

Addendum: Dispute Preprocessing

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Definitions & usages

The following definitions and usages apply to this Dispute Preprocessing Addendum (this **Addendum**) but not necessarily to the rest of this Agreement.

Agreement refers to the agreement of which this Addendum is a part.

Dispute refers to a dispute arising out of or relating to this Agreement.

DEFGEN-0500

Examples are inclusive.

Examples (and terms such as *for example*) are used in this Addendum for purposes of illustration, not of limitation, unless another meaning is clear from the context.

DEFGEN-0600

Include, etc., are inclusive.

Include and similar terms (e.g., including) — see "Examples."

DEFGEN-0800

Otherwise agreed requires a signed writing (with limited exceptions).

As used in this Addendum, *otherwise agreed* and its variations (for example, *agreed otherwise*) mean that the parties have agreed otherwise *in writing*, unless they have previously agreed — in writing — that, for that particular matter or class of matters, a non-written agreement otherwise is acceptable

DEFGEN-1400

Seasonably has the UCC meaning.

An action is taken *seasonably* if it is taken at or within the time agreed or, if no time is agreed, at or within a reasonable time.

Status-review conferences

STATUSREV-0100

To help identify and head off potential disputes, status-review conferences will be held, by phone or in person, at either party's reasonable request. Conference details will be arranged by the request-

ing party, which will seasonably circulate draft minutes if requested.

(1) Each party will participate in status conferences as stated. (2) The parties anticipate that conference agendas will typically include, as appropriate and without limitation: (A) progress made; (B) problems encountered or anticipated; (C) plans for future action; and (D) assumptions being made. (3) Unless otherwise agreed, the specified party will take the lead in arranging the administrative mechanics of the conference, including for example, as appropriate, coordinating the scheduling; providing a dial-in number for telephone conferences; and circulating a proposed agenda, especially including previous items for follow-up. (4) The specified party may (and if another party so requests, it shall) seasonably draft and circulate conference minutes that include (A) a summary of any decisions made, and, (B) as a tracking aid, a list of any action- or follow-up items for specific individuals or parties. (5) Any party may object to the contents of draft minutes by seasonably so advising all other parties in writing.


Dispute management

DISP-0100

Disputes will be escalated upon request.

Whenever requested by either party, the parties will jointly refer any dispute between them to their respective higher management levels, including executive-level management where appropriate.

DISP-0200

Early neutral evaluation (non-binding) will be initiated upon request. 

(1) In any dispute, at either party's request the parties will jointly consult an experienced, knowledgeable, neutral individual, informally and in confidence, for non-binding advice as to what would constitute a responsible resolution of the dispute. (2) Any procedural disagreement concerning the consultation will be resolved by reference to the Early Neutral Evaluation Procedures of the American Arbitration Association, to the extent not inconsistent with this Agreement.

Shifting of attorneys' fees to encourage settlement



SETTLE-0100

To encourage reasonable settlement of disputes, this section applies to written settlement offers that conspicuously invoke this section and set forth an acceptance deadline of at least 10 business days.

(1) The intent of this section is to create incentives for the parties to make and to accept (as the case may be) reasonable offers to settle any disputes that may arise between them. (2) This section ap-

plies to any written offer, by a party to an adverse party, to settle a dispute, but only if the offer: (i) is made in accordance with this Agreement's notice provisions; (ii) expressly and conspicuously states that failure to accept the offer by a stated deadline could result in an award of attorneys' fees and expenses against the adverse party pursuant to this section; and (iii) is not accepted by the adverse party by the stated deadline.

SETTLE-0200

If the final result of litigation and/or arbitration is not more favorable to a non-settling party than an unaccepted settlement offer, then the non-settling party is liable for the offeror's post-offer expenses.

(1) This clause applies if (A) a dispute gives rise to a final judgment or arbitration award from which no further appeal is taken or possible; (B) before the judgment or award became not further appealable, a party made a settlement offer to an adverse party in accordance with this section; (C) the adverse party did not accept the settlement offer; and (D) the judgment or award is not more favorable to the adverse party than the unaccepted offer. (2) In that case, the adverse party shall reimburse the offeror for any and all of the following that the offeror incurred after making the offer: (A) costs; and (B) the offeror's reasonable expenses of litigation, arbitration, and/or appellate proceedings arising out of the dispute, including but not limited to reasonable fees and expenses for attorneys and expert witnesses. (3) For the avoidance of doubt, such reimbursement is in addition to any other relief to which the offeror may be entitled.

SETTLE-0500

An offer not timely accepted is deemed withdrawn; a counter-offer is not a rejection.

(1) A settlement offer, made under this section, that is not timely accepted in writing, is considered withdrawn, but does not preclude a later offer. (2) An adverse party's making of a counter-offer shall not be deemed a rejection of a pending offer, which shall remain open until accepted or withdrawn as provided herein.

SETTLE-0600

Settlement offers are confidential and inadmissible.

(1) Each party shall preserve in strict confidence the existence and details of (i) any offer made by either party pursuant to this section and (ii) any communications between the parties regarding the offer. (2) Evidence of an unaccepted offer is not admissible in any proceeding to adjudicate or arbitrate the dispute except to determine costs and expenses.

— END —