## Introductory Comments

- Focus now on the general provisions typically included in a contract, e.g., Merger or Integration Clause, Amendments, and Governing Law;
- Frequently, if not usually, called “boilerplate” or “housekeeping provisions” or “administrative (seemingly non-substantive?) provisions” and regarded by some as standardized stuff that can be copied and pasted from one form to another;
- Not so. The provisions included, and the way they are drafted, address really important issues—so
- “…Attention must be paid!”

## Overview of Presentation

- 1. Merger/Integration Clause
- 2. Non-Reliance Clause
- 3. Amendments
- 4. Implied Waiver, Discharge, or Termination
- 5. Assignment and Delegation
- 6. Successors and Assigns (and No Third Party Beneficiaries)
- 7. Governing Law
- 8. Choice of Forum
- 9. Severability
- 10. Cumulative Remedies
- 11. Counterparts
- 12. Notice
- 13. Waiver of Jury Trial
A Word about Sources and Drafting

- Tina Stark, Negotiating and Drafting Contract Boilerplate (ALM Pub. 2003)
- Alex Ritchie, "How Contact Boilerplate Can Bite," 2013 No. 3 RMMLF—INST PAPER No. 6 (May 2-3, 2013)
- Drafting General Provisions
  - Declarations—statements of fact as to which the parties agree—in the present tense
  - Covenants—obligations—promises a party "shall" perform.

Merger or Integration Clause—Slide 1

- Under the Parol Evidence Rule at common law, "a binding integrated agreement discharges prior agreements to the extent that it is inconsistent with them," while "a binding completely integrated agreement discharges prior agreements to the extent that they are within its scope." Restatement, 2nd, Contracts §213 (emphasis added).
- UCC §2‐202 is similar: "Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended as a final expression of any agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous agreement but may be explained or supplemented (a) by course of dealing or usage of trade or by course of performance and (b) by evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement."

Merger or Integration—Slide 2

- So how do you determine whether a writing is "a binding completely integrated agreement" as opposed to a merely "binding integrated agreement"?
  - If merely the latter, the terms may not only be explained by course of dealing, usage of trade, and course of performance but may also be supplemented by evidence of consistent additional terms.
  - If the former, no evidence of "consistent additional terms" is admissible.
- The drafter has to make it clear which it is, and the way to do that is to use the very language of the statute.
- If a deal involves more than one document, e.g., an Agreement, a Security Agreement, and a Confidentiality Agreement, use a defined term to include all three—"Transactional Documents" —and have the Merger clause in each reference the "Transactional Documents"
**Merger or Integration Clause—Slide 3**

- "**Merger.** This Agreement states the full agreement between the parties and supersedes all prior negotiations and agreements."
- "**Merger.** This Agreement constitutes the final, exclusive agreement between the parties on the matters contained in this Agreement. All earlier and contemporaneous negotiations and agreements between the parties on the matters contained in this Agreement are expressly merged into and superseded by this Agreement."
- Should you have the clause initialed by the parties? Summers and White in their treatise on Sales recommend doing so.
- *Source: Tina Stark, Drafting Contracts at p. 234*

**Merger or Integration Clause—Slide 4**

- *Exceptions making parol evidence admissible.* Despite merger or integration clause which is explicitly "a final, exclusive agreement between the parties on the matters contained in this Agreement," courts have admitted parol evidence in
  - To explain a term found ambiguous, and
  - To allow a party to establish a defense of fraudulent inducement.
- So a Merger clause alone may not preclude evidence of promises outside the Agreement from being admitted.
- *Anti- or Non-Reliance Clauses.* These clauses state that the representations in an Agreement are the only ones on which the parties relied in entering into the contract. Are they effective to bar a fraud claim related to a promise or representation not stated the Agreement?

**Merger or Integration Clause—Slide 5**

**Non-Reliance Clause**

- States disagree on the question of whether an anti- or non-reliance clause will be given the desired effect:
  - Delaware: IAC Search, LLC v. Convergent LLC, 2016 WL 6995363 (Del.Ch. November 30, 2016), held the clause to be effective when used in combination with (1) No Extra-Contractual Representations of Seller, (2) Acknowledgement of Buyer (Non-Reliance), and (3) Integration clauses;
  - New York: JM Vidal, Inc. v. Textis USA, Inc., 764 F.Supp. 599 (S.D.N.Y. 2011), agrees if the anti-reliance provision is clear and specific, noting that a standard merger clause and general non-reliance clause are insufficient.
Merger or Integration Clause—Slide 6
Example of Non-Reliance Clause

“[4.7] The Buyer is a sophisticated purchaser and has made its own independent investigation, review and analysis regarding the Transferred Group and the transactions contemplated hereby, which investigation, review and analysis were conducted by the Buyer together with expert advisors, including legal counsel, that it has engaged for such purpose. The Buyer acknowledges that neither the Seller nor any of its Affiliates or Representatives is making, directly or indirectly, any representation or warranty with respect to any data rooms, management presentations, due diligence discussions, estimates, projections or forecasts involving the Transferred Group. . . . unless any such information is expressly included in a representation or warranty contained in Article III. Nothing in this Section 4.7 is intended to modify or limit any of the representations or warranties of the Seller set forth in Article III.”
IAC Search, LLC v. Conversant LLC at p. 5.

Amendments—Slide 1

• If the parties—and their counsel—have gone to the trouble of negotiating and drafting a contract and executing it, they surely want to stick to the script and be careful about claimed oral changes not upsetting the certainty and predictability of the deal!
• Can the parties prohibit and declare void any oral amendments?

• A lot of case law holds they can’t. Judge Cardozo wrote in Beatty v. Guggenheim Exploration Co., 122 N.E. 378, 381 (N.Y. 1919), “The clause which forbids a change, may be changed like any other. The prohibition of oral waiver may itself be waived. . . . Whenever two men contract, no limitation self-imposed can destroy their power to contract again.”

• In contrast, UCC §2–209(2) provides, “A signed agreement which excludes modification or rescission except by a signed writing cannot be otherwise modified or rescinded, but except as between merchants such a requirement on a form supplied by the merchant must be separately signed by the other party;” and Iowa Code § 489.111(4) states, “An operating agreement in a signed record that excludes modification or rescission except by a signed record cannot be otherwise modified or rescinded.”

Amendments—Slide 2

• Why not try? Almost everyone thinking about it tries to bar oral amendments, requiring amendments only by written agreement. E.g.,

• “Amendments. The parties may amend this Agreement only by the parties’ written agreement that identifies itself as an amendment to this Agreement [and is signed by a Vice President for each company].”
• Parties may also specify by name or by position within a business entity (such as a designated corporate officer), the person required to sign on behalf of each party.
• Effectiveness of the amendment might be further conditioned on delivery of a certified copy of Board resolution authorizing same.
Waiver, Discharge and Termination—Slide 1

- Barring oral amendments doesn’t address waiver, discharge, or termination.
- An amendment, or modification, permanently changes the Agreement.
- Waiver, in contrast, is a one-time dispensation from an obligation or a condition in an Agreement, resulting from the voluntary and intentional relinquishment of a known legal right.
- Discharge terminates a contractual duty and termination ends the Agreement.
- UCC §2-209(4): ‘Although an attempt at modification or rescission does not satisfy subsection 2 . . . , it can operate as a waiver.’

Waiver, Discharge and Termination—Slide 2

- In addition to requiring amendments to be in writing, consider the same for waivers, discharges, and terminations:
  - ‘Waiver. No provision in this Agreement may be waived, except pursuant to a writing executed by the party against whom the waiver is sought to be enforced.’ OR, in addition, state:
  - “No failure or delay in (i) exercising any right or remedy or (ii) requiring the satisfaction of any condition under this Agreement, and no course of dealing between the parties, operates as a waiver or estoppel of any right, remedy, or condition.”
- Will it work? Maybe. Or maybe not!

Assignment and Delegation—Slide 1

Definitions and Some Law

- Assignment means the transfer to a third party of the assignor’s right to receive performance under a contract, while delegation is appointment by a promisor of another person to perform the promisor’s promise.
- Contract rights are assignable unless:
  - substitution of the assignee for the assignor “would materially change the duty of the obligor, or materially increase the burden or risk imposed on him by his contract, or materially reduce its value to him;”
  - forbidden by statute or on grounds of public policy;
  - validly precluded by contract.
- A promisor’s duty to perform under a contract can be delegated unless the delegation is contrary to (i) public policy or (ii) the terms of promisor’s promise or (iii) the other party has a substantial interest in having his original promisor perform or control the acts required by the contract.
Assignment and Delegation—Slide 2
Boilerplate, Interpretation, and Some Questions

• "Neither party may assign this Agreement." What does this mean?
• Prohibition of assignment of "this Agreement" "bars only the delegation to an assignee of the performance by the assignor of a duty or condition," unless circumstances indicate otherwise. Restatement, 2nd, Contacts § 322; UCC § 2-210(4);
• Some Questions: Do you include an assignment and delegation clause?
  • What if the non-delegating party/the promisee would consent?
  • If so, is consent a matter addressed to the promisee’s "sole discretion"?
  • Or may the promisee "not unreasonably withhold consent"?
  • Should consent be conditioned on assignee’s express assumption of duties?
  • Imagine merger, control change, or transfer on death: is there an "assignment"?
  • What if a party does assign? Is the assignment void? Or just a basis for damages?

Assignment and Delegation—Slide 3
Sample Clause

Assignment and Delegation.
(a) No Assignments. No party may assign any of its rights under this Agreement, except with the prior written consent of the other party. That party shall not unreasonably withhold its consent. All assignments of rights are prohibited under this subsection, whether they are voluntary or involuntary, by merger, consolidation, dissolution, operation of law, or any other manner. For purposes of this Section,
(i) a "change of control" is deemed an assignment of rights; and
(ii) "merger" refers to any merger in which a party participates, regardless of whether it is the surviving or disappearing entity.
(b) No Delegations. No party may delegate any performance under this Agreement.
(c) Ramifications of Purported Assignment or Delegation. Any purported assignment or delegation of right or performance in violation of this section is void. [Source: Stark, Drafting Boilerplate, Ch. 3, § 3.14, p. 78.]

Successors and Assigns—Slide 1

• Example: "Successors and Assigns. This Agreement binds and benefits the parties and their respective successors and assigns."
• Assume an assignment of an Agreement by the promisor/assignor to the assignee. Is the assignee obligated to perform the assignor’s duties or obligations to the non-assigning party to the Agreement?
• Again, the modern view is that the assignee is bound, even absent an express assumption of duties. Restatement 2nd, Contracts § 326. In effect courts recognize an implied assumption of performance duties.
• But that wasn’t always clear, still may not universally be followed, and isn’t the best practice (requiring an express assumption is).
• A "Successors and Assigns" clause addresses the relationship between the assignee and the non-assigning party, and it purports to bind the promisor’s assignee to perform even absent an express assumption.
Successors and Assigns—Slide 2
Comments and Drafting Suggestions

- If the Agreement prohibits assignments or only authorizes them in certain circumstances, e.g., upon the written consent of the non-assigning party, there is a risk that the Successors and Assigns clause above could be seen as contemplating and authorizing assignments otherwise barred.
- The word "permitted" should be inserted before "successors" and before "assigns" to eliminate any argument for recognizing unpermitted assignments.
- Assignment means a voluntary transfer; succession does not imply assignment.
- A "successor" is the legal entity resulting from a merger, consolidation, bankruptcy, or other legal transformation. A natural person doesn't have a "successor" and instead has heirs, executors, administrators, and legal representatives, so they should be included explicitly in the provision.

Successors and Assigns—Slide 3
[and No Third Party Beneficiaries]

- "Successors and Assigns. This Agreement binds and benefits the parties and their respective heirs, executors, administrators, legal representatives, permitted successors, and permitted assigns."
- [No Third Party Beneficiaries. No person other than the parties and their respective permitted successors and permitted assigns has any rights or remedies under this Agreement or is an intended beneficiary of this Agreement.]

Governing Law—Slide 1

- Absent a Governing Law provision, the law governing the rights and duties of the parties to a contract, questions of validity, interpretation, performance and breach, enforcement and remedies will be the law of the state that has the most significant relationship to the transaction and to the parties, considering
  - The place of contracting;
  - The place of negotiations;
  - The place of performance;
  - The location of the subject matter of the contract; and
  - The residence or place of organization of the parties.
- A lot is at stake. Parties don't want to leave it litigation to resolve.
Governing Law—Slide 2

• A Governing Law (or Choice of Law) provision establishes the law that will govern a dispute arising from an agreement.
• Courts enforce Governing Law provisions unless state law expressly provides otherwise and dictates that a specific law governs, or unless the transaction bears no reasonable or appropriate relation to the state whose law is selected to govern.
• E.g., UCC § 1-301(a) ("Except as otherwise provided in this section, when a transaction bears a reasonable relation to this state and also to another state or nation, the parties may agree that the law either of this state or of such other state or nation shall govern their rights and duties.")

Governing Law—Slide 3

Stock Clauses and Drafting Issues

• A typical Governing Law clause might read, "Governing Law: This Agreement is to be governed by and construed in accordance with the laws of X or "The law of State X governs all matters with respect to this Agreement."
• But drafted in either way, it would present several problems.
• As drafted, the clause would not be read to require a court in State Y to apply the law of State X to an action other than a contract action, like a tort action—because "all matters" does not include torts—or even one arising under a related contract.
• And what if X's conflicts of law principles lead to application of the law of State Y? That thwarts the parties' intention that X law apply.

Governing Law—Slide 4

A Sample Draft and Drafting Points

• Governing Law: The laws of [insert state name], without giving effect to its conflicts of law principles, govern all matters, including torts, arising under and relating to this Agreement and transactions it contemplates, including its validity, interpretation, construction, performance, and enforcement.
• The phrase "without giving effect to its conflicts of law principles" precludes application of what is known in Conflicts of Law as the renvoi doctrine, so the state whose law is designated to govern will not invoke Conflicts of Laws principles and apply the law of a state which the parties did not want applied.
• The phrase "arising under and relating to" this Agreement takes the Governing Law provision beyond this Agreement to other transactions that are related to the Agreement, and it encompasses torts.
• The phrase "including torts," like a good belt-and-suspenders person, leaves nothing to doubt and makes sure the chosen law governs tort as well as contract claims.
Choice of Forum—Slide 1
Permissive or Mandatory? Enforceable?

- A Choice of Forum clause states that a party [may] [shall] bring any legal action or proceeding to resolve a dispute arising out of or under the Agreement in a specified forum, district, and state. As indicated, the clause may be permissive, or it may be mandatory.

- The U.S. Supreme Court held a contractual forum selection clause presumptively valid and enforceable absent proof that enforcement would be unreasonable. The Bremen v. Zapata Off-Shore Co., 407 U.S. 1 (1972); the Restatement, 2nd, Conflict of Laws §80 is to similar effect (“The parties’ agreement as to the place of the action will be given effect unless it is unfair or unreasonable”), and most state courts—though not all—enforce such a clause unless extremely inconvenient or unless a party would be denied an adequate remedy.

Choice of Forum—Slide 2
Some Practice Concerns

- The perspectives of the parties on the choice of forum may coincide, but certainly not necessarily; this clause is a matter for negotiation, and bargaining power matters.

- Presumably the parties will want the forum selected to be located in the state whose law is chosen.

- But as with any determination of where to bring suit, a host of considerations need to be taken into account:
  - Will the chosen forum be able to exercise personal jurisdiction over a resisting party?
  - Will venue be proper? Though proper, will it be forum non conveniens?
  - How can service of process be effectuated?

Choice of Forum—Slide 3
Sample Clause*

Section X.01. Designation of Forum. Any party bringing a legal action or proceeding against any other party arising out of or relating to this Agreement shall bring the legal action or proceeding in the United States District Court for the [insert District location] District of [insert state name] or in any court of the State of [insert state name] sitting in [insert city name].

Section X.02. Waiver of Right to Contest Jurisdiction. Each party waives, to the fullest extent permitted by law, (a) any objection which it may now or later have to the laying of venue of any legal action or proceeding arising out of or relating to this Agreement brought in any court of the State of [insert state name] sitting in [insert city name] or the United States District Court for the [insert District location] District of [insert state name]; and (b) any claim that any action or proceeding brought of any such court has been brought in an inconvenient forum.

*Source: Tina Stark, Drafting Boilerplate § 6.04, pp. 143-44.
Sample Clause (continued)

- Section X.03. Submission to Jurisdiction. Each party to this Agreement submits to the exclusive jurisdiction of (a) the United States District Court for the [insert District location] District of [insert state name] and its appellate courts; and (b) any court of the State of [insert state name] sitting in [insert city name] and its appellate courts, for the purpose of all legal actions and proceedings arising out of or relating to this Agreement.

- Section X.04. Appointment of Process Agent.

- Section X.05. Service upon Process Agent.

- Section X.06. Alternative Methods of Service of Process.

Severability—Slide 1

- For any of a number of reasons we can imagine, a court may determine that a provision of an Agreement is illegal, invalid, or unenforceable. What does that do to the whole Agreement?

  - Courts have looked to see whether the Agreement is "divisible," involving independent and separable sets of promises or obligations, or whether the provision is "severable" because the unenforceable provision is "not an essential part of the agreed exchange," or whether the entire Agreement should be held unenforceable.

  - See Restatement, 2nd, Contracts §§ 183-184.

Severability—Slide 2

- A carelessly drafted clause—"If any provision of this Agreement is determined to be illegal or unenforceable, the remaining provisions continue to be legal and enforceable."—could be disastrous.

  - Much better would be to state what the Restatement and cases reflect, namely: "If any provision of this Agreement is determined to be illegal or unenforceable, the remaining provisions of this Agreement remain in full force, if the essential provisions of this Agreement for each party remain legal and enforceable."

  - But what are the "essential provisions"?
Severability—Slide 3

• The contract drafters might specify what is "essential."
• Or they might express "essential" in different terms, such as "if both the economic and legal substance of the transactions contemplated by this Agreement are not affected in any manner that is materially adverse to any party."
• Or they might decide, contrary to the usual "severability" provision, that a court determining that a provision is illegal or unenforceable should simply not enforce the Agreement at all.

Cumulative Remedies—Slide 1

• A "cumulative remedies" provision avoids the doctrine of "election of remedies."
• At common law many courts recognized and applied a doctrine of "election of remedies," sometimes invoking it in the different forums of law and equity before they were merged, and at other times recognizing it in order to avoid a double recovery where there had already been a claim made or satisfaction given.
• Today it isn't the law. UCC Article 2, § 2-703, Comment 1 ("This Article rejects any doctrine of election of remedy as a fundamental policy and thus the remedies are essentially cumulative in nature and include all of the available remedies for breach."); Restatement, 2nd, Contracts §378.

Cumulative Remedies—Slide 2

• Accordingly, in drafting a contract, one might well not include a cumulative remedies clause.
• But within any Agreement, there are likely a number of "remedies" provided for varying failures to perform, so it may be desirable to include such a clause, subject to your wanting to specify an exclusive remedy for a certain, specific kind of failure to perform.
• An example is "Cumulative Remedies. The rights and remedies of the parties, both under this Agreement and otherwise now or subsequently available at law or in equity, are cumulative and not exclusive of any other rights and remedies under this Agreement or otherwise now or subsequently available at law or in equity."
Counterparts—Slide 1

• Provision for execution of an Agreement in counterparts was at one time a means for providing parties with duplicate, signed original copies and also a means for preventing fraud.
• Today such a provision is designed
  • to provide for duplicate, signed original copies [FRE Rule 1002 defines an "original" to include "any counterpart intended to have the same effect by the person executing it"], and
  • to accommodate and facilitate execution of an Agreement in multiple location as opposed to a single room where a "Closing" will take place.
• The intention remains, however, to make sure that all of the signed, separate counterparts nevertheless constitute just one agreement.

Counterparts—Slide 2

• A simple counterparts provision might read, 
  "Counterparts. The parties may execute this Agreement in one or more counterparts, each of which is an original, and all of which constitute only one agreement between the parties."
• That language permits the parties to execute duplicate originals that together constitute just one Agreement.
• But it doesn’t address the increasing phenomenon of parties and their counsel closing a deal in different locations.
• The next slide shows a counterparts provision that does so.

Counterparts—Slide 3

Sample Clause

• "Counterparts; Effectiveness of Agreement. The parties may execute this Agreement in one or more counterparts, each of which when executed and delivered is an original, and all of which when executed and delivered constitute only one agreement between the parties. The Agreement must be manually executed, but the exchange of copies of this Agreement and of manually executed signature pages by facsimile or by electronic mail as an attachment in portable document format [.pdf] to the addresses provided in Section ___ [the Notice provision] constitute effective delivery of this Agreement as to the parties and may be used in lieu of the original Agreement for all purposes. [Each party that
Counterparts—Slide 4
Sample Clause (cont’d)
delivers an executed counterpart signature page by facsimile or by electronic mail shall promptly thereafter deliver an original executed signature page to the other party, but failure to do so does not affect the validity, enforceability, or binding effect of this Agreement. This Agreement is not effective until [both] [all] parties have executed and delivered a counterpart of this Agreement.*


Notice—Slide 1
• The provision dealing with Notice is an essential provision. An Agreement is typically replete with instances where Notice is required to be given, and key questions arise:
  • What constitutes a “notice”? Define the term (“Notice” means any notice, demand, request, consent, or other communication.)
  • How may the notice be given?
  • If by mail, what kind?—First class, postage prepaid? Certified Mail? Registered Mail? Certified Mail, Return Receipt Requested?
  • Is notice by means of email acceptable? Risk of spam and other security filters.
  • To whom should notice be addressed? The Party? Counsel? Both? A specific person, or the person occupying a specific position?
  • To what address(es) should the notice be sent?
  • When is the notice effective? When it is sent? Or when it is received?

Notice—Slide 2
Sample Clause*

• Notices.
  • [a] Requirement of a Writing; Permitted Methods of Delivery: Each party giving or making any notice, request, demand or other communication (each, a “Notice”) pursuant to this Agreement shall give the Notice in writing and use one of the following methods of delivery, each of which for purposes of this Agreement is a writing: personal delivery, Registered or Certified Mail (in each case, return receipt requested and postage prepaid), nationally recognized overnight courier (with all fees prepaid), [or facsimile [or email] [except for Notices pursuant to . . .].
Notice—Slide 3
Sample Clause* (cont’d)

• (b) **Addresses and Addresses.** Any party giving a Notice shall address the Notice to the appropriate person at the receiving party (the “Addressee”) at the address listed on the signature page of this Agreement or to another Addressee or another address as designated by a party in a Notice pursuant to this Section [with copy addressed to that Addressee’s counsel].

• (c) **Effectiveness of a Notice.** Except as provided elsewhere in this Agreement, a Notice is effective only if the party giving the Notice has complied with subsections (a) and (b) and if the Addressee has received the Notice.*

* Source, Tina Stark, Drafting Boilerplate, § 15.15, pp. 498-501.

Waiver of Jury Trial—Slide 1

• As everyone knows, the right to a jury trial is Constitutionally secured, both under the U.S. and under State Constitutions.

• But a party might prefer not to have its claim or defense heard by a jury—think corporate defendants—and so would want the other party to waive the right to a jury trial otherwise available.

• Waiver, particularly of a constitutional right, is usually stated to require a knowing, intentional, and voluntary relinquishment of a right.

• So stock language and clauses that surprise the person against whom the apparent waiver is invoked are scrutinized, and unless evidence shows the “waiver” was a voluntary and intentional relinquishment, a court might well decline to enforce a clause purporting to waive the right to a jury trial.

Waiver of Jury Trial—Slide 2
Drafting Advice

• Tina Stark provides excellent drafting advice for this kind of clause.

• “1. Put the waiver of jury trial provision as the last of the general provisions, so that it immediately precedes the signature lines.

• “2. Make the provision prominent by putting it in bold font and in a font size that is larger than that used in the rest of the contract.

• “3. Use a caption that indicates that the right to a jury trial is being waived.

• “4. List the provision in the table of contents, using a caption that indicates the right to a jury trial is being waived.

• “5. Make the provision bilateral.
Waiver of Jury Trial—Slide 3
Drafting Advice (cont’d)

• *6. If the other party is a natural person,
  (a) require that person to initial the provision;
  (b) include a statement that the waiver is knowing, voluntary, and intentional;
  (c) require that person to acknowledge that her lawyer explained the provision; and
  (d) require that person’s lawyer to sign a form stating that he [she] has explained the
  provision and its ramifications to his [or her] client.*

*Source: Tina Start, Drafting Contracts (2nd ed.) § 16.5, pp. 228-29.

Waiver of Jury Trial—Slide 4
Sample Clause

Here’s Tina Stark’s suggested clause:

“Waiver of Right to Jury Trial. Each party knowingly, voluntarily, and intentionally waives its right to a trial by jury in any legal proceeding arising out of or relating to this Agreement and the transactions it contemplates. This waiver applies to any legal proceeding, whether sounding in contract, tort, or otherwise. Each party acknowledges that it has received the advice of competent counsel.”

Questions

• Are there any questions?

Thank you.