<sup>25</sup> "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 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.

## **BEL Claims - Matching of Revenues and Expenses**

### **ATTACHMENT H – Start-Up Businesses Methodology**

#### **Start-Up Short Earnings Cycle Annual Variable Margin Methodology**

The approach outlined below does not alter the structure as to how compensation is calculated under the Settlement Agreement, but does require amendment of the P&Ls utilized in such calculations. The calculations of compensation will be consistent with that prescribed by Exhibit 7 of the Settlement Agreement.

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 Vendor identifies an error(s) in how the claimant has accounted for revenue and/or expenses, correcting entries will be made to the P&Ls to restate revenue and expenses to 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 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 7 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 (May 2011 to April 2012 or May 2010 to April 2011 if projections are utilized):
    - i. Monthly corresponding variable expenses during the Benchmark Period will be calculated for each Fiscal Year that forms part of the Benchmark Period (e.g., 2011 and 2012 if the claimant's Fiscal Year follows a calendar year), based on the percentage relationship between



## **BEL Claims - Matching of Revenues and Expenses**

### **ATTACHMENT H – Start-Up Businesses Methodology**

- the sum of all variable expenses for each Fiscal Year or May 2010 to April 2011 if projections are utilized to total revenue for the same year.
- ii. This variable expense percentage is applied to the specific monthly revenue amounts in each Fiscal Year in the Benchmark Period to calculate the corresponding variable expenses for each month.
- b. Compensation Period (May 2010 to April 2011):
- i. Monthly corresponding variable expenses during the Compensation Period will be calculated for each Fiscal Year that forms part of the Compensation Period (e.g., 2010 and 2011 if the claimant's Fiscal Year follows a calendar year) based on the percentage relationship between the sum of all variable expenses for each Fiscal Year to total revenue for the same Fiscal Year.
  - ii. This variable expense percentage is applied to the specific monthly revenue amounts in each Fiscal Year in the Compensation Period to calculate the corresponding variable expenses for each month.
5. Calculate Expected Revenue & Expected Costs
- a. Expected Revenue and Expenses shall equal either:
    - i. The actual revenue and expenses as set forth in the restated and/or allocated P&Ls calculated at Step 4 above for the Benchmark Period (i.e., May 2011 to April 2012); or
    - ii. Revenue and expenses reported on financial projections for the Start-Up Business for the period May 2010 to April 2011. The use of such projections would be dependent on satisfying the requirements of Exhibit 7 of the Settlement Agreement: that the projections were prepared prior to the spill and used to seek the extension of credit or financing to the Start-Up Business, from a financial institution, other entity in the primary business of lending or investing money, or non-family private investors with business lending experience.
  - b. Claimant's Expected Profit/Loss for the Compensation Period will be calculated as the difference between the claimant's Expected Revenue and Expected Costs, provided that Expected Revenue and Expected Costs must both be based on actual results from the Benchmark Period, or, if

## **BEL Claims - Matching of Revenues and Expenses**

### **ATTACHMENT H – Start-Up Businesses Methodology**

alternatively selected by claimants in Zones B and C, both Expected Revenue and Expected Costs must both be based on qualifying projections.

6. Calculate Actual Revenue and Actual Costs
  - a. Actual profit/loss generated over the Compensation Period will be calculated as the difference between (i) the claimant's Actual Revenues (from May 2010 to April 2011) as set forth in the restated and/or allocated P&Ls calculated at Step 4 above and (ii) the claimant's Actual Variable costs (from May 2010 to April 2011) as set forth in the restated and/or allocated P&Ls calculated at Step 4 above.
7. Compensation will be computed under Exhibit 7 of the Settlement Agreement as follows:
  - a. Calculate the claimant's Base Compensation Loss as the difference between (i) the claimant's Expected Profit/Loss and (ii) the claimant's Actual Profit/Loss generated during the Compensation Period.
  - b. Apply the agreed-upon RTP adjustment.
  - c. Deduct any payments or credits received by the claimant from BP or the GCCF pursuant to BP's OPA claims process, or from any VoO Settlement Payment Offset and/or VoO Earned Income Offset, where applicable.

### **Start-Up Construction Methodology**

The approach outlined below, does not alter the structure as to how compensation is calculated under the Settlement Agreement, but does amend the P&Ls utilized in such calculations. The calculation of compensation will be consistent with that prescribed by Exhibit 7 of the Settlement Agreement.

The restatement and/or reallocation of the P&Ls to more accurately match revenue and expenses requires an analysis of the financial results of the claimant based on the claimant's Fiscal Year. Annual

## **BEL Claims - Matching of Revenues and Expenses**

### **ATTACHMENT H – Start-Up Businesses Methodology**

revenues will be allocated to each month of the Fiscal Year based on that month's percentage of variable expenses to that Fiscal Year's annual variable expenses.

As a consequence of restating/reallocating monthly revenue based on a month's variable expenses as a percentage of annual variable expenses, the revenue recorded on the restated/allocated P&Ls can no longer be attributed to individual customers. Accordingly, the restated/allocated P&Ls could not be utilized for the purpose of determining causation for any claimant required to satisfy a Customer Mix Test. Under the Start-Up Construction Methodology, any claimant required to satisfy a Customer Mix Test<sup>26</sup> to demonstrate causation will utilize the contemporaneous P&Ls for the Customer Mix element of the causation assessment, but will utilize the restated/allocated P&Ls for the Revenue Pattern Test component of causation and in computing compensation.<sup>27</sup>

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 Vendor identifies an error(s) in how the claimant has accounted for revenue and/or variable expenses, correcting entries will be made to the P&Ls to restate revenue and/or variable expenses.

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<sup>26</sup> As per Exhibit 7 of the Settlement Agreement, a claimant must demonstrate "an aggregate of 10% increase in the share of total revenue generated by customers located in Zones A-C [or non-local customers] over the *same* period of three consecutive from May 2011 to April 2012 as selected by the claimant for the upturn revenue pattern test. . . ." (*emphasis added*). Under the Start-Up Construction Methodology this requirement will be amended to permit a claimant, for the purpose of satisfying a customer mix test, to select any three month period in the Benchmark Period to satisfy the customer mix test, and such period may be different from that used to satisfy the Upturn Revenue Pattern test.

<sup>27</sup> This procedure would supersede, for construction companies only, Policy 464 as it relates to the requirement to utilize the same P&Ls for determining causation and calculating compensation.

## **BEL Claims - Matching of Revenues and Expenses**

### **ATTACHMENT H – Start-Up Businesses Methodology**

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 7 of the Settlement Agreement using such P&Ls.
4. The restated P&Ls (as required) will be analyzed under the Start-Up Construction Methodology as follows:
  - a. Allocation based on claimant's Fiscal Year:
    - i. For each individual Fiscal Year each month's variable expenses as a percentage of that Fiscal Year's total variable expenses will be computed.
    - ii. Annual revenue for each Fiscal Year will be allocated to individual months by multiplying total annual revenue by each month's percentage of total variable expenses (as computed in accord with i. above).
5. The P&Ls, restated and allocated in accord with Step 4 above, are utilized as the input for calculating compensation under Exhibit 7 of the Settlement Agreement.
6. Calculate Expected Revenue and Expected Costs
  - a. Expected Revenue and Costs shall equal either:
    - i. The actual revenue and expenses as set forth in the restated and/or allocated P&Ls calculated in accord with Step 4 above for the Benchmark Period (i.e., May 2011 to April 2012); or
    - ii. Revenue and expenses reported on financial projections for the Start-Up Business for the period May 2010 to April 2011. The use of such projections would be dependent on satisfying the requirements of Exhibit 7 of the Settlement Agreement: that the projections were prepared prior to the spill and used to seek the extension of credit or financing for the Start-Up Business, from a financial institution, other entity in the primary business of lending or investing money, or non-family investors with business lending experience.
  - b. Claimant's Expected Profit/Loss for the Compensation Period will be calculated as the difference between the claimant's Expected Revenue and Expected Costs, provided that Expected Revenue and Expected Costs must both be based on actual results from the Benchmark Period, or, if

## **BEL Claims - Matching of Revenues and Expenses**

### **ATTACHMENT H – Start-Up Businesses Methodology**

alternatively selected by claimants in Zones B and C, both Expected Revenue and Expected Costs must both be based on qualifying projections.

7. Calculate Actual Profit/Loss
  - a. Actual Profit/Loss generated over the Compensation Period will be calculated as the difference between (i) the claimant's Actual Revenues (from May 2010 to April 2011) as set forth in the restated and/or allocated P&Ls calculated in accord with Step 4 above and (ii) the claimant's Actual Variable Costs (from May 2010 to April 2011) as set forth in the restated and/or allocated P&Ls calculated in accord with Step 4 above.
8. Compensation will be computed under Exhibit 7 of the Settlement Agreement as follows:
  - a. Calculate the claimant's base compensation loss as the difference between (i) the claimant's expected profit/loss and (ii) the claimant's actual profit/loss generated during the Compensation Period.
  - b. Apply the agreed-upon RTP adjustment.
  - c. Deduct any payments or credits received by the claimant from BP or the GCCF pursuant to BP's OPA claims process, or from any VoO Settlement Payment Offset and/or VoO Earned Income Offset, where applicable.

### **Start-Up Agriculture Methodology**

The methodology outlined below – “the Start-Up Agriculture Methodology” – deviates from the methodologies described previously in that both revenue and variable expenses will be allocated.

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.

## **BEL Claims - Matching of Revenues and Expenses**

### **ATTACHMENT H – Start-Up Businesses Methodology**

2. If the CSSP Accounting Vendor identifies an error(s) in how the claimant has accounted for either revenue or variable expenses, correcting entries will be made to the P&Ls to restate revenue and/or variable expenses to 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 7 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 under the Start-Up Agriculture Methodology as follows:
  - a. Allocation of revenue:
    - i. An evaluation of the nature of the crops grown by the claimant during the Benchmark and Compensation Period will be performed to understand the type of crop(s) grown, and the “crop season” in each given Fiscal Year. In addition, through discussions with the claimant and / or third parties, where considered necessary, a review of supporting documentation, the CSSP Accounting Vendors will understand whether produce from each “crop season” was sold shortly after harvesting, or held in storage for sale at a subsequent date.
    - ii. Revenue recorded on the claimant’s contemporaneous P&Ls will be analyzed to determine the “crop seasons” to which it relates. This will require the claimant to provide additional information (e.g., inventory records, yield reports, sales records) in order to break out the recorded revenue into the various “crop seasons” (e.g., allocated to each year, or different “crop seasons” where multiple crop types were planted in any one year) and identify the time period of each “crop season.”
    - iii. Based on the analysis performed at i. and ii. above, monthly revenue will be allocated on a straight line basis to those months of the “crop season.” For example:

## **BEL Claims - Matching of Revenues and Expenses**

### **ATTACHMENT H – Start-Up Businesses Methodology**

- A sale recorded in December 2012 for crops produced during the “crop season” running from April 2012 to September 2012 will be allocated on a straight line basis over the 6 months April 2012 to September 2012.
  - A sale recorded in February 2011 related to crops produced during the “crop season” running from April 2010 to September 2010 will be allocated on a straight line basis over the 6 months April 2010 to September 2010.
- iv. CSSP Accounting Vendors will obtain support from the claimant with regard to the “crop season” dates, but will exercise professional judgment in determine the appropriate months to allocate revenue to. For example:
- If work in preparing a field for planting commences on April 30, 2011, May 2011 will most likely be the first month to which revenue is allocated.
  - If the crop was harvested on November 3, 2012, October 2012 will most likely be the last date to which revenue is allocated.
- v. Where a crop season crosses a claimant’s Fiscal Year, or sales of crops are made in Fiscal Years subsequent to that in which the “crop season” resided, claimants may be required to provide additional years of P&L data
- vi. On completion of steps i. through v. above, revenue will be allocated for each Fiscal Year included in the Benchmark and Compensation Periods (2010, 2011 and 2012).
- vii. As a consequence of revenue being restated or allocated, a causation analysis will be re-performed (if causation is not presumed) to confirm that the claimant meets the Revenue Pattern Test per Exhibit 7 of the Settlement Agreement. For claimant’s required to satisfy the customer mix test, the allocation of revenue per step iii. above will require that the identity of individual purchases of crop be tracked with the allocation of revenue.
- b. Allocation of variable expenses:
- i. An analysis of variable expenses, considered significant in the professional judgment of CSSP Accounting Vendors, recorded in any Fiscal Year will be performed to determine if they relate to that year’s “crop season” or whether they represented bulk purchases held in inventory for

## **BEL Claims - Matching of Revenues and Expenses**

### **ATTACHMENT H – Start-Up Businesses Methodology**

future “crop seasons.” If variable expenses pertain to multiple “crop seasons” the expense will be allocated to each individual “crop season.”

- ii. Remaining variable expenses during each Fiscal Year included in the Benchmark Period and the Compensation Period will be allocated to individual months based on that month’s allocated revenue as a percentage of total revenue for the same Fiscal Year period. This approach results in a consistent variable profit margin for each month of any given Fiscal Year. The calculation is as follows:
  - 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 each Fiscal Year and total allocated revenue for the same Fiscal Year. This will yield a separate variable expense percentage for each Fiscal Year included in the Benchmark Period.
  - This variable expense percentage (specific for each individual Fiscal Year included in the Benchmark Period) is applied to the specific monthly allocated revenue amounts in the Benchmark Period to calculate the corresponding variable expenses for each month.
  - Monthly corresponding variable expenses during the Compensation Period will be calculated based on the percentage relationship between the sum of all variable expenses for each Fiscal Year included in the Compensation Period and total revenue for the same Fiscal Year.
  - 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.
5. The P&Ls, restated and allocated in accord with Step 4 above, are utilized as the input for calculating compensation under Exhibit 7 of the Settlement Agreement.
6. Calculate Expected Revenue and Expected Costs
  - a. Expected Revenue and Costs shall equal either:



## **BEL Claims - Matching of Revenues and Expenses**

### **ATTACHMENT H – Start-Up Businesses Methodology**

- i. The actual revenue and expenses as set forth in the restated and/or allocated P&Ls calculated in accord with Step 4 above for the Benchmark Period (i.e., May 2011 to April 2012); or
    - ii. Revenue and expenses reported on financial projections for the Start-Up Business for the period May 2010 to April 2011. The use of such projections would be dependent on satisfying the requirements of Exhibit 7 of the Settlement Agreement: that the projections were prepared prior to the spill and used to seek the extension of credit or financing to the Start-Up Business, from a financial institution, other entity in the primary business of lending or investing money, or non-family investors with business lending experience.
  - b. Claimant's Expected Profit/Loss for the Compensation Period will be calculated as the difference between the claimant's Expected Revenue and Expected Costs, provided that Expected Revenue and Expected Costs must both be based on actual results from the Benchmark Period, or, if alternatively selected by claimants in Zones B and C, both Expected Revenue and Expected Costs must both be based on qualifying projections.
7. Calculate Actual Profit/Loss
- a. Actual Profit/Loss results over the Compensation Period will be calculated as the difference between (i) the claimant's Actual Revenues (from May 2010 to April 2011) as set forth in the restated and/or allocated P&Ls calculated in accord with Step 4 above and (ii) the claimant's Actual Variable Costs (from May 2010 to April 2011) as set forth in the restated and/or allocated P&Ls calculated in accord with Step 4 above.
8. Compensation will be computed under Exhibit 7 of the Settlement Agreement as follows:
- a. Calculate the claimant's base compensation loss as the difference between (i) the claimant's expected profit/loss and (ii) the claimant's actual profit/loss generated during the Compensation Period.
  - b. Apply the agreed-upon RTP adjustment.
  - c. Deduct any payments or credits received by the claimant from BP or the GCCF pursuant to BP's OPA claims process, or from any VoO Settlement Payment Offset and/or VoO Earned Income Offset, where applicable.

## **BEL Claims - Matching of Revenues and Expenses**

### **ATTACHMENT H – Start-Up Businesses Methodology**

#### **Educational Institutions Methodology**

The approach outlined below does not alter the structure as to how compensation is calculated under the Settlement Agreement but does amend the P&Ls utilized in such calculations. The calculations of both Step 1 and Step 2 compensation will be consistent with that prescribed by Exhibit 7 of the Settlement Agreement.

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. An evaluation of the claimant's tuition arrangements (i.e., payments for annual tuition, an individual semester, or trimesters) will be performed to understand the time period for which student tuition fees apply. In addition, the method of payment (i.e., advanced payment in full, or a monthly/quarter tuition payment(s)) will be confirmed with the claimant and / or third parties, receipt and analysis of supporting documentation.
3. If the CSSP Accounting Vendor identifies an error(s) in how the claimant has accounted for either revenue or variable expenses, correcting entries will be made to the P&Ls to restate revenue or expenses.
4. If adjustments made in accord with 3. above result in restated P&Ls that are deemed sufficiently matched, the claim will be processed under the methodology set forth in Exhibit 7 of the Settlement Agreement. However, if revenue has been restated in accord with 3. above a causation analysis will be re-performed (if causation is not presumed). If causation is satisfied, the restated P&Ls are utilized as the input for calculating compensation under the Settlement Agreement.
5. If adjustments made in accord with 3. above do not resolve matching issues, the P&Ls will be revised, as set forth below, allocating both revenue and expenses.

## **BEL Claims - Matching of Revenues and Expenses**

### **ATTACHMENT H – Start-Up Businesses Methodology**

- a. Allocation of revenue:
- i. Revenue recorded on the claimant's contemporaneous P&Ls will be analyzed to determine the months covered by the tuition fees paid. This will require some additional information (e.g., reports from student admission records, tuition sub-ledger, student enrollment information, student fee accounts) in order to break out the recorded revenue into the various categories of payment types (e.g., annual enrollment, semester, trimesters) and identify the time period covered by the tuition period..
  - ii. Based on the analysis performed at i. above, monthly revenue will be allocated on a straight line basis to those months covered by the tuition . For example:
    - A payment made in July 2010 for the academic year running from September 2010 to June 2011 will be allocated on a straight line basis over the 10 months September 2010 to June 2011.
    - A payment made in September 2011 for a semester that runs from September 2011 through December 2011, will be allocated on a straight line basis over the 4 month period September 2011 to December 2011.
  - iii. CSSP Accounting Vendors will obtain support from the claimant with regard to the academic year or semester dates, but will exercise professional judgment in determine the appropriate months to allocate revenue to. For example:
    - If a term commences on August 30, 2010, September 2010 will most likely be the first month to which revenue is allocated.
    - If a term ends on June 3, 2011, May 2011 will most likely be the last date to which revenue is allocated.
  - iv. On completion of steps i. through iii. above, revenue will be allocated for each calendar year that forms part of the Benchmark and Compensation Period (2010, 2011, and 2012).
  - v. As a consequence of revenue being restated or allocated, a causation analysis will be re-performed (if causation is not presumed) to confirm that the claimant meets the Revenue Pattern Test per Exhibit 7 of the Settlement Agreement. For claimant's required to satisfy the

## **BEL Claims - Matching of Revenues and Expenses**

### **ATTACHMENT H – Start-Up Businesses Methodology**

customer mix test, the allocation of revenue per step ii. above will require that the identity of individual students be tracked with the allocation of revenue.

b. Allocation of variable expenses:

- i. Variable expenses during each Fiscal Year that forms part of the Benchmark Period and the Compensation Period (e.g., 2010, 2011 and 2012 if the claimant maintains their Fiscal Year on a calendar year) will be allocated to individual months based on that month's allocated revenue as a percentage of total revenue for each Fiscal Year. This approach results in a consistent variable profit margin for each month of any given Fiscal Year. The calculation is as follows:

- Monthly corresponding variable expenses for each Fiscal Year of the Benchmark Period (e.g., 2011 and 2012 if the claimant maintains their Fiscal Year on a calendar year) will be calculated based on the percentage relationship between the sum of all variable expenses for each Fiscal Year and total revenue for the same annual period. This will yield a separate variable expense percentage for each Fiscal Year that forms part of the Benchmark Period.
- This variable expense percentage (specific for each individual Fiscal Year that forms part of the Benchmark Period) is applied to the specific monthly revenue amounts in the Benchmark Period to calculate the corresponding variable expenses for each month.
- Monthly corresponding variable expenses during each Fiscal Year that comprises part of the Compensation Period (i.e., 2010 and 2011 if the claimant maintains their Fiscal Year on a calendar year) will be calculated based on the percentage relationship between the sum of all variable expenses for each Fiscal Year and total revenue for the same Fiscal Year.
- This variable expense percentage is applied to the specific monthly revenue amounts in the Compensation Period to calculate the corresponding variable expenses for each month.

## **BEL Claims - Matching of Revenues and Expenses**

### **ATTACHMENT H – Start-Up Businesses Methodology**

6. The P&Ls, restated in accord with Step 5 above, are utilized as the input for calculating compensation under Exhibit 7 of the Settlement Agreement.
7. Calculate Expected Revenue and Expected Costs
  - a. Expected Revenue and Costs shall equal either:
    - i. The actual revenue and expenses as set forth in the restated and/or allocated P&Ls calculated in accord with Step 5 above for the Benchmark Period (i.e., May 2011 to April 2012); or
    - ii. Revenue and expenses reported on financial projections for the Start-Up Business for the period May 2010 to April 2011. The use of such projections would be dependent on satisfying the requirements of Exhibit 7 of the Settlement Agreement: that the projections were prepared prior to the spill and used to seek the extension of credit or financing to the Start-Up Business, from a financial institution, other entity in the primary business of lending or investing money, or non-family investors with business lending experience.
  - b. Claimant's Expected Profit/Loss for the Compensation Period will be calculated as the difference between the claimant's Expected Revenue and Expected Costs, provided that Expected Revenue and Expected Costs must both be based on actual results from the Benchmark Period, or, if alternatively selected by claimants in Zones B and C, both Expected Revenue and Expected Costs must both be based on qualifying projections.
8. Calculate Actual Profit/Loss
  - a. Actual Profit/Loss results over the Compensation Period will be calculated as the difference between (i) the claimant's Actual Revenues (from May 2010 to April 2011) as set forth in the restated and/or allocated P&Ls calculated in accord with Step 5 above and (ii) the claimant's Actual Variable Costs (from May 2010 to April 2011) as set forth in the restated and/or allocated P&Ls calculated in accord with Step 4 above.

## **BEL Claims - Matching of Revenues and Expenses**

### **ATTACHMENT H – Start-Up Businesses Methodology**

9. Compensation will be computed under Exhibit 7 of the Settlement Agreement as follows:
  - a. Calculate the claimant's base compensation loss as the difference between (i) the claimant's expected profit/loss and (ii) the claimant's actual profit/loss generated during the Compensation Period.
  - b. Apply the agreed-upon RTP adjustment.
  - c. Deduct any payments or credits received by the claimant from BP or the GCCF pursuant to BP's OPA claims process, or from any VoO Settlement Payment Offset and/or VoO Earned Income Offset, where applicable.

### **Start-Up Professional Services 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. An evaluation of the claimant's fee arrangements for all cases/engagements (i.e., time & materials, fixed fee, contingent fee, or a combination thereof) will be performed based on discussions and an assessment of additional records requested from the claimant. Such additional records will be consistent with those outlined in the Professional Services Methodology (Attachment F). It should be noted that information requested may include records either prior to and/or after the Benchmark and Compensation Periods (i.e., prior to 2010 or after 2012).
3. If the CSSP Accounting Vendor identifies an error(s) in how the claimant has accounted for either revenue or variable expenses, correcting entries will be made to the P&Ls to restate revenue or expenses..
4. If adjustments made in accord with 3. above result in restated P&Ls that are deemed sufficiently matched, the claim will be processed under the methodology set forth in Exhibit 7 of the Settlement Agreement. However, if revenue has been restated in accord with 3. above a causation analysis will

## **BEL Claims - Matching of Revenues and Expenses**

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be re-performed (if causation is not presumed). If causation is satisfied, the restated P&Ls are utilized as the input for calculating compensation under the Settlement Agreement.

5. If adjustments made in accord with 3. above do not resolve matching issues, the P&Ls will be revised, as set forth below, allocating both revenue and expenses.

For those claimants who submit P&Ls which are deemed not “sufficiently matched”, the P&Ls will be adjusted to allocate revenue on a straight line basis over the period of the case/engagement, unless the claimant can submit appropriate, reliable and complete records that permit an alternative allocation of revenue based on when activity generating the revenue occurred. In professional services companies this would correspond to periods when work on the matter/engagement was actually performed. Alternative information that the claimant may elect to present to demonstrate when effort was expended/hours were worked may include:

- Time and billing records maintained in the ordinary course of business that detail time worked by month by case/engagement is considered to be the most accurate and complete source of information.
- Other case/engagement records may provide sufficient information to ‘reconstruct’ when hours were worked in generating the revenue earned: calendars, engagement letters, court filings, case summaries, trial dockets, court and deposition appearances, expert report submissions, project deliverables, transaction closure dates, contract execution dates, court approvals, and payment schedules and receipts.

### **Revenue**

#### **Allocate Revenue on a straight line basis over the duration of the case/litigation**

1. If the claimant elects not to submit additional documentation, or provides documentation that, in the judgment of the Claims Administrator, does not permit the CSSP Accounting Vendors to reasonably estimate and verify the level of work effort in a given month, revenue will be allocated to each month on a straight line basis over the duration of the matter.

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2. A matter will be considered to have commenced from the date of execution of an engagement letter or other indicia of the commencement of the undertaking, through the date that a matter has been settled, or a final project deliverable has been submitted and payment has been received, unless other information indicates an alternative date. Other information could include, for example: evidence that work was commenced prior to the execution of an engagement letter or other indicia of the commencement of the undertaking, post-trial filings, appeals, a further negotiation of the amount ultimately paid, or presentations after issuance of a final report. Information must be provided by claimants to permit the CSSP Accounting Vendors to verify the commencement and completion date of cases/engagements.
3. In determining revenue generated for each matter, consideration will be given to the nature of the case/engagement, but in all instances will be net of any reimbursable expenses. Revenue from time & material and fixed fee arrangements will be determined based on the engagement letter or other description of the nature and scope of the undertaking, and invoice records. For contingent fee arrangements, revenue will be based on the amount paid to the claimant as of the date the CSSP Accounting Vendors analyze the claim. For contingent fee cases that remain open/unsettled as of the date the claim is being evaluated, no revenue or variable expenses will be recognized within the claimant calculation for such cases.
4. For each case/engagement (or a subset thereof if, in the professional judgment of the CSSP Accounting Vendor, some projects are deemed immaterial to the compensation calculation) the revenue allocated to each month will equal revenue (determined in accord with 3 above) divided by the number of months that the case/engagement was worked on (as determined in accord with 2 above).
5. Where revenue has been restated and/or allocated, a causation analysis will be re-performed to confirm that the claimant meets the revenue pattern test per the Settlement Agreement (if causation is not presumed).



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#### **Allocate Revenue based on Available Information**

The claimant will have the option to submit documentation to the Claims Administrator if it believes such records can more accurately estimate the level of work/hours incurred in a given month, thereby permitting revenue to be allocated based on such effort, rather than a straight line basis. The CSSP Accounting Vendors will assess such records and determine whether, in their professional judgment, such records are adequate and complete enough to reasonably estimate and verify the level of work effort performed in a given month as it relates to each specific case/engagement. If it is determined that such records permit a reasonable estimate of when effort was expended/hours were worked, revenue will be allocated based on such efforts. However, if not deemed sufficient to reasonably estimate and verify when effort was expended/hours were worked, the CSSP Accounting Vendors will revert to allocating revenue to each month on a straight line basis over the duration of the matter.

In considering what additional information a claimant may elect to submit to identify when effort was expended/hours were worked, the CSSP Accounting Vendors anticipate that this will most likely include time and billing records maintained by a claimant in the ordinary course of business. In the absence of such records, other information may be utilized to estimate or 'reconstruct' when effort was expended/hours were worked.. Such information may include, but not be limited to, calendars, engagement letters, court filings, case summaries, court and deposition appearances, expert report submissions, transaction close dates, contract execution dates, project deliverables, court approvals, court/trial dates, and payment schedules and receipts. The approach that will be followed is detailed below:

1. Information will be requested from the claimant that details the nature of the fee arrangements for all cases/engagements commenced and/or closed during the Benchmark and Compensation Periods. The information requested will be consistent with the items set out in Attachment E – Professional Services Methodology. Given that cases/engagements may have commenced prior to

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the Compensation Period or were ongoing or closed after the Benchmark Period, information required from claimants may extend prior to the Compensation Period and subsequent to the Benchmark Period.

2. Revenue will be allocated to each month of the Benchmark Period (May 2011 to April 2012) and Compensation Period (May 2010 to April 2011) based on when work was actually performed.
3. To identify when hours were worked the following steps will be performed:
  - a. A detailed inventory of all engagements performed by the claimant will be obtained, separated by the nature of the fee arrangement.
  - b. The CSSP Accounting Vendors will, through inquiries of the claimant, and an evaluation of submitted documentation, determine if contemporaneous time and billing records were maintained by the claimant in sufficient detail to determine and verify when effort was expended/hours were worked on individual cases/engagements, or if practical a grouping of cases/engagements that had similar characteristics (e.g., commencement and completion date, revenue earned and paid). If deemed sufficient, time and billing records will be utilized.
  - c. If time and billing records were not maintained by the claimant in sufficient detail to determine when effort was expended/hours were worked, the CSSP Accounting Vendor will consider the adequacy and completeness of other information provided and determine if sufficient to estimate and verify when effort was expended/time was worked, and will allocate revenue on such basis.

#### **Utilizing Time and Billing records to reallocate revenue**

1. Any billing records submitted will be analyzed for each engagement. Hours recorded by personnel for each individual case/engagement (or a subset thereof if, in the professional judgment of the CSSP Accounting Vendor, some projects are deemed immaterial to the compensation calculation) will be compared to the timing of revenue recognized. Total revenue earned from each case will be considered net of reimbursable expenses. Total revenue earned from each case/engagement will be

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allocated to each month based on the percentage of hours charged in that month relative to the total case/engagement hours.

2. Based upon the content and format of the time and billing records received, additional analysis may be performed including but not limited to comparison of pre-spill and post-spill: monthly hours worked in assessing lost hours, if any; billing rates per engagement/case in assessing higher/lower rates, if any; changes in the overall variable profit margin between periods, if any; utilization mix of professional staff (including owners/partners); lines and/or types of services/engagements worked on; and length of the project and value of settlements reached.
3. For contingent fee cases that remain open/unsettled as of the date the claim is being evaluated, no revenue nor variable expenses will be recognized within the claimant calculation for such cases.
4. Where revenue has been restated and/or allocated a causation analysis will be re-performed to confirm that the claimant meets the revenue pattern test per the Settlement Agreement (if causation is not presumed).

#### **Utilizing Engagement Records to allocate revenue**

1. It is expected that claimants who operate under a time & materials fee arrangement will maintain time and billing records in order to create and support the invoices to their clients. Accordingly, it is assumed that the methodology set out below will most likely apply to fixed fee and contingent fee arrangements, or a combination of the two. It should be noted that if a firm has a variety of fee arrangements including some performed on a time & materials basis, for which it maintained time and billing records, the revenue may (based on the professional judgment of the CSSP Accounting Vendors) be bifurcated, and different records will be applied to identify when hours were worked.

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2. If the claimant elects to submit documentation that the CSSP Accounting Vendors deem sufficient to estimate and verify the effort expended/hours worked in any given month, cases/engagements performed under a fixed fee or contingent fee arrangement will be evaluated utilizing other engagement documentation, as follows:
  - a. Fixed and contingent fee cases/engagements worked during the Benchmark Period and the Compensation Period
    - i. Identify the commencement and completion date for each case/engagement, including the date revenue was recorded and/or cash was received
    - ii. In the case of a legal matter, conduct an examination of available legal and non-legal documents (e.g., pleadings and other court records, discovery requests, depositions and/or court documents, due diligence commencement dates, transaction closure dates, submission of contract drafts, lawyer's calendars etc.) to establish proof of work/timing of effort in order to estimate the revenue that should be attributed to a given month. This process will be performed in consultation with the claimant.
      - Based on the duration of the legal matter, combined with the timing of significant events, an estimate of the percentage of the total work effort on the case will be assigned to each month.
      - Revenue will be allocated to each month by multiplying the total contingent fee or fixed fee by that month's percentage of the total effort expended on the case.
  - b. For other professional services claimants (not law firms), conduct an examination of available documentation (e.g., budgets, project reports, draft and final deliverables, calendars, time and billing records, progress and status reports, meetings/presentations and other key milestone events) to establish proof of work/timing of effort in order to estimate the revenue that should be attributed to a given month. This process will be performed in consultation with the claimant.
    - i. Based on the duration of the engagement, combined with the timing of significant events/milestones, an estimate of the percentage of the total effort incurred on the engagement will be assigned to each month.

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- ii. Revenue will be allocated to each month by multiplying the total contingent fee or fixed fee by that month's percentage of the total effort expended on the engagement.
3. For contingent fee cases that remain open/unsettled as of the date the claim is being evaluated, no revenue or variable expenses will be recognized within the claimant calculation for such cases.
4. Where revenue has been restated and/or allocated a causation analysis will be re-performed to confirm that the claimant meets the revenue pattern test per the Settlement Agreement (if causation is not presumed).

#### **Variable Expenses**

1. It is expected that the records maintained by some claimants may not separately identify variable expenses, as defined in Exhibit 4D of the Settlement Agreement, to specific cases/engagements.
2. Where revenue is allocated on a straight line basis over the duration of a case/engagement, due to the claimant electing not to submit additional documentation, or where there was a lack of sufficient information to reliably estimate and verify when hours were worked/effort was expended, variable expenses incurred during the Benchmark Period (May 2011 to April 2012 or May 2010 to April 2011 if projections are used) and Compensation Period (May 2010 to April 2011) will be allocated to individual months based on that month's revenue as a percentage of total revenue for each individual Fiscal Year that forms part of the Benchmark or Compensation Periods (e.g., 2010, 2011 and 2012 if the claimant maintains their Fiscal Year on a calendar year). This approach results in a consistent variable profit margin for each month of any given Fiscal Year. The calculation is as follows:
  - a. Monthly corresponding variable expenses during the Benchmark Period will be calculated for each Fiscal Year that forms part of the Benchmark Period based on the percentage relationship between the sum of all variable expenses for each Fiscal Year or May 2010 to April 2011 if projections are utilized, and total revenue for the same Fiscal Year.

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- b. This variable expense percentage is applied to the specific monthly revenue amounts in each Fiscal Year in the Benchmark Period to calculate the corresponding variable expenses for each Fiscal Year.
  - c. Monthly corresponding variable expenses during the Compensation Period will be calculated for each Fiscal year that forms part of the Compensation Period based on the percentage relationship between the sum of all variable expenses for each Fiscal Year and total revenue for the same Fiscal Year.
  - d. This variable expense percentage is applied to the specific monthly revenue amounts in each Fiscal Year in the Compensation Period to calculate the corresponding variable expenses for each month.
3. Where revenue has been allocated on a basis other than the straight line basis, variable expenses incurred during the Benchmark and Compensation Periods will be allocated to individual months based on the total effort expended/hours worked, estimated using the same information utilized in allocating revenue.

#### **Compensation Calculation**

1. The restated and/or allocated P&Ls resulting from the allocation of revenue and variable expenses are utilized as the input for calculating compensation under Exhibit 7 of the Settlement Agreement:
2. Calculate Expected Revenue and Expected Costs
  - a. Expected Revenue and Expected Costs shall equal either:
    - i. The Actual Revenue and Actual Costs as set forth in the restated and/or allocated P&Ls for the Benchmark Period (i.e., May 2011 to April 2012); or
    - ii. Revenue and expenses reported on financial projections for the Start-Up Business for the period May 2010 to April 2011. The use of such projections would be dependent on satisfying the requirements of Exhibit 7 of the Settlement Agreement: that the projections were used to seek the extension of credit or financing to the Start-Up Business, from a financial institution,

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- other entity in the primary business of lending or investing money, or non-family provider investors with business lending experience.
- b. Claimant's Expected Profit/Loss for the compensation period will be calculated as the difference between the claimant's Expected Revenue and Expected Costs, provided that Expected Revenue and Expected Costs must both be based on actual results from the Benchmark Period, or, if alternatively selected by claimants in Zones B and C, both expected revenue and expected costs must both be based on qualifying projections.
3. Calculate Actual Profit/Loss
    - a. Actual profit/loss results over the Compensation Period will be calculated as the difference between (i) the claimant's Actual Revenues (from May 2010 to April 2011) as set forth in the restated and/or allocated P&Ls and (ii) the claimant's Actual Variable Costs (from May 2010 to April 2011) as set forth in the restated and/or allocated P&Ls.
  4. Compensation will be computed under Exhibit 7 of the Settlement Agreement as follows:
    - a. Calculate the claimant's base compensation loss as the difference between (i) the claimant's expected profit/loss and (ii) the claimant's actual profit/loss generated during the Compensation Period.
    - b. Apply the agreed-upon RTP adjustment.
    - c. Deduct any payments or credits received by the claimant from BP or the GCCF pursuant to BP's OPA claims process, and/or from any VoO Settlement Payment Offset and/or VoO Earned Income Offset, where applicable.
  5. As noted above in 'Utilizing Time and Billing records,' if this data is available and used to allocate revenues, the additional analysis described below may be performed at this step in order to identify and quantify the various components of the compensation calculation. This analysis may include consideration of compensation resulting from a decrease/increase in hours, a decrease/increase in rates/awards and an increase/decrease in variable profit margin. Depending upon the level of detail provided, these components may be further analyzed to identify compensation amounts

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associated with changes in utilization/mix of professional staff as well as changes in types of services/engagements/cases worked on.