IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

ERIC WINTON, solely in his capacity as Seller Representative under the Equity Purchase Agreement dated December 20, 2024, Plaintiff, v. THE NORTH HIGHLAND COMPANY LLC, Defendant.	C.A. No. 2026-0138-LWW

MEMORANDUM OPINION

Date Submitted: August 20, 2026
Date Decided: September 18, 2026

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WILL, Vice Chancellor

Earnout provisions bridge valuation gaps but can leave sellers vulnerable after they cede operational control to the buyer. To protect their contingent upside, sellers may negotiate procedural checks. The sellers here did just that.

The North Highland Company LLC acquired a technology consulting firm, agreeing to an earnout based in part on gross profits from "Qualifying Projects." The governing purchase agreement established a classification process under which the seller representative would notify North Highland of the potential Qualifying Projects, and the parties then would mutually agree on their classification before North Highland submitted a client proposal.

Post-closing, North Highland used its exclusive control over internal systems to withhold information the seller representative needed to identify Qualifying Projects, preventing him from participating in the bargained-for notification and classification process. North Highland also unilaterally excluded projects based on extra-contractual carve-outs. The seller representative now seeks to enforce the bargained-for protective mechanism.

The implied covenant of good faith and fair dealing requires North Highland to provide the limited information necessary to make the purchase agreement's notification and classification process operative. Without that information, the contractual process is thwarted. The required information is, however, far more limited than the plaintiff asserts. The purchase agreement's plain text also governs the meaning of Qualifying Projects, and North Highland may not use the mutual-agreement requirement to inject unwritten exceptions into a negotiated definition. Accordingly, judgment is entered in part for the plaintiff on his expedited claims.

I. BACKGROUND

Unless otherwise noted, the following facts were stipulated to by the parties or proven by a preponderance of the evidence at trial.[1]

A. The Bridge

Plaintiff Eric Winton is a technology consultant.[2] He became the Chief Executive Officer of The Bridge Strategy & Technology Consulting, LLC—a technology consulting firm—in May 2023.[3] Winton was recruited to grow The Bridge's practice with the goal of an eventual liquidity event.[4]

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[1] *See* Joint Submission of Pre-trial Order (Dkt. 82) ("PTO"). Trial occurred over two days, during which three fact witnesses testified live. *See* Trial Trs. Vols. I and II (Dkts. 90-91). Trial testimony is cited as "[Name] Tr. __." The trial record contains 213 joint exhibits and four deposition transcripts. Exhibits are cited by the numbers provided on the parties' joint exhibit list as "JX __," unless otherwise defined. *See* Joint Ex. List (Dkt. 71); Pl.'s Notice of Lodging (Dkt. 85). Deposition transcripts are cited as "[Name] Dep. __."

[2] Winton Tr. 8-9.

[3] *Id.* at 12-13.

[4] *Id.* at 13.

After Winton became CEO, he shifted The Bridge's core business model from contractor-based to employee-based and added new consulting practices.[5] He also led the acquisition of five companies to expand The Bridge's client base.[6]

In early 2024, The Bridge engaged an investment bank to run a competitive sale process.[7] It received over twenty indications of interest that led to six letters of intent—five from private equity firms and one from a strategic bidder, defendant The North Highland Company LLC.[8]

B. The Letter of Intent

North Highland is the U.S. operating entity of a global change management consulting firm.[9] It pitched itself as a strategic buyer offering The Bridge growth capital and a platform to become North Highland's internal data and technology arm.[10] Eager to win the bid, North Highland's Chief Executive Officer Alex Bombeck made a "shut it down" offer to preempt competing bids.[11]

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[5] *Id.* at 14.

[6] *Id.* at 16-17.

[7] *Id.* at 18.

[8] PTO ¶ 8.

[9] *Id.* ¶¶ 9-10; Bombeck Tr. 471-72.

[10] Winton Tr. 24.

[11] *Id.* at 25-26.

On October 1, 2024, North Highland submitted a letter of intent ("LOI") to acquire The Bridge at an enterprise value of $180 million.[12] The offer consisted of $90 million in upfront cash, a $50 million contingent earnout, and $40 million in rolled equity.[13] The Bridge would become North Highland's technology practice and "sell[] into North Highland's Fortune 500 customer base," with Winton leading the practice and reporting directly to Bombeck.[14] The acquisition would "position the combined company to gain market share . . . by cross selling [their] complementary offerings."[15] Though The Bridge would operate as an independent business unit, it would assume the North Highland brand.[16]

The parties negotiated an earnout structure to close the gap between their respective valuations of The Bridge. Bombeck assured Winton that the earnout targets would be a "layup."[17] On October 2, 2024, Winton countersigned the LOI.[18]

C. The Negotiations

After executing the LOI, the parties conducted due diligence and negotiated an Equity Purchase Agreement ("EPA"). North Highland's Chief Commercial

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[12] JX 2.

[13] *Id.*; *see also* JX 3.

[14] JX 2; *see* Winton Tr. 34, 37-38.

[15] JX 2; *see* Winton Tr. 35.

[16] Winton Tr. 38-39.

[17] *Id.* at 30, 40-41.

[18] JX 2 at 6; Winton Tr. 33.

Officer, Barbara Ray, led integration efforts.[19] The parties anticipated that The Bridge would cross-sell services to a subset of North Highland's clients.[20]

On November 8, 2024, North Highland circulated a draft addendum to the EPA outlining the earnout structure (the "Earnout Addendum").[21] The parties executed the EPA on December 20, 2024.[22] Winton also signed an employment agreement to continue as an executive of The Bridge.[23]

D. The EPA

Under the EPA, The Bridge's equity holders (the "Sellers") exchanged their interests for approximately $90 million in cash, $40 million in rolled equity, and an uncapped earnout.[24] Winton was appointed Seller Representative.[25] The earnout targeted $50 million in contingent payments across two years.[26] To receive a payout, The Bridge had to hit 80% of its $25 million annual "Gross Profit" target.[27]

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[19] Ray Tr. 338-39, 399.

[20] JX 5 at 10; Ray Tr. 353-54.

[21] JX 7.

[22] JX 13 ("EPA").

[23] JX 14 at 3.

[24] EPA § 2.8.

[25] *Id.* § 2.7; *see* Winton Tr. 57-58.

[26] *See* JX 2 at 1; Winton Tr. 60.

[27] Winton Tr. 60; EPA Ex. D ("Earnout Addendum") § 1.2.

The "Gross Profit" metric has four components: "Gross Revenue," less "Cost of Goods Sold" and an "Investment Adjustment," plus "Cross Sale Gross Profit."[28] Gross Revenue captures revenue generated directly by The Bridge.[29] Cross Sale Gross Profit captures gross profit from North Highland's operations derived from (1) sales to The Bridge's legacy clients, and (2) any "Qualifying Project."[30]

The Earnout Addendum defines a "Qualifying Project" as "any new project initiated by [North Highland] . . . that primarily (based on revenue) involves the delivery of technology or data analytics services."[31] Because the Sellers ceded operational control to North Highland, Winton viewed this provision as an essential protective mechanism.[32] It ensured that if North Highland sidelined The Bridge from a technology or data project, the Sellers would still receive earnout credit.[33]

The Earnout Addendum sets out a procedure for classifying such projects. Before classification, the Seller Representative "shall notify" North Highland of a potential Qualifying Project, and the parties "shall mutually agree" on the classification.[34] This mutual agreement must occur "prior to the submission of any

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[28] Winton Tr. 63; Earnout Addendum § 1.2.

[29] Earnout Addendum § 1.2.

[30] *Id.*

[31] *Id.*

[32] Winton Tr. 72-74.

[33] *Id.* at 74.

[34] Earnout Addendum § 1.2.

[request for proposal ("RFP")] during [North Highland's] 'Stage 3' internal process."[35] In practice, North Highland uses a staged intake process.[36]

Winton's employment agreement aligned with this structure. It restricted North Highland from exercising its operational discretion in a manner that would "unreasonably interfere with [his] goal of achieving the Earnout."[37]

E. Post-Closing Operations and the Pipeline

On January 7, 2025, after closing, leadership from North Highland and The Bridge met.[38] North Highland presented a plan limiting The Bridge's cross-selling efforts to six or eight specific accounts to achieve a $6 million "go-get" revenue target.[39] Winton countered by proposing a "strike team" to collaboratively pursue strategic accounts.[40]

North Highland uses Salesforce to track customer opportunities through a staged pipeline. Stages 0 through 2 involve ideation and validating a client problem. During Stage 3—the critical sales activity phase—the deal team populates a "pricing tool" with anticipated staffing levels, roles, hours, costs, and proposed rates.[41] This

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[35] *Id.*

[36] Ray Tr. 345-50; *see infra* notes 41-43 and accompanying text (describing the stages).

[37] JX 14 § 1(A).

[38] Winton Tr. 86-87.

[39] Bombeck Tr. 528; Ray Tr. 355-58.

[40] JX 45; Ray Tr. 356-57.

[41] Ray Tr. 345-46.

tool contains information relevant to anticipated revenue and provides the "first objective set of information" indicating "what might compose that project."[42] At the end of Stage 3, a formal proposal or statement of work is submitted to the client.[43]

Winton received Salesforce access about two weeks after closing.[44] Thirty to forty opportunities pass through North Highland's Stage 3 pipeline on a weekly basis.[45]

F. The Earnout Dispute

Tensions soon mounted over the earnout's administration. At a February 2025 managing directors retreat, North Highland's leadership reprimanded Winton for discussing the earnout.[46] Bombeck further instructed North Highland's managing directors not to approach The Bridge without his clearance.[47] Adding to the friction, North Highland claimed that The Bridge would not receive earnout credit for revenue generated by Bridge personnel staffed on North Highland accounts.[48]

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[42] Bombeck Tr. 509; Ray Tr. 396.

[43] Ray Tr. 351.

[44] Winton Tr. 256.

[45] Ray Tr. 341.

[46] Winton Tr. 95.

[47] *Id.* at 96.

[48] *Id.* at 94.

Concerned about potential misalignment, Winton drafted a "plain language" memorandum summarizing his understanding of the Earnout Addendum.[49] On March 5, 2025, Winton walked Bombeck and Ray through the document on a video call.[50] The memo asserted that The Bridge "should have the opportunity to participate, and receive earnout credit, in all projects that are primarily data and technology, regardless of whether it was sourced by [North Highland] . . . or The Bridge Unit."[51] Ray stopped Winton, admitting that she had not read the Earnout Addendum and was learning its terms for the first time.[52]

Later that day, Bombeck emailed Winton and Ray. He wrote that although he had gained a better understanding of Winton's position, he believed the Earnout Addendum was "open to interpretation and likely d[id] [not] effectively represent the business practicality intended."[53] He instructed Winton and Ray to document how the earnout should be "managed and measured."[54]

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[49] JX 22; Winton Tr. 112-13.

[50] JX 22; Winton Tr. 113-15.

[51] JX 22 at 2.

[52] Ray Tr. 362; Winton Tr. 116.

[53] JX 24; Bombeck Tr. 498, 556-57 (testifying that his omission of the word "not" was a typographical error).

[54] JX 24; *see* Bombeck Tr. 499.

G. The “Ways of Working” Document

In late March 2025, Ray circulated a “Ways of Working” document to Winton to govern the parties’ operational interactions.[55] The document outlined a series of anticipated meetings to review potential tech and data project opportunities but excluded certain North Highland clients and geographic regions from earnout credit.[56]

Winton attended the ensuing review meetings but found they fell short of what the Earnout Addendum required.[57] Rather than evaluating the entire pipeline, North Highland provided a curated list of opportunities it had predetermined were eligible for cross-selling consideration.[58] Yet, despite having some access to Salesforce, Winton never formally identified a Qualifying Project or notified North Highland of one during the meetings.[59] Internally, Winton maintained to his legacy Bridge team that he did not agree to North Highland’s extra-contractual carve-outs.[60]

Tensions came to a head during a quarterly all-hands call on April 15. Winton announced to several hundred employees that The Bridge was “open for business”

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[55] JX 34; Ray Tr. 367.

[56] JX 34 at 4; Ray Tr. 368-69.

[57] Winton Tr. 138.

[58] *Id.* at 283-84; Ray Tr. 371.

[59] Winton Tr. 283-84.

[60] JX 28; JX 35.

and encouraged anyone with an opportunity to contact The Bridge directly.[61] The next morning, Ray emailed the executive team "scolding" Winton.[62] She stated that the Earnout Addendum was "specific as to what is included and our need to agree on the opportunity before moving forward," and emphasized that she retained "the decision rights on behalf of North Highland relative to what is in the cross-sell."[63]

H. Winton's Termination

On May 6, 2025, North Highland terminated Winton for cause.[64] He was not given a reason for the termination.[65]

On June 6, Winton emailed North Highland's General Counsel to assert his continued role as Seller Representative.[66] He requested detailed monthly profit and loss statements for The Bridge, along with current pipeline and closed/won reports for North Highland projects tagged as "Data & Technology."[67]

North Highland responded on June 27 by providing a curated pipeline report.[68] The report excluded certain geographic regions and named accounts from earnout

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[61] Winton Tr. 142; Ray Tr. 380-81.

[62] Winton Tr. 144.

[63] JX 43.

[64] JX 47.

[65] Winton Tr. 148-52.

[66] JX 49.

[67] *Id.*; Winton Tr. 159-60.

[68] JX 53.

eligibility.[69] As Ray testified, this and subsequent reports only allowed Winton to "determine what has already been determined to be qualified and primarily tech and data" by North Highland.[70] North Highland did not provide the underlying pricing tools.[71] After receiving the curated reports, Winton never notified North Highland of a project he believed to be a Qualifying Project.[72]

In later correspondence, North Highland maintained that The Bridge must be "meaningfully involved in the sale and delivery of [the] work" to receive earnout credit.[73] In December 2025, Winton's counsel sent a demand letter requesting "real-time" Stage 3 pipeline access to perform his Seller Representative role.[74]

By the end of 2025, The Bridge had generated $50 million in revenue.[75]

I. This Litigation

On January 30, 2026, Winton filed this litigation against North Highland, claiming breach of contract and seeking specific performance, money damages, and declaratory relief.[76] He sought expedition to compel North Highland to fulfill its

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[69] JX 58; JX 63.

[70] Ray Tr. 459.

[71] *Id.* at 461.

[72] Winton Tr. 206.

[73] JX 58.

[74] JX 70.

[75] Ray Tr. 413-14.

[76] Pl.'s Verified Compl. for Breach of Contract and Specific Performance (Dkt. 1).

contractual obligations during the 2026 earnout period.[77] I granted expedition in part, bifurcating the action to resolve four forward-looking issues concerning the 2026 earnout process.[78]

A two-day trial on the expedited matters was held on May 19 and 20, 2026.[79] On June 20, I entered a stipulated order staying proceedings at the parties' request and agreed to "defer issuing a ruling on the [e]xpedited [m]atters while the parties engage in settlement discussions."[80] The order provided that "[i]f a party elects to discontinue settlement discussions . . . or the stay otherwise expires, the parties [would] promptly inform the Court by letter."[81] No such letter was filed. Instead, on August 12, Winton filed a First Amended Verified Complaint.[82]

On August 20, the parties informed me that their settlement talks had failed in early August and asked that I resume resolution of the expedited issues that had been tried in May.[83]

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[77] *See* Pl.'s Mot. for Expedited Proceedings (Dkt. 1).

[78] *See* Tr. of Feb. 9, 2026 Oral Arg. and Rulings of the Ct. on Pl.'s Mot. to Expedite (Dkt. 34) ("MTE Hr'g Tr."); PTO ¶ 2.

[79] *See* Judicial Action Form (Dkt. 88).

[80] Stipulation and Order Temporarily Staying Proceedings to Facilitate Settlement Discussions (Dkt. 93) ¶ 5.

[81] *Id.*

[82] First Am. Verified Compl. (Dkt. 94).

[83] Ltr. Submitting Joint Status Update (Dkt. 96).

II. ANALYSIS

Winton contends that North Highland breached the EPA and Earnout Addendum, entitling him to specific performance of certain forward-looking rights and declaratory relief. "[T]he elements of a breach of contract claim are: (1) a contractual obligation; (2) a breach of that obligation by the defendant; and (3) a resulting damage to the plaintiff."[84] Specific performance is an equitable remedy for a breach of contract. A plaintiff must prove by clear and convincing evidence that he has no adequate remedy at law and that "(1) a valid contract exists, (2) he is ready, willing, and able to perform, and (3) that the balance of equities tips in favor of [the plaintiff]."[85] "[T]o obtain a declaratory judgment, the plaintiff bears the burden of proving each element of his claim by a preponderance of the evidence. 'Proof by a preponderance of the evidence means proof that something is more likely than not.'"[86]

Winton's claims concern the fully integrated EPA and Earnout Addendum, both of which are valid and enforceable contracts governed by Delaware law.[87] Delaware courts interpret contracts "according to their plain, ordinary meaning."[88]

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[84] *H-M Wexford LLC v. Encorp, Inc.*, 832 A.2d 129, 140 (Del. Ch. 2003).

[85] *Osborn ex rel. Osborn v. Kemp*, 991 A.2d 1153, 1158 (Del. 2010).

[86] *Henry v. Phixios Hldgs., Inc.*, 2017 WL 2928034, at *7 (Del. Ch. July 10, 2017) (citation omitted); *see* 10 *Del. C.* § 6506.

[87] EPA §§ 6.4, 6.11.

[88] *Alta Berkeley VI C.V. v. Omneon, Inc.*, 41 A.3d 381, 385 (Del. 2012).

In doing so, the court reviews the contract as a whole and "will give each provision and term effect, so as not to render any part of the contract mere surplusage."[89] "Where the language of a contract is plain and unambiguous, its meaning should be determined without reference to extrinsic facts or aids, and it must be enforced as written."[90]

A. The Earnout Structure and Qualifying Projects

The earnout is one component of "Transaction Consideration" as defined in the EPA.[91] The Earnout Addendum establishes a tiered formula for an earnout payment keyed to Gross Profit thresholds. Gross Profit is calculated as Gross Revenue minus Cost of Goods Sold and the Investment Adjustment, plus Cross Sale Gross Profit.[92]

Cross Sale Gross Profit is the mechanism by which North Highland's operations—outside The Bridge business unit—contribute to the Sellers' earnout. It is defined as:

> one hundred percent (100%) of the gross profit of [North Highland] and its Subsidiaries ***(other than [The Bridge])*** derived from (i) the sale of products and services offered by [North Highland] and its Subsidiaries ***(other than [The Bridge])*** to any

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[89] *In re Shorenstein Hays-Nederlander Theatres LLC Appeals*, 213 A.3d 39, 56 (Del. 2019) (citation omitted).

[90] *Galantino v. Baffone*, 46 A.3d 1076, 1081 n.9 (Del. 2012) (quoting 17A Am. Jur. 2d Contracts § 330).

[91] EPA § 1.1 (defining "Transaction Consideration").

[92] Earnout Addendum § 1.2 (defining "Gross Profit").

> Company Client and (ii) any Qualifying Project, in each case, during such Earnout Payment Period and calculated in accordance with GAAP, as consistently and historically applied by [North Highland]. For the avoidance of doubt, the Cross Sale Gross Profit ***shall exclude any gross profit of [The Bridge]*** or otherwise associated with revenue that is included in the calculation of Gross Revenue.[93]

This definition sets out two paths to generating Cross Sale Gross Profit that count toward the earnout. The first path captures gross profit derived from North Highland or its subsidiaries (other than The Bridge) cross-selling products and services to any "Company Client"—i.e., a client of The Bridge.[94] The second path captures gross profit from a Qualifying Project, as defined in the Earnout Addendum. In either case, Cross Sale Gross Profit excludes The Bridge's own gross profit and gross profit associated with revenue already included in Gross Revenue. The exclusion prevents double counting; it does not prohibit The Bridge from participating in the same project.

Because the Sellers ceded operational control of The Bridge business unit at closing, North Highland held significant control over the Sellers' ability to obtain the earnout. The Qualifying Project component of Cross Sale Gross Profit protected the Sellers against North Highland preventing The Bridge from working on

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[93] Earnout Addendum § 1.2 (defining "Cross Sale Gross Profit") (emphasis added).

[94] *Id.* (defining "Company Client" and "Cross Sale Gross Profit").

engagements that generated earnout-qualifying Gross Profit.[95] The Earnout Addendum both defines a Qualifying Project and outlines a procedural mechanism for the Seller Representative to identify a Qualifying Project at a specific stage of North Highland's RFP process.[96] The contours of the Qualifying Project definition are at the center of the expedited issues.

B. The Expedited Issues

The parties tried four expedited issues: (1) whether North Highland must provide the Seller Representative with access to its sales pipeline and pricing tools to identify Qualifying Projects; (2) whether the definition of Qualifying Project is limited to the single revenue-based criterion in the Earnout Addendum; (3) whether the mutual-agreement requirement in the Qualifying Project definition prohibits North Highland from exercising a veto based on extra-contractual criteria; and (4) whether North Highland must provide separate 2026 business unit profit and loss statements before delivery of the earnout statement.

1. <u>Pipeline Access to Qualifying Projects</u>

The first expedited issue is whether North Highland must grant the Seller Representative contemporaneous access to its 2026 sales pipeline and pricing tools sufficient to identify and notify North Highland of potential Qualifying Projects.

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[95] *See* Winton Tr. 72-73; Riggs Dep. 74-75.

[96] Earnout Addendum § 1.2 (defining "Qualifying Project").

The Earnout Addendum requires the Seller Representative, as a condition to classification, to "notify" North Highland of any potential Qualifying Project so that the parties may "mutually agree" on its classification "prior to the submission of any RFP during [North Highland's] 'Stage 3' internal process."[97] But the agreement does not address how the Seller Representative is to access North Highland's internal systems and information to identify these projects.

Winton invokes the implied covenant of good faith and fair dealing to challenge North Highland's withholding of information needed to participate in that process. He seeks an order of specific performance "requiring North Highland to provide the Seller Representative, contemporaneously and before any Stage 3 RFP submission to a customer," categories of Salesforce and pricing-tool documents that he obtained in discovery.[98] North Highland counters that the Seller Representative lacks information rights at this stage, pointing to Section 1.3 of the Earnout Addendum, which grants him "reasonable access" to working papers after an earnout statement is issued.[99] North Highland also argues that the implied covenant cannot supply a right to contemporaneous information since Winton failed to secure it at the bargaining table.[100]

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[97] *Id.*

[98] Pl.'s Corrected Opening Pre-trial Br. (Dkt. 73) ("Pl.'s Opening Br.") 49; *see* PTO ¶ 62(a).

[99] Earnout Addendum § 1.3(b).

[100] Def.'s Pre-trial Answering Br. (Dkt. 74) ("Def.'s Answering Br.") 37-40.

I conclude that the implied covenant of good faith and fair dealing prohibits North Highland from arbitrarily withholding the data necessary for the Seller Representative to participate in the contractual notification and classification process, but not as broadly as Winton contends. The scope of this implied constraint is narrow and does not include real-time pipeline access. Rather, to prevent the frustration of the parties' bargain, North Highland must periodically provide—before any Stage 3 RFP submission—the Salesforce and pricing-tool data necessary for the Seller Representative to determine whether a project is a Qualifying Project.

a. The Implied Covenant of Good Faith and Fair Dealing

The Earnout Addendum defines a "Qualifying Project" as:

> any new project initiated by [North Highland] and its Subsidiaries (other than [The Bridge]) that primarily (based on revenue) involves the delivery of technology or data analytics services provided, however, that, prior to any new project being classified as a Qualifying Project, ***the Seller Representative shall notify*** [North Highland] and its Subsidiaries of such project and ***the Buyer and the Seller Representative shall mutually agree*** as to whether such project constitutes a Qualifying Project prior to the submission of any RFP during [North Highland's] "Stage 3" internal process.[101]

The proviso in this definition establishes a sequence of events. First, "[p]rior to" the classification of a Qualifying Project, the Seller Representative "shall notify" North Highland of "such project."[102] After the Seller Representative's notification, the

[101] Earnout Addendum § 1.2 (defining "Qualifying Project") (emphasis added).
[102] *Id.*

parties "shall mutually agree" on whether it constitutes a Qualifying Project before North Highland submits any RFP for the project during its Stage 3 process.[103] Winton asserts that the Earnout Addendum contains an implied constraint prohibiting North Highland from withholding the data necessary for him to engage in this process.

The implied covenant can function as a "limited 'gap-filler'" that "enforces the parties' reasonable expectations in circumstances that they could not foresee and did not address in their written agreement, but it may not be used to rewrite or contradict express terms."[104] Applying it is a "cautious enterprise."[105] A court will not rewrite a contract simply because a party later wishes it had negotiated a better deal.[106] But the court may "imply contract terms when the party asserting the implied covenant proves that the other party has acted arbitrarily or unreasonably, thereby frustrating the fruits of the bargain that the asserting party reasonably expected."[107] The implied covenant also constrains the exercise of contractual

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[103] *Id.*

[104] *Johnson & Johnson v. Fortis Advisors LLC*, 352 A.3d 229, 251 (Del. 2026).

[105] *Nemec v. Shrader*, 991 A.2d 1120, 1125-26 (Del. 2010).

[106] *Id.* at 1126.

[107] *Id.*

discretion where necessary to preserve the parties' reasonable expectations at signing.[108]

Here, the implied constraint concerns North Highland's control over implementation of the agreed-upon notification and classification process. The Earnout Addendum makes the Seller Representative's notification a prerequisite to classification. That process requires information about a project's anticipated services and revenue composition. North Highland cannot demand strict compliance with this condition precedent while wielding its exclusive control over its systems to arbitrarily withhold the sole means of effectuating it.

North Highland counters that the implied covenant is inapplicable because Winton's termination as an at-will employee—and the resulting loss of his information access—were foreseeable.[109] It asserts that the lack of an express information right in the Earnout Addendum is an intentional omission, not a contractual gap.[110] For support, it cites the settled principle that the implied covenant cannot supply contractual protections a party failed to secure at the bargaining table.[111]

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[108] *Johnson & Johnson*, 352 A.3d at 253.

[109] *See Oxbow Carbon & Mins. Hldgs., Inc. v. Crestview-Oxbow Acq., LLC*, 202 A.3d 482, 507 (Del. 2019) (declining to apply the implied covenant where the contract terms were clear and the events could have been anticipated).

[110] Def.'s Answering Br. 38-40.

[111] *See, e.g.*, *Winshall v. Viacom Int'l, Inc.*, 76 A.3d 808, 816 (Del. 2013).

North Highland's arguments are misplaced and conflate Winton's employment with his separate role as Seller Representative. Winton is not claiming a free-floating information right. He seeks information to satisfy the notification condition and to participate in the agreed-upon Qualifying Project classification process. The Earnout Addendum assigns that process to the Seller Representative. The relevant inquiry is whether, at signing, the parties reasonably understood that the agreed-upon classification process required North Highland to provide the information necessary for the Seller Representative to participate, regardless of his continued employment.

Under North Highland's interpretation of the Earnout Addendum, the carefully negotiated Qualifying Project definition and Stage 3 procedural check would be rendered illusory unless North Highland chooses to provide information necessary for Winton to participate.[112] Although the implied covenant cannot rewrite a contract term, it may constrain a party "from arbitrary or unreasonable conduct" that prevents the counterparty "from receiving the fruits of the bargain."[113] Withholding the data necessary to identify potential Qualifying Projects blocks the

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[112] North Highland has declined to extend such access.

[113] *Nemec*, 991 A.2d at 1128; *see Johnson & Johnson*, 352 A.3d at 258 n.145 (distinguishing an impermissible change to a regulatory requirement from an implied constraint on discretion that preserves bargained-for procedural protections (citing *Dieckman v. Regency GP LP*, 155 A.3d 358 (Del. 2017))); *see also Osborn*, 991 A.2d at 1159 (explaining that Delaware courts "will not read a contract to render a provision or term meaningless or illusory").

Seller Representative from engaging in the very classification process the Earnout Addendum contemplates.[114]

North Highland also argues that the court should not recognize an implied obligation because the parties knew how to—and did—negotiate for express information rights elsewhere in the EPA.[115] It points to Earnout Addendum Section 1.3, which gives the Seller Representative "reasonable access" to working papers in connection with his review of the earnout statement.[116]

This argument conflates distinct mechanisms. Section 1.3 addresses a retrospective review after an earnout statement has been delivered to the Seller Representative.[117] Section 1.4(a) preserves North Highland's authority to operate the business.[118] Neither provision addresses how the Seller Representative will obtain information to classify projects under the Qualifying Project definition. Read together, these provisions support finding a limited implied constraint that preserves

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[114] *Cf. Riverbend Cmty., LLC v. Green Stone Eng'g, LLC*, 55 A.3d 330, 334 (Del. 2012) (explaining that a court construing a Delaware contract must "give priority to the parties' intentions as reflected in the four corners of the agreement" and "must construe the agreement as a whole, giving effect to all provisions therein").

[115] Def.'s Answering Br. 38-39.

[116] *See* Earnout Addendum § 1.3.

[117] *Id.*

[118] *Id.* § 1.4(a).

the parties' bargain without creating a general right to monitor North Highland's business.[119]

b. The Scope of the Implied Constraint

The implied covenant does not entitle the Seller Representative to unrestricted pipeline access. It imposes only the minimum constraint necessary to protect the parties' bargain.[120] Here, Winton is entitled only to the data required to determine whether a project is a Qualifying Project so that he can notify North Highland and engage in the mutual-agreement process.

Winton insists that he should receive the same universe of information North Highland produced to him in discovery.[121] This includes pipeline information for all projects in Stages 0 to 3, pricing-tool information for projects proceeding from Stages 2 to 3, and related Salesforce materials.[122] But the scope of discovery was

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[119] This limited constraint does not alter the contractual allocation of risk. In *Nemec v. Shrader*, for example, the challenged redemption was authorized by the agreement's terms. 991 A.2d at 1126-28. In *Johnson & Johnson v. Fortis Advisors LLC*, the proposed implied term would have substituted a different regulatory approval pathway for the one the parties selected. 352 A.3d at 253-58. Here, the constraint changes neither the substantive eligibility requirements nor the notification and mutual-agreement conditions. It prevents North Highland from arbitrarily undermining the process the parties adopted.

[120] *See Gerber v. Enter. Prods. Hldgs., LLC*, 67 A.3d 400, 419 (Del. 2013), *overruled on other grounds by Winshall*, 76 A.3d 808 (explaining that the implied covenant contemplates "faithfulness to the scope, purpose, and terms of the parties' contract"). That focus on scope requires the implied covenant to be measured against the contractual obligation at issue—not to expand the parties' bargain beyond that obligation.

[121] *See* Pl.'s Opening Br. 49.

[122] PTO ¶ 62(a); *see* JX 78 at 6-7.

governed by the relevance standard applicable to his breach of contract claims.[123] That standard has no bearing on the scope of his contractual right, which is governed by the EPA and Earnout Addendum.

The Seller Representative is only entitled to the information necessary to determine whether a project "primarily (based on revenue) involves the delivery of technology or data analytics services."[124] He does not need every document generated in connection with a project to make that assessment. Nor is he entitled to contemporaneous access to North Highland's systems. Instead, a periodic report of the data necessary for the Seller Representative to make a Qualifying Project determination before an RFP is submitted in Stage 3 is sufficient to uphold the parties' bargain.

c. North Highland's Breach

Without pipeline visibility, the Seller Representative cannot notify North Highland of a potential Qualifying Project. As discussed, the implied covenant prohibits North Highland from unreasonably restricting the data necessary to satisfy that notification condition.[125] The record demonstrates that North Highland

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[123] *See* JX 205; *see also* Ct. Ch. R. 26.

[124] Earnout Addendum § 1.2. The defendant's arguments about the definition of Qualifying Project are addressed in the context of Issue 2, below. *See infra* Section II.B.2.

[125] *See supra* Section II.B.1.a.

breached this implied constraint by depriving Winton of access to the data needed to do so.

North Highland exploited its exclusive control over its internal systems to frustrate the Qualifying Project notification process. It not only withheld pricing tools, but also provided curated pipeline reports that omitted projects it unilaterally deemed ineligible.[126] Even for the projects it disclosed to Winton, the provided pipeline reports were inadequate because they lacked information identifying whether a project involved technology or data analytics.[127] For instance, the "Amount" field in the pipeline reports supplied the project's top-line gross contract value, which describes how much the project is worth, but obscured what was actually being sold.[128] The pricing tool, by contrast, generates the line-item allocation necessary to perform the Earnout Addendum's revenue-based assessment.[129]

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[126] *See* Ray Tr. 461; *id.* at 459 (confirming the pipeline report allowed Winton only to "determine what has already been determined to be qualified and primarily tech and data" by North Highland); Winton Tr. 172-73.

[127] *See* JX 63.

[128] For example, if North Highland pitches a $1,000,000 project, the "Amount" column will list $1,000,000. But Winton has no way of knowing if that represents $900,000 in data analytics work (a Qualifying Project) or $900,000 in change management services with a $100,000 tech add-on (a non-Qualifying Project).

[129] *See, e.g.*, JX 81 (native).

The deprivation of this data irreparably harms the Sellers. Money damages awarded after the 2026 earnout period closes cannot adequately remedy this harm. Once a project passes Stage 3 without the Seller Representative's involvement, the opportunity for timely participation in the contractual process is lost. Although the classification standard is objective, its application requires a contemporaneous assessment of projected revenue and the assumptions underlying it. A retrospective inquiry cannot reliably establish which projects the Seller Representative would have brought forward, how the parties would have evaluated those projects, or what outcome would have been reached. Indeed, the parties stipulated in Section 6.14 of the EPA that a breach would cause "irreparable damage" and waived any defense that a remedy at law would be adequate.[130]

d. Specific Performance

Winton has proven "by clear and convincing evidence" that he is "entitled to specific performance" and "has no adequate legal remedy."[131] The Earnout Addendum is valid. He stands ready to perform.[132] North Highland is in breach.[133]

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[130] EPA § 6.14; *see Martin Marietta Materials, Inc. v. Vulcan Materials Co.*, 68 A.3d 1208, 1227 (Del. 2012) (explaining that Delaware courts consistently enforce contractual stipulations of irreparable harm and waivers of the adequate-remedy-at-law defense, provided that the facts support a finding of irreparable harm).

[131] *Osborn*, 991 A.2d at 1158; *see supra* note 85 and accompanying text (summarizing the elements required to obtain specific performance).

[132] Winton Tr. 178-79.

[133] *See supra* Section II.B.1.c.

Money damages are inadequate because they cannot reliably compensate for the lost opportunity to participate in the contractual classification process before a project passes Stage 3.[134] Finally, the balance of the equities favors enforcement because the burden to North Highland of providing limited reports and supplemental disclosures is outweighed by the continuing deprivation of the Sellers' bargained-for procedural protection.

Winton seeks broad data access because the information he ostensibly needs varies by project.[135] But equity demands that this remedy be tailored to only the minimum data necessary for the Seller Representative to participate in the classification and mutual-agreement process. North Highland must provide the pricing-tool output showing the revenue allocation between technology or data analytics services and other services. It need not provide the complete pricing tool or portions containing highly confidential information that are extraneous to the Qualifying Project determination. A periodic reporting requirement also strikes the

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[134] *Cf. Fortis Advisors, LLC v. Krafton, Inc.*, 354 A.3d 906, 953 n.435 (Del. Ch. 2026) (extending the contractual earnout period by the duration of the CEO's wrongful ouster to restore the sellers' opportunity to achieve the earnout and ensure that specific performance "is not illusory").

[135] *See* Winton Tr. 219.

appropriate balance. North Highland's own proposed process contemplates biweekly reporting, confirming that such a mechanism is administrable.[136]

North Highland must provide reports every two weeks identifying projects entering or moving through Stage 3 for which an RFP has not yet been submitted. The information must include the Salesforce fields necessary to identify the project—such as Opportunity Name, Stage, Amount, Account, and comparable identifying information. It must also include the corresponding pricing-tool output showing the revenue allocation between technology or data analytics services and other services for projects entering or moving through Stage 3. If a project will reach the submission deadline before the next scheduled report, North Highland must provide a supplemental disclosure sufficiently in advance to afford the Seller Representative a meaningful opportunity to notify North Highland of the potential Qualifying Project and participate in the mutual-agreement process. The biweekly reporting schedule does not excuse compliance with this requirement.

The procedure must not, however, create unnecessary delay in North Highland's sales process. North Highland's pipeline moves quickly: approximately 750 opportunities are in Stage 3 at any given time, 30 to 40 new opportunities enter

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[136] *See* Def.'s Mot. to Vacate Scheduling Order for Expedited Proceedings as Moot (Dkt. 40) Ex. 1 (offering certain information to the Seller Representative "[e]very two weeks").

Stage 3 each week, and a project may move from Stage 3 to Stage 4 within hours.[137] Given that pace, the Seller Representative cannot hold up North Highland's process by failing to respond promptly once information is delivered. The implementing order should establish response deadlines for regular and supplemental disclosures, address incomplete or materially revised disclosures, and provide a procedure for time-sensitive projects.

2. <u>The Definition of "Qualifying Project"</u>

The second expedited issue is whether the definition of "Qualifying Project" is governed solely by the revenue-based criterion in the Earnout Addendum, or whether North Highland may apply extra-contractual carve-outs.[138] Winton contends that the contract's plain text controls. I agree. The Earnout Addendum's substantive classification test is complete, unambiguous, and excludes the industry-based "cross-sell" limitations North Highland has applied. As such, extrinsic evidence is irrelevant.[139]

The Qualifying Project definition in Section 1.2 of the Earnout Addendum has two parts, followed by a procedural proviso. First, a project must be "new" and

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[137] *See* Ray Tr. 341-42.

[138] PTO ¶ 62(b).

[139] *See Sunline Com. Carriers, Inc. v. CITGO Petroleum Corp.*, 206 A.3d 836, 846 (Del. 2019) ("'When the contract is clear and unambiguous, we will give effect to the plain-meaning of the contract's terms and provisions,' without resort to extrinsic evidence." (citation omitted)).

"initiated by [North Highland] and its Subsidiaries (other than [The Bridge])."[140] This language establishes the threshold eligibility for a Qualifying Project; neither party debates its meaning.

Second, the definition supplies one substantive classification criterion: the project "primarily (based on revenue) involves the delivery of technology or data analytics services."[141] This language is clear and unambiguous. It imposes an objective, revenue-based measure at the project's inception. The Earnout Addendum supplies no exceptions to this definition.

North Highland insists that Qualifying Projects "were intended to be projects for which [The] Bridge was cross-selling services to certain North Highland customers."[142] It relies on the defined term Cross Sale Gross Profit, arguing that the term's title contemplates cross-selling.[143] That argument does not comport with the term's definition, which lacks any requirement that The Bridge participate in, sell, staff, or perform a Qualifying Project for the resulting gross profit to count toward the earnout. The definition also expressly excludes from Cross Sale Gross Profit

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140 Earnout Addendum § 1.2.

141 *Id.* (defining "Qualifying Project").

142 Def.'s Answering Br. 52.

143 *See id.* at 48-50; Earnout Addendum § 1.2 (defining "Cross Sale Gross Profit").

"any gross profit of the Business Unit or otherwise associated with revenue that is included in the calculation of Gross Revenue."[144]

The structure of the definitions in the Earnout Addendum is consistent with this reading. Cross Sale Gross Profit excludes "any gross profit of the Business Unit" and gross profit associated with revenue already included in Gross Revenue. These exclusions prevent double counting; they do not impose a requirement that The Bridge participate in a Qualifying Project. Whether a project qualifies turns on the express terms of the Qualifying Project definition, which contains no such requirement.

North Highland separately invokes the Qualifying Project definition's mutual-agreement proviso to inject extra-contractual criteria.[145] That argument fails. The mutual-agreement clause is a procedural mechanism for applying the substantive revenue-based test to live projects. It is not a means to keep projects from being presented to the Seller Representative in the first place.[146]

Accordingly, Winton is entitled to a declaration that, subject to the definition's express requirements concerning a project's initiation and the notification and mutual-agreement process, classification of a Qualifying Project depends on whether

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[144] Earnout Addendum § 1.2.

[145] *See* Def.'s Answering Br. 56-58.

[146] The scope of the mutual-agreement requirement is addressed fully as Issue 3, below.

the project primarily, based on revenue, involves the delivery of technology or data analytics services. The dispute is ripe, concerns a concrete controversy between adverse parties regarding a contract's meaning, and is capable of resolution by declaration.[147] North Highland's carve-outs are foreclosed by the plain, unambiguous text of the Earnout Addendum.

3. The Mutual-Agreement Requirement

The third expedited issue is whether the mutual-agreement clause in the Qualifying Project definition operates as a procedural check or a substantive veto.[148] The provision requires that the parties "mutually agree as to whether such project ***constitutes*** a Qualifying Project prior to the submission of any RFP" in Stage 3.[149] Winton asserts that the clause merely requires the parties to verify whether a project meets the revenue-based criterion.[150] North Highland responds that the provision imposes no limitation on the criteria North Highland may consider, permitting it to

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[147] *See* 10 *Del. C.* § 6501; *Stroud v. Milliken Enters., Inc.*, 552 A.2d 476, 479-80 (Del. 1989).

[148] PTO ¶ 62(c).

[149] Earnout Addendum § 1.2 (defining "Qualifying Project") (emphasis added).

[150] Pl.'s Opening Br. 42-43.

withhold agreement based on operational factors such as capacity, skill sets, and business continuity.[151]

The text of the provision concerns whether a project "constitutes" a Qualifying Project.[152] The plain meaning of "constitute" is to make up, form, or compose.[153] The mutual-agreement step is thus a verification exercise in which the parties apply the single, revenue-based criterion addressed above to the facts of a given project. It is a procedural mechanism, not a license for North Highland to withhold classification based on extra-contractual operational considerations.

North Highland maintains that this reading cannot be squared with Section 1.4(a) of the Earnout Addendum, which grants it the right to "own and operate the Business Unit and the Company and its Subsidiaries in any way that [North Highland] and its Affiliates deem appropriate, in their sole discretion," notwithstanding anything to the contrary therein.[154] I disagree. Section 1.4(a) governs whether and how North Highland operates its business—which projects to pursue, staff, or continue. But once North Highland initiates a project that satisfies

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[151] Bombeck Tr. 506.

[152] Earnout Addendum § 1.2 (defining "Qualifying Project").

[153] *See* "Constitute," Merriam-Webster, www.merriam-webster.com/dictionary/constitute (last visited Sept. 8, 2026) (defining "constitute" as "make up, form, compose"); *Sanyo Elec. Co., Ltd. v. Intel Corp.*, 2021 WL 747719, at *9 (Del. Ch. Feb. 26, 2021) (explaining that "constitute" is synonymous with "form, make up," indicating equivalency between a subject and the category it purportedly satisfies).

[154] Earnout Addendum § 1.4(a).

the Qualifying Project criterion, the process contemplated by Section 1.2 of the Earnout Addendum is triggered. North Highland's operational discretion is undisturbed by this verification step. It simply cannot withhold its agreement based on extra-contractual criteria.

North Highland further argues that Winton's reading renders the mutual-agreement clause itself superfluous.[155] Not so. At Stage 3, a project has not yet generated actual revenue.[156] The mutual-agreement step serves the practical purpose of requiring the parties to verify projected revenue composition and staffing assumptions before an RFP is submitted.[157] This reading gives the clause independent effect without subsuming the definition it qualifies.

Winton is therefore entitled to a declaration that the Earnout Addendum prohibits North Highland from withholding agreement based on extra-contractual criteria.[158]

4. Separate Business Unit Records

The fourth expedited issue is whether North Highland must *provide* separate 2026 business unit profit and loss statements to permit real-time monitoring of the

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[155] Def.'s Answering Br. 51.

[156] *See* Ray Dep. 89.

[157] *See id.* at 255-56.

[158] *See supra* note 147 and accompanying text (explaining that Winton has met the declaratory judgment standard).

earnout.[159] Winton conceded at his deposition that he lacks an ongoing right to access these materials before the delivery of the earnout statement, effectively abandoning this claim.[160] Recognizing this defect, he attempted to pivot on the eve of trial to a claim regarding North Highland's duty to *maintain* those records.[161]

This belated change is procedurally improper and prejudicial to North Highland. I expedited a narrow claim concerning the provision of information—not the maintenance of records. To permit Winton to unilaterally substitute an unexpedited claim in a fast-moving proceeding would deprive North Highland of fair notice and the opportunity to conduct targeted discovery.

Because Winton abandoned the expedited claim on this subject, and no claim regarding the duty to maintain records was expedited, I deny the request for such relief without prejudice to his ability to raise it during the non-expedited portion of this case.

III. CONCLUSION

For the foregoing reasons, judgment is entered for Winton on the adjudicated, expedited claims. Winton is entitled to specific performance requiring North Highland to provide the Salesforce and pricing-tool data necessary to prevent the

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[159] *See* MTE Hr'g Tr. 34-35.

[160] *See* Winton Dep. 74.

[161] *See* PTO ¶ 62(d).

frustration of the contractual notification and classification process. He is also entitled to declarations that the Qualifying Project classification is governed by the Earnout Addendum's revenue-based criterion, subject to the express initiation and procedural requirements, and that North Highland may not withhold its agreement based on extra-contractual criteria. Winton's request for relief concerning separate business unit records is denied without prejudice. The parties must confer on and file a proposed final order implementing this decision within three business days, unless the parties mutually request additional time.