

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

CONEXANT SYSTEMS, INC., *et al.*,¹

Debtors.

) Chapter 11

) Case No. 13-10367 ()

) Joint Administration Requested

**DEBTORS' APPLICATION FOR ENTRY OF AN
ORDER PURSUANT TO 28 U.S.C. §156(c) AUTHORIZING THE
EMPLOYMENT AND RETENTION OF BMC GROUP, INC. AS CLAIMS AND
NOTICING AGENT, EFFECTIVE *NUNC PRO TUNC* TO THE PETITION DATE**

Conexant Systems, Inc. and its debtor affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “*Debtors*”),² respectfully represent:

Jurisdiction

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).
2. Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The bases for the relief requested herein are section 156(c) of title 28 of the United States Code (the “*Judicial Code*”), section 503(b) of the Bankruptcy Code, Rules 2002-

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal taxpayer-identification number, are: Conexant Systems, Inc. (9439); Conexant CF, LLC (6434); Brooktree Broadband Holding, Inc. (5436); Conexant, Inc. (8218); and Conexant Systems Worldwide, Inc. (0601). The Debtors' main corporate address is 4000 MacArthur Blvd., Newport Beach, California 92660

² A detailed description of the Debtors and their businesses, and the facts and circumstances supporting this motion and the Debtors' chapter 11 cases, are set forth in greater detail in the Declaration of Sailesh Chittipeddi, President and CEO of Conexant Systems, Inc., in Support of First Day Pleadings (the “*First Day Declaration*”), filed contemporaneously with the Debtors' voluntary petitions for relief filed under chapter 11 of title 11 of the United States Code (the “*Bankruptcy Code*”), on February 28, 2013 (the “*Petition Date*”).

1(f) and 9013-1(m) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”) and the Court’s *Protocol for the Employment of Claims and Noticing Agents under 28 U.S.C. § 156(c)*, instituted by the Clerk on February 1, 2012 (the “**Claims Agent Protocol**”).

Relief Requested

4. By this application (the “**Application**”), the Debtors request entry of an order, substantially in the form attached hereto as **Exhibit A** (the “**Order**”), (a) authorizing the Debtors to employ and retain BMC Group, Inc. (“**BMC**”) as notice and claims agent in these chapter 11 cases, pursuant to the terms and conditions set forth in the services agreement between the Debtors’ and BMC dated as of February 7, 2103 (a copy of which is annexed as **Exhibit 1** to **Exhibit A** attached hereto and incorporated herein by reference) (the “**Services Agreement**”) and (b) approving the terms of BMC’s employment and the indemnification provisions set forth in the Services Agreement (as modified pursuant to this Application). In support of this application, the Debtors submit the Declaration of Tinamarie Feil, President of Client Services (the “**Feil Declaration**”), a copy of which is attached hereto as **Exhibit B**.

BMC’s Qualifications

5. The Debtors believe that they may have at least a few thousand potential creditors and parties-in-interest that must be given notice of developments related to these chapter 11 cases. With such a significant number of parties involved in these chapter 11 cases, it is likely that heavy administrative burdens will be imposed upon the Court and the Clerk of the United States Bankruptcy Court for the District of Delaware (the “**Clerk’s Office**”). To relieve the Clerk’s Office of these burdens and comply with the Local Rules, the Debtors seek to engage BMC as an independent, third-party notice and claims agent to effectively and efficiently serve

notice upon all creditors and other relevant constituencies in these chapter 11 cases, as well as transmit, receive, docket and maintain all proofs of claim and proofs of interest filed in these chapter 11 cases.

6. BMC is a claims administration firm that specializes in chapter 11 administration, consulting and analysis, including noticing, claims processing, voting and other tasks in the effective administration of chapter 11 cases. BMC has developed efficient and cost-effective methods to handle the voluminous mailings associated with chapter 11 noticing and claims processing that ensure the orderly and fair treatment of creditors, interest holders and all parties in interest. The Debtors believe that such assistance will expedite service of notices, streamline the claims administration process and enable the Debtors to focus on their reorganization efforts.

7. Further, BMC has experience working with, and will continue to work with, the Clerk's Office to ensure that BMC's services conform with all of the Court's procedures, the Local Rules and any orders entered by this Court. BMC's experience in matters of this size and complexity (or greater) in which it has acted as the official notice and claims agent in this District is extensive. *See, e.g., In re Coach AM Group Holdings Corp.*, No. 12-10010 (KG); *In re Graceway Pharmaceuticals, LLC*, No. 11-13036 (MFW); *In re Regen Biologics, Inc.*, No. 11-11083 (PJW); *In re Urban Brands, Inc.*, No. 10-13005; *In re Ultimate Escapes Holdings, Inc.*, No. 10-12915 (BLS); and (KJC); *In re W.R. Grace & Co.*, No. 01-01139 (JKF). Furthermore, BMC has acted as the official notice, claims and balloting agent in large chapter 11 cases outside this District. *See, e.g., In re Atari, Inc.*, No. 13-10176 (JMP) (Bankr. S.D.N.Y. Feb. 15, 2013) (authorizing the retention of BMC Group, Inc. as claims and noticing agent); *In re Jennifer Convertibles, Inc.*, No. 10-13779 (ALG) (Bankr. S.D.N.Y. July 22, 2010) (same).

Services Performed

8. In accordance with the terms and conditions of the Services Agreement, and in compliance with Local Rule 2002-1(f), it is anticipated that BMC will perform the services required pursuant thereto (and noted below), as well as any additional services at the request of the Debtors or the Clerk's Office.

9. Specifically, the Debtors seek to engage BMC to provide certain noticing and claims processing services, including:

- a. Prepare and serve required notices and documents in the cases in accordance with the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure (the "***Bankruptcy Rules***") in the form and manner directed by the Debtors and/or the Court, including (i) notice of the commencement of the cases and the initial meeting of creditors under Bankruptcy Code § 341(a), (ii) notice of any claims bar date, (iii) notices of transfers of claims, (iv) notices of objections to claims and objections to transfers of claims, (v) notices of any hearings on a disclosure statement and confirmation of the Debtors' plan or plans of reorganization, including under Bankruptcy Rule 3017(d), (vi) notice of the effective date of any plan and (vii) all other notices, orders, pleadings, publications and other documents as the Debtors or Court may deem necessary or appropriate for an orderly administration of the cases.
- b. Maintain an official copy of the Debtors' schedules of assets and liabilities and statement of financial affairs (collectively, "***Schedules***"), listing the Debtors' known creditors and the amounts owed thereto;
- c. Maintain (i) a list of all potential creditors, equity holders and other parties-in-interest; and (ii) a "core" mailing list consisting of all parties described in sections 2002(i), (j) and (k) and those parties that have filed a notice of appearance pursuant to Bankruptcy Rule 9010; update said lists and make said lists available upon request by a party-in-interest or the Clerk;
- d. Furnish a notice to all potential creditors of the last date for the filing of proofs of claim and a form for the filing of a

proof of claim, after such notice and form are approved by this Court, and notify said potential creditors of the existence, amount and classification of their respective claims as set forth in the Schedules, which may be effected by inclusion of such information (or the lack thereof, in cases where the Schedules indicate no debt due to the subject party) on a customized proof of claim form provided to potential creditors;

- e. Maintain a post office box or address for the purpose of receiving claims and returned mail, and process all mail received;
- f. For *all* notices, motions, orders or other pleadings or documents served, prepare and file or caused to be filed with the Clerk an affidavit or certificate of service within seven (7) business days of service which includes (i) either a copy of the notice served or the docket numbers(s) and title(s) of the pleading(s) served, (ii) a list of persons to whom it was mailed (in alphabetical order) with their addresses, (iii) the manner of service, and (iv) the date served;
- g. Process all proofs of claim received, including those received by the Clerk's Office, and check said processing for accuracy, and maintain the original proofs of claim in a secure area;
- h. Maintain the official claims register for each Debtor (the "***Claims Registers***") on behalf of the Clerk; upon the Clerk's request, provide the Clerk with certified, duplicate unofficial Claims Registers; and specify in the Claims Registers the following information for each claim docketed: (i) the claim number assigned, (ii) the date received, (iii) the name and address of the claimant and agent, if applicable, who filed the claim, (iv) the amount asserted, (v) the asserted classification(s) of the claim (*e.g.*, secured, unsecured, priority, *etc.*), (vi) the applicable Debtor, and (vii) any disposition of the claim;
- i. Implement necessary security measures to ensure the completeness and integrity of the Claims Registers and the safekeeping of the original claims;
- j. Record all transfers of claims and provide any notices of such transfers as required by Bankruptcy Rule 3001(e);

- k. Relocate, by messenger or overnight delivery, all of the court-filed proofs of claim to the offices of Claims and Noticing Agent, not less than weekly;
- l. Upon completion of the docketing process for all claims received to date for each case, turn over to the Clerk copies of the claims register for the Clerk's review (upon the Clerk's request);
- m. Monitor the Court's docket for all notices of appearance, address changes, and claims-related pleadings and orders filed and make necessary notations on and/or changes to the claims register;
- n. Assist in the dissemination of information to the public and respond to requests for administrative information regarding the case as directed by the Debtors or the Court, including through the use of a case website and/or call center.
- o. If the case is converted to chapter 7, contact the Clerk's Office within three days of the notice to Claims and Noticing Agent of entry of the order converting the case;
- p. Thirty days prior to the close of these cases, to the extent practicable, request that the Debtors submit to the Court a proposed Order dismissing the Claims and Noticing Agent and terminating the services of such agent upon completion of its duties and responsibilities and upon the closing of these cases;
- q. Within seven days of notice to Claims and Noticing Agent of entry of an order closing the chapter 11 cases, provide to the Court the final version of the claims register as of the date immediately before the close of the cases; and
- r. At the close of these cases, box and transport all original documents, in proper format, as provided by the Clerk's Office, to (i) the Federal Archives Record Administration, located at Central Plains Region, 200 Space Center Drive, Lee's Summit, MO 64064 or (ii) any other location requested by the Clerk's Office.

10. The Claims Registers shall be opened to the public for examination without charge during regular business hours and on a case-specific website maintained by BMC.

11. BMC will follow the notice and claim procedures that conform to the guidelines promulgated by the Clerk's Office, section 331 of the Judicial Code (the "*Judicial Conference of the United States*") or as it otherwise may be directed by the Court.

Professional Compensation

12. The Debtors propose to retain BMC at the rates set forth in the Services Agreement. In addition, before the Petition Date, the Debtors paid a retainer to BMC in the amount of \$10,000. The Debtors respectfully submit that BMC's rates for its notice and claims processing services are competitive and comparable to the rates charged by its competitors for similar services. The Debtors' compared BMC's engagement proposal to at least three of BMC's competitors, that are court-approved claims and noticing agents pursuant to the claims agent protocol, before engaging BMC on the terms included in the Services Agreement.

13. The Debtors respectfully request that the undisputed fees and expenses incurred by BMC in the performance of the above services be treated as administrative expenses of the Debtors' estates pursuant to 28 U.S.C. § 156(c) and 11 U.S.C. § 503(b)(1)(A) and be paid in the ordinary course of business without further application to or order of the Court. BMC agrees to maintain records of all services showing dates, categories of services, fees charged and expenses incurred, and to serve monthly invoices on the Debtors, the office of the United States Trustee, counsel for the Debtors, counsel for any official committee, if any, monitoring the expenses of the Debtors and any party-in-interest who specifically requests service of the monthly invoices.

14. If any dispute arises relating to the Services Agreement or BMC's monthly invoices, the Debtors and BMC will meet in an attempt to resolve the dispute. If a resolution is not achieved, the Debtors and BMC will seek resolution of the matter from the Court.

15. As of the Petition Date, the Debtors do not owe BMC any amounts for services rendered before the Petition Date. Although certain expenses and fees may have been incurred but not yet applied to the retainer, such amounts, if any, would be less than the balance of the retainer as of the Petition Date.

Disinterestedness

16. BMC shall not employ any past or present employee of the Debtors for work that involves the Debtors' chapter 11 cases. As disclosed in the Feil Declaration, to the best of BMC's knowledge, and except as otherwise disclosed in the Feil Declaration, BMC is a "disinterested person" within the meaning of section 101(14) of the Bankruptcy Code and neither holds nor represents an interest adverse to the Debtors' estates nor has a connection to the Debtors, their creditors or their related parties with respect to any matter for which BMC will be employed.

17. Should BMC discover any relevant facts or relationships bearing on the matters described herein, BMC will use reasonable efforts to promptly file a supplemental declaration with the Court.

18. BMC further represents that:

- a. it will not consider itself employed by the United States government and shall not seek any compensation from the United States government in its capacity as agent;
- b. by accepting employment in these chapter 11 cases, BMC waives any right to receive compensation from the United States government; and
- c. in its capacity as agent, BMC will not be an agent of the United States and will not act on behalf of the United States.

Indemnification

19. As part of the overall compensation payable to BMC under the terms of the Services Agreement, the Debtors have agreed to certain indemnification obligations as specifically enumerated in the Services Agreement, to the extent permitted by applicable law and as set forth in the Order attached hereto as **Exhibit A**.

20. The terms of the Services Agreement and indemnification provisions included therein were negotiated at arm's-length between the Debtors and BMC, and the Debtors respectfully submit that these provisions of the Services Agreement are reasonable and in the best interests of the Debtors, their estates and creditors.

21. Moreover, consistent with the practice in this jurisdiction, the Debtors requested, and BMC has agreed, that the Court approve the indemnification provisions reflected in the Services Agreement subject to the modifications set forth in the proposed order attached hereto as **Exhibit A**.

22. The Debtors believe that the proposed modifications to the indemnification provisions of the Service Agreement are appropriate under the circumstances, consistent with recent orders entered in this jurisdiction and should be approved.

Supporting Authority

23. Section 156(c) of the Judicial Code, which governs the staffing and expenses of the Court, authorizes the Court to use facilities other than the Clerk's Office for administration of chapter 11 cases:

Any court may utilize facilities or services, either on or off the court's premises, which pertain to the provision of notices, dockets, calendars, and other administrative information to parties in cases filed under the provisions of title 11, United States Code, where the costs of such facilities or services are paid for out of the assets of the estate and are not charged to the United States. The

utilization of such facilities or services shall be subject to such conditions and limitations as the pertinent circuit council may prescribe.

28 U.S.C. § 156(c).

24. In addition, Local Rule 2002-1(f) provides, in relevant part, as follows:

Notice and Claims Clerk. Upon motion of the debtor or trustee, at any time without notice or hearing, the Court may authorize the retention of a notice and/or claims clerk under 28 U.S.C. § 156(c). In all cases with more than 200 creditors or parties in interest listed in the creditor matrix, unless the Court orders otherwise, the debtor shall file such motion on the first day of the case or within seven (7) days thereafter.

Del. Bankr. L.R. 2002-1(f).

25. Accordingly, section 156(c) of the Judicial Code empowers the Court to utilize outside agents and facilities for notice and claims purposes, provided the Debtors' estates pay the cost of such services. Additionally, Local Rule 2002-1(f) requires that a debtor in a case with over 200 creditors (such as these chapter 11 cases) file a motion to retain a claims agent on the first day of the case or within seven days thereafter. Thus the Debtors retention of BMC as the notice and claims agent in these chapter 11 cases is consistent with controlling law and is in the best interests of the Debtors, their estates and creditors.

26. In view of the number of anticipated claimants and the complexity of the Debtors' businesses, the Debtors submit that the appointment of BMC as notice and claims agent is both necessary and in the best interests of the Debtors' estates and their creditors, because the Debtors will be relieved of the burdens associated with the claims and noticing services. Accordingly, the Debtors will be able to devote their full attention and resources to the restructuring efforts described above

Nunc Pro Tunc Relief is Appropriate

27. Pursuant to the Debtors' request, BMC has acted as the Claims and Noticing Agent since the Petition Date with assurances that the Debtors would seek approval of its employment and retention *nunc pro tunc* to the Petition Date so that BMC may be compensated for its pre-application services. The Debtors believe that no party in interest will be prejudiced by the granting of the *nunc pro tunc* employment of BMC, since BMC has provided and continues to provide valuable services to the Debtors' estates in the interim period.

28. Courts in this jurisdiction have routinely approved *nunc pro tunc* employment similar to that requested herein in matters comparable to this matter. *See e.g., In re Satcon Technology Corp.*, No. 12-12869 (Bankr. D. Del. Oct. 18, 2012) (approving *nunc pro tunc* employment of the claims and noticing agent to perform claims and noticing services); *In re Prince Sports, Inc.*, No. 12-11439 (Bankr. D. Del. May 2, 2012) (same).

29. Based on the foregoing, the Debtors submit that they have satisfied the requirements of the Judicial Code, Bankruptcy Rules, Local Rules and Claims Agent Protocol. Accordingly, the Debtors respectfully request entry of the Order pursuant to section 156(c) of the Judicial Code, Local Rule 2002-1(f) and the Claims Agent Protocol authorizing the Debtors to retain and employ BMC to act as Claims and Noticing Agent *nunc pro tunc* to the Petition Date.

Notice

30. The Debtors have provided notice of this motion to: (a) the Office of the United States Trustee for the District of Delaware; (b) the entities listed on the Consolidated List of Creditors Holding the 30 Largest Unsecured Claims filed pursuant to Bankruptcy Rule 1007(d); (c) counsel to the Debtors' prepetition secured lender and debtor in possession lender; (d) the agent for the Debtors' prepetition secured notes; (e) counsel to each of the prepetition equity

holders; (f) the Delaware Secretary of State; (g) the Delaware Secretary of Treasury; (h) the Delaware State Attorney General; (i) the Office of the United States Attorney General for the State of Delaware; (j) the Internal Revenue Service; and (k) the Securities and Exchange Commission. In light of the nature of the relief requested in this motion, the Debtors respectfully submit that no further notice is necessary.

No Prior Request

31. No prior motion for the relief requested herein has been made to this or any other court.

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WHEREFORE, for the reasons set forth herein, the First Day Declaration and the Kass Declaration, the Debtors respectfully request that the Court enter an order, substantially in the form attached hereto as **Exhibit A**, (a) authorizing the Debtors to employ and retain [BMC] as notice and claims agent in accordance with the terms set forth in the Service Agreement [as modified by the Order] and (b) granting such other and further relief as may be appropriate.

Dated: February 28, 2013
Wilmington, Delaware

Conexant Systems, Inc
Brooktree Broadband Holding, Inc
Conexant CF, LLC
Conexant Systems Worldwide, Inc.
Conexant, Inc.

/s/ Sailesh Chittipeddi

Sailesh Chittipeddi, Ph.D.
President and Chief Executive Officer
Conexant Systems, Inc.

Exhibit A

Proposed Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re: CONEXANT SYSTEMS, INC., <i>et al.</i> ¹ <div style="text-align: right;">Debtors.</div>)))))))	Chapter 11 Case No. 13-10367 () Joint Administration Requested Related to Docket No.
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**ORDER AUTHORIZING THE EMPLOYMENT AND RETENTION
OF BMC GROUP, INC. AS NOTICE, CLAIMS AND BALLOTING AGENT**

Upon the application (the “*Application*”)² of the Debtors for entry of an order (this “*Order*”), pursuant to section 156(c) of the Judicial Code, section 503(b) of the Bankruptcy Code, Rules 2002-1(f) and 9013-1(m) of the Local Rules and the Claims Agent Protocol, authorizing the Debtors to employ and retain BMC as notice and claims agent in accordance with the terms and conditions set forth in the Services Agreement attached hereto as **Exhibit 1**, all as more fully described in the Application and Feil Declaration; and the Court having jurisdiction to consider the Application and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334; and consideration of the Application and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and venue being proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Application being adequate and appropriate under the particular circumstances; and a hearing having been held to consider the

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal taxpayer-identification number, are: Conexant Systems, Inc. (9439); Conexant CF, LLC (6434); Brooktree Broadband Holding, Inc. (5436); Conexant, Inc. (8218); and Conexant Systems Worldwide, Inc. (0601). The Debtors’ main corporate address is 4000 MacArthur Blvd., Newport Beach, California 92660

² Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Application.

relief requested in the Application (the "**Hearing**"); and upon consideration of the First Day Declaration, the Feil Declaration, the record of the Hearing and all proceedings had before the Court; and the Court having found and determined that the relief sought in the Application is in the best interests of the Debtors' estates, their creditors and other parties in interest, and that the legal and factual bases set forth in the Application and the Feil Declaration establish just cause for the relief granted herein; and any objections to the requested relief having been withdrawn or overruled on the merits; and after due deliberation and sufficient cause appearing therefor, it is hereby ORDERED:

1. Notwithstanding the terms of the Services Agreement attached to the Application, the Application is approved solely as set forth in this Order.

2. The Debtors are authorized to retain BMC effective *nunc pro tunc* to the Petition Date under the terms of the Services Agreement, and Claims and Noticing Agent is authorized and directed to perform noticing services and to receive, maintain, record and otherwise administer the proofs of claim filed in these cases, and all related tasks, all as described in the Application (the "**Claims and Noticing Services**").

3. BMC is authorized and directed to obtain a post office box or address for the receipt of proofs of claim.

4. BMC is authorized to take such other action to comply with all duties set forth in the Application.

5. The Debtors are authorized to compensate BMC in accordance with the terms of the Services Agreement upon the receipt of reasonably detailed invoices setting forth the services provided by BMC and the rates charged for each, and to reimburse BMC for all reasonable and necessary expenses it may incur, upon the presentation of appropriate documentation, without

the need for BMC to file fee applications or otherwise seek Court approval for the compensation of its services and reimbursement of its expenses.

6. BMC shall maintain records of all services showing dates, categories of services, fees charged and expenses incurred, and shall serve monthly invoices on the Debtors, the office of the U.S. Trustee, counsel for the Debtors, counsel for any official committee, if any, monitoring the expenses of the Debtors and any party-in-interest who specifically requests service of the monthly invoices.

7. The parties shall meet and confer in an attempt to resolve any dispute which may arise relating to the Engagement Agreement or monthly invoices, and that the parties may seek resolution of the matter from the Court if resolution is not achieved.

8. Pursuant to section 503(b)(1)(A) of the Bankruptcy Code, the fees and expenses of BMC under this Order shall be an administrative expense of the Debtors' estates.

9. BMC may apply its retainer to all pre-petition invoices, which retainer shall be replenished to the original retainer amount, and thereafter, BMC may hold its retainer under the Services Agreement during the chapter 11 cases as security for the payment of fees and expenses incurred under the Services Agreement.

10. The Debtors shall indemnify BMC under the terms of the Services Agreement.

11. BMC shall not be entitled to indemnification, contribution or reimbursement pursuant to the Engagement Agreement for services other than the services provided under the Services Agreement, unless such services and the indemnification, contribution or reimbursement therefore are approved by the Court.

12. Notwithstanding anything to the contrary in the Services Agreement, the Debtors shall have no obligation to indemnify BMC, or provide contribution or reimbursement to BMC,

for any claim or expense that is either: (i) judicially determined (the determination having become final) to have arisen from BMC's gross negligence, willful misconduct, or fraud; (ii) for a contractual dispute in which the Debtors allege the breach of BMC's contractual obligations if the Court determines that indemnification, contribution or reimbursement would not be permissible pursuant to *In re United Artists Theatre Co., et al.*, 315 F.3d 217 (3d Cir. 2003), or (iii) settled prior to a judicial determination under (i) or (ii), but determined by this Court, after notice and a hearing, to be a claim or expense for which BMC should not receive indemnity, contribution or reimbursement under the terms of the Services Agreement as modified by this Order.

13. If, before the earlier of (i) the entry of an order confirming a chapter 11 plan in these cases (that order having become a final order no longer subject to appeal), or (ii) the entry of an order closing these cases, BMC believes that it is entitled to the payment of any amounts by the Debtors on account of the Debtors' indemnification, contribution and/or reimbursement obligations under the Services Agreement (as modified by this Order), including without limitation the advancement of defense costs, BMC must file an application therefore in this Court, and the Debtors may not pay any such amounts to BMC before the entry of an order by this Court approving the payment. This paragraph is intended only to specify the period of time under which the Court shall have jurisdiction over any request for fees and expenses by BMC for indemnification, contribution or reimbursement, and not a provision limiting the duration of the Debtors' obligation to indemnify BMC. All parties in interest shall retain the right to object to any demand by BMC for indemnification, contribution or reimbursement.

14. In the event BMC is unable to provide the services set out in this order, BMC will immediately notify the Clerk and Debtors' attorney and cause to have all original proofs of claim

and computer information turned over to another claims and noticing agent with the advice and consent of the Clerk and Debtors' attorney.

15. The Debtors may submit a separate retention application, pursuant to 11 U.S.C. § 327 and/or any applicable law, for work that is to be performed by BMC but is not specifically authorized by this Order.

16. The Debtors and BMC are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Application.

17. Notwithstanding any term in the Services Agreement to the contrary, the Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

18. BMC shall not cease providing claims processing services during these cases for any reason, including nonpayment, without an order of the Court.

19. In the event of any inconsistency between the Services Agreement, the Application and the Order, the Order shall govern.

Date: _____, 2013
Wilmington, Delaware

United States Bankruptcy Judge

Exhibit 1 to Exhibit A

Services Agreement

AGREEMENT FOR SERVICES

This Agreement dated as of February 1, 2013, is entered between Conexant Systems, Inc. ("Customer"), and BMC Group, Inc. ("BMC"). The services rendered by BMC pursuant to this Agreement will commence on the date first set forth above and will continue until the Agreement is terminated as set forth below.

TERMS AND CONDITIONS

I. SERVICES

In accordance with the terms and conditions contained in this Agreement and in the Fee Schedule annexed hereto, BMC agrees to provide upon request one or more of the services as follows: (a) assisting the Customer, Customer's Counsel and Office of the Clerk with noticing and claims docketing and (b) assisting Customer with the compilation, administration, evaluation and production of documents and information necessary to support a restructuring effort. At Customer's, Counsel's or the Clerk's Office's direction, as the case may be, and in accordance with any court orders or rules in the bankruptcy case(s) (including any court order authorizing BMC's engagement), BMC will (1) prepare and serve those notices required in the bankruptcy case; (2) receive, record and maintain copies of all proofs of claim and proofs of interest filed in the bankruptcy case; (3) create and maintain the official claims register(s); (4) receive and record all transfers of claims pursuant to Bankruptcy Rule 3001(e); (5) maintain an up-to-date mailing list for all entities who have filed proofs of claim and/or requests for notices in the bankruptcy case; (6) assist Customer and Counsel with the administrative management, reconciliation and resolution of claims; (7) print, mail and tabulate ballots for purposes of plan voting; (8) assist with the preparation and maintenance of Customer's Schedules of Assets and Liabilities, Statements of Financial Affairs and other master lists and databases of creditors, assets and liabilities; (9) assist with the production of reports, exhibits and schedules of information or use by the Customer, Counsel or to be delivered the Court, the Clerk's Office, the U.S. Trustee or third parties; and (10) provide other technical and document management services of a similar nature requested by Customer or the Clerk's office; (11) facilitate or perform distributions, and (12) assist Customer with all analyses and/or collections of avoidance actions pursuant to Chapter 5 of the United States Bankruptcy Code.

II. TECHNOLOGY SUPPORT

BMC agrees to provide computer software support and to educate and train Customer in the use of the support software, provide BMC's standard reports as well as consulting and programming support for Customer requested reports, program modifications, database modification, and/or other features.

III. PRICES, CHARGES AND PAYMENT

- A. BMC agrees to charge, and Customer agrees to pay, BMC's standard prices for its services, expenses and supplies at the rates or prices in accordance with the fee schedule annexed hereto. Any agreed upon reductions or caps will be applied on an invoice level.
- B. BMC shall be provided with an advance payment retainer of \$ 10,000.00. BMC will be compensated at its stated rates for services rendered and reimbursed for expenses necessarily incurred. The retainer shall be applied first to pre-petition invoices then to any post-petition invoices.

- C. Wire transfer information for the transmission of payments is as follows:

Bank Name -	Bridge Bank, N.A.
ABA/Routing # -	121143260
Account Name -	BMC Group, Inc.
Account # -	0101222545

- D. BMC raises its rates from time to time and generally does so each January.
- E. Customer agrees to pay BMC for any necessarily incurred out-of-pocket reasonable expenses for transportation, lodging, meals and related items.
- F. In connection with noticing services, upon BMC's request, Customer agrees to prepay BMC estimated postage amounts with respect to each notice or shall authorize BMC to cause the courier's charges (such as UPS or FedEx) to be stated to Customer's own account with such courier.
- G. BMC agrees to invoice Customer for fees and expenses and Customer agrees that the amount invoiced is due and payable upon its receipt of the invoice. If any amount is unpaid as of thirty (30) days from the receipt of the invoice, Customer further agrees to pay a late charge, calculated as one and one-half percent (1-1/2%) interest per month on the amount unpaid, accruing from the invoice date. In the case of a dispute in the invoice amount, notice shall be given to BMC within twenty (20) days of receipt of the invoice by Customer. Late charges shall not accrue on any amounts in dispute. The balance of the invoice amount is due and payable in the normal course.
- H. BMC will look only to the Customer for payment of invoices and in no event shall Counsel be liable for any of BMC's invoices in connections with this Services Agreement.

IV. WARRANTY

The BMC warranty under the Agreement shall be limited to the re-running, at its expense, of any inaccurate reports, provided that such inaccuracies were caused solely as a result of BMC performance hereunder and provided further that BMC shall receive written notice of such inaccuracies within thirty (30) days of delivery of such report. If said notice is not made to BMC within the prescribed time limit Customer is liable for all charges. Customer agrees that the foregoing constitutes the exclusive remedy available with respect to inaccurate reports.

V. RIGHTS OF OWNERSHIP

- A. The parties understand that the software programs and other similar proprietary materials furnished by BMC pursuant to this Agreement and/or developed during the course of this Agreement by BMC are the sole property of BMC. The term "program" shall include, without limitation, data processing programs, specifications, applications, routines, sub-routines, procedural manuals, and documentation. Customer agrees not to copy or permit others to copy for unauthorized use the source code from the support software or any other programs or similar proprietary materials furnished pursuant to this Agreement.
- B. Customer further agrees that any ideas, concepts, know-how or techniques relating to data processing or BMC's performance of its services developed during the course of its Agreement by BMC shall be exclusive property of BMC.
- C. Upon Customer's request at any time or times while this Agreement is in effect, BMC shall immediately deliver to Customer at Customer's sole expense, any or all of the non-

proprietary data, information and records held or controlled by BMC pursuant to this Agreement, in the form requested by Customer. Any information, data and records, in whatever form existing, whether provided to BMC by Customer or developed by BMC for Customer under this Agreement, may be retained by BMC until all amounts due under this Agreement are paid in full, it being understood that neither party asserts rights of ownership in the official claims register or materials filed with BMC as an agent of the court.

- D. Customer shall remain liable for all charges imposed under this Agreement as a result of data or physical media maintained by BMC. BMC shall dispose of the data and media in the manner requested by Customer. Customer agrees to pay BMC for reasonable expenses incurred as a result of the disposition of the data or media. After giving Customer thirty (30) days advance notice, BMC reserves the right to dispose of data or media maintained by BMC for Customer if Customer has not utilized the services provided herein for a period of at least ninety (90) days or if Customer has not paid all charges due to BMC.

VI. NON-SOLICITATION

Customer agrees that they shall not, directly or indirectly, solicit for employment, employ or otherwise retain staff of BMC during the term of this Agreement, nor for a period of twelve (12) months after termination of this Agreement unless mutually agreed upon by both parties.

VII. CONFIDENTIALITY

- A. BMC agrees to, and shall cause its servants, agents, employees, licensees, and subcontractors to, safeguard and keep confidential all data, records, information and communications of any sort or form, regardless of whether written, oral, visual or otherwise recorded or transmitted, with respect to Customer, but excluding such data, records, information and communications that exist in the public domain by reason other than a breach of BMC's obligations under this Section VII "Confidentiality" (the "Confidential Information"). BMC will use the Confidential Information only for the benefit of Customer in connection with the provision of services under this Agreement. Customer agree to, and will cause its servants, agents, employees, licensees, and subcontractors to, keep all information with respect to BMC's system, procedures and software confidential; provided, however, that if either party is required to produce any such information by order of any governmental agency or other regulatory body, it may, upon not less than five business days' written notice to the other party, release the required information. The obligations set forth in this paragraph shall survive termination of this Agreement.

VIII. TERMINATION

- A. This Agreement shall remain in force until terminated by Customer, or, by BMC upon thirty (30) days' prior written notice to the other party.
- B. In the event that this contract is terminated, regardless of the reason for such termination, BMC shall cooperate with Customer to orderly transfer to Customer or their designee (or destroy, at Customer's direction) data, records and information in its possession or control and to effect an orderly transition of record-keeping functions. BMC shall provide all necessary staff, services and assistance required for an orderly transfer and transition. Customer agrees to pay for such services in accordance with BMC's then existing prices for such services.

IX. SYSTEM IMPROVEMENTS

BMC's policy is to provide continuous improvements in the quality of service to the Customer. BMC, therefore, reserves the right to make changes in operations procedures, operating systems, programming languages, general purpose library programs, application programs, time period of accessibility, types of terminal and other equipment and the BMC data center serving the Customer.

X. LIMITATIONS OF LIABILITY AND INDEMNIFICATION

Except with respect to breaches under Section VII "Confidentiality" above, Customer shall indemnify and hold BMC, its officers, employees and agents harmless against any losses, claims, damages, judgments, liabilities and expense (including reasonable counsel fees and expenses) resulting from action taken or permitted by BMC in good faith with due care and without negligence in reliance upon instructions or orders received from Customer as to anything arising in connection with its performance under this Agreement. Except with respect to breaches under Section VII "Confidentiality" above, BMC shall be without liability to Customer with respect to any performance or non-performance, in accordance with the terms of this Agreement or instructions properly received pursuant hereto, if done in good faith and without negligence or willful or wanton misconduct. Except with respect to breaches under Section VII "Confidentiality" above, in no event shall liability to Customer for any losses or damages, whether direct or indirect, arising out of this Agreement exceed the total amount billed or billable to Customer for the portion of the particular work which gave rise to the loss or damage. Except with respect to breaches under Section VII "Confidentiality", in no event shall BMC be liable for any indirect, special or consequential damages such as loss of anticipated profits or other economic loss in connection with or arising out of the services provided for in this Agreement.

XI. NOTICES

All notices in connection with this Agreement shall be given or made upon the respective parties in writing by facsimile or overnight courier and shall be deemed as given, if by facsimile, on the business day immediately following confirmed transmission, or if by courier, on the day it is delivered by such courier to the appropriate address set forth below:

<p>BMC Group, Inc. Attn: Tinamarie Feil 600 1st Avenue Suite 300 Seattle, WA 98104</p> <p>E-Mail: tfel@bmcgroup.com Tel: 206.516.3300 Fax: 206.516.3304</p>	<p>Conexant Systems, Inc. Attn: <u>Carl M. Mills</u> 4000 MacArthur Blvd Newport Beach, CA 92660</p> <p>Email: <u>carl.mills@conexant.com</u> Tel: <u>949 483 4684</u> Fax: <u>949 483 5050</u></p>
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Or to such other address as the party to receive the notice or request so designates by written notice to the other.

XII. APPLICABLE LAW

This agreement shall be construed in accordance with the laws of the State of Washington and may be modified only by a written instrument duly executed by an authorized representative of Customer and an officer of BMC.

XIII. ENTIRE AGREEMENT/ MODIFICATIONS

Each party acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and further agrees that it is the complete and exclusive statement of the agreement between the parties, which supersedes and merges all prior proposals, understandings and other agreements, oral and written between the parties relating to the subject matter of this Agreement. The Agreement may not be modified or altered by written instrument duly executed by both parties. Customer represents that they have the authority to enter into this Agreement, may be subject to bankruptcy court approval, and the Agreement is non-dischargeable under any applicable statute or law. If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired thereby. In the event of any conflict between a term of this Agreement and any order of the court exercising jurisdiction over the Customer's bankruptcy case, the term of the order shall govern.

XIV. ASSIGNMENT

This Agreement and the rights and duties hereunder shall not be assignable by the parties hereto except upon written consent of the other, with the exception that this Agreement can be assigned by BMC to a wholly owned subsidiary of BMC.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

BMC Group, Inc. By: <u><i>Tinamarie Feil</i></u> Name: Tinamarie Feil Title: President, Client Services Date: February 7, 2013	Conexant Systems, Inc. By: <u><i>Carol M. Morris</i></u> Name: Carol M. Morris Title: CFO Date: February 7, 2013
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Exhibit B

Feil Declaration

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

CONEXANT SYSTEMS, INC., *et al.*,¹

Debtors.

)
) Chapter 11
)

) Case No. 13-_____ ()
)

) Joint Administration Requested
)

**DECLARATION OF TINAMARIE FEIL IN SUPPORT
OF THE DEBTORS' APPLICATION FOR ENTRY OF AN
ORDER AUTHORIZING THE EMPLOYMENT AND RETENTION
OF BMC GROUP, INC. AS NOTICE, CLAIMS AND BALLOTING AGENT**

I, Tinamarie Feil, being duly sworn, state the following under penalty of perjury and that the following is true to the best of my knowledge, information and belief:

1. I am the President of Client Services for BMC Group, Inc. ("**BMC**"), located at 600 1st Avenue, Suite 300, Seattle, WA 98104.

2. I am authorized to submit this declaration in support of the application of the Debtors (the "**Application**")² for entry of an order authorizing the Debtors to employ and retain BMC as notice, claims and balloting agent in these chapter 11 cases, pursuant to the terms and conditions set forth in the services agreement between Conexant Systems, Inc. and BMC dated as of February 7, 2013 (such agreement together with all amendments, modifications, renewals thereof and all documents ancillary thereto or otherwise entered into in connection therewith, the

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal taxpayer-identification number, are: Conexant Systems, Inc. (9439); Conexant CF, LLC (6434); Brooktree Broadband Holding, Inc. (5436); Conexant, Inc. (8218); and Conexant Systems Worldwide, Inc. (0601). The Debtors' main corporate address is 4000 MacArthur Blvd., Newport Beach, California 92660

² Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Application.

“*Services Agreement*”), a copy of which is annexed to the Application as Exhibit 1 to Exhibit A.

BMC’s Qualifications

3. BMC is a bankruptcy administrator that specializes in providing comprehensive chapter 11 administrative services including noticing, claims processing, balloting and other related services critical to the effective administration of chapter 11 cases. BMC has developed efficient and cost-effective methods to handle the voluminous mailings associated with the noticing, claims processing and balloting aspects of chapter 11 cases that ensure the orderly and fair treatment of creditors, equity security holders and all parties in interest. Further, BMC has experience working with, and will continue to work with, the Clerk’s Office to ensure that BMC’s services conform with all of the Court’s procedures, the Local Rules and any orders entered by this Court.

4. BMC has substantial experience in matters of this size and complexity and has acted as the official notice, claims and balloting agent in many large chapter 11 cases in this District and in others. *See, e.g., In re Coach AM Group Holdings Corp.*, No. 12-10010 (KG); *In re Graceway Pharmaceuticals, LLC*, No. 11-13036 (PJW); *In re Regen Biologics, Inc.*, No. 11-11083 (PJW); *In re Urban Brands, Inc.*, No. 10-13005 (KJC); *In re Ultimate Escapes Holdings, Inc.*, No. 10-12915 (BLS); and *In re W.R. Grace & Co.*, No. 01-01139 (JKF). Furthermore, BMC has acted as the official notice, claims and balloting agent in large chapter 11 cases outside this District. *See, e.g., In re Atari, Inc.*, No. 13-10176 (JMP) (Bankr. S.D.N.Y. Feb. 15, 2013)) (authorizing the retention of BMC Group, Inc. as claims and noticing agent); *In re Jennifer Convertibles, Inc.*, No. 10-13779 (ALG) (Bankr. S.D.N.Y. July 22, 2010) (same).

Services Provided

5. In accordance with the terms and conditions of the Services Agreement, and in compliance with Rule 2002-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”), BMC will perform the services required pursuant thereto (and noted below), as well as any additional services at the request of the Debtors or the Clerk’s Office.

6. Specifically, the Debtors seek to engage BMC to provide certain noticing and claims processing services, including:

- a. Prepare and serve required notices and documents in the cases in accordance with the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) in the form and manner directed by the Debtors and/or the Court, including (i) notice of the commencement of the cases and the initial meeting of creditors under Bankruptcy Code § 341(a), (ii) notice of any claims bar date, (iii) notices of transfers of claims, (iv) notices of objections to claims and objections to transfers of claims, (v) notices of any hearings on a disclosure statement and confirmation of the Debtors’ plan or plans of reorganization, including under Bankruptcy Rule 3017(d), (vi) notice of the effective date of any plan and (vii) all other notices, orders, pleadings, publications and other documents as the Debtors or Court may deem necessary or appropriate for an orderly administration of the cases.
- b. Maintain an official copy of the Debtors’ schedules of assets and liabilities and statement of financial affairs (collectively, “**Schedules**”), listing the Debtors’ known creditors and the amounts owed thereto;
- c. Maintain (i) a list of all potential creditors, equity holders and other parties-in-interest; and (ii) a “core” mailing list consisting of all parties described in sections 2002(i), (j) and (k) and those parties that have filed a notice of appearance pursuant to Bankruptcy Rule 9010; update said lists and make said lists available upon request by a party-in-interest or the Clerk;

- d. Furnish a notice to all potential creditors of the last date for the filing of proofs of claim and a form for the filing of a proof of claim, after such notice and form are approved by this Court, and notify said potential creditors of the existence, amount and classification of their respective claims as set forth in the Schedules, which may be effected by inclusion of such information (or the lack thereof, in cases where the Schedules indicate no debt due to the subject party) on a customized proof of claim form provided to potential creditors;
- e. Maintain a post office box or address for the purpose of receiving claims and returned mail, and process all mail received;
- f. For *all* notices, motions, orders or other pleadings or documents served, prepare and file or caused to be filed with the Clerk an affidavit or certificate of service within seven (7) business days of service which includes (i) either a copy of the notice served or the docket numbers(s) and title(s) of the pleading(s) served, (ii) a list of persons to whom it was mailed (in alphabetical order) with their addresses, (iii) the manner of service, and (iv) the date served;
- g. Process all proofs of claim received, including those received by the Clerk's Office, and check said processing for accuracy, and maintain the original proofs of claim in a secure area;
- h. Maintain the official claims register for each Debtor (the "**Claims Registers**") on behalf of the Clerk; upon the Clerk's request, provide the Clerk with certified, duplicate unofficial Claims Registers; and specify in the Claims Registers the following information for each claim docketed: (i) the claim number assigned, (ii) the date received, (iii) the name and address of the claimant and agent, if applicable, who filed the claim, (iv) the amount asserted, (v) the asserted classification(s) of the claim (*e.g.*, secured, unsecured, priority, *etc.*), (vi) the applicable Debtor, and (vii) any disposition of the claim;
- i. Implement necessary security measures to ensure the completeness and integrity of the Claims Registers and the safekeeping of the original claims;

- j. Record all transfers of claims and provide any notices of such transfers as required by Bankruptcy Rule 3001(e);
- k. Relocate, by messenger or overnight delivery, all of the court-filed proofs of claim to the offices of Claims and Noticing Agent, not less than weekly;
- l. Upon completion of the docketing process for all claims received to date for each case, turn over to the Clerk copies of the claims register for the Clerk's review (upon the Clerk's request);
- m. Monitor the Court's docket for all notices of appearance, address changes, and claims-related pleadings and orders filed and make necessary notations on and/or changes to the claims register;
- n. Assist in the dissemination of information to the public and respond to requests for administrative information regarding the case as directed by the Debtors or the Court, including through the use of a case website and/or call center.
- o. If the case is converted to chapter 7, contact the Clerk's Office within three days of the notice to Claims and Noticing Agent of entry of the order converting the case;
- p. Thirty days prior to the close of these cases, to the extent practicable, request that the Debtors submit to the Court a proposed Order dismissing the Claims and Noticing Agent and terminating the services of such agent upon completion of its duties and responsibilities and upon the closing of these cases;
- q. Within seven days of notice to Claims and Noticing Agent of entry of an order closing the chapter 11 cases, provide to the Court the final version of the claims register as of the date immediately before the close of the cases; and
- r. At the close of these cases, box and transport all original documents, in proper format, as provided by the Clerk's Office, to (i) the Federal Archives Record Administration, located at Central Plains Region, 200 Space Center Drive, Lee's Summit, MO 64064 or (ii) any other location requested by the Clerk's Office.

7. The Claims Registers shall be opened to the public for examination without charge during regular business hours and on a case-specific website maintained by BMC.

8. BMC will follow the notice and claim procedures that conform to the guidelines promulgated by the Clerk's Office, section 331 of the Judicial Code (the "*Judicial Conference of the United States*") or as it otherwise may be directed by the Court.

Professional Compensation

9. Subject to the Court's approval, the Debtors have agreed to compensate BMC for professional services rendered in connection with these chapter 11 cases pursuant to the Services Agreement. Before the Petition Date, BMC received a retainer from the Debtors in the amount of \$10,000 to be applied in satisfaction of obligations incurred pursuant to the Services Agreement. BMC believes that the rates for its notice and claims processing services are comparable to the rates charged by its competitors for similar services.

10. BMC respectfully submits that the fees and expenses incurred by BMC are administrative in nature and should not be subject to the standard fee application procedures for professionals. Specifically, BMC requests authorization to be compensated on a monthly basis (in the ordinary course of business and in accordance with the terms and conditions set forth in the Services Agreement). BMC agrees to maintain records of all services showing dates, categories of services, fees charged and expenses incurred, and to serve monthly invoices on the Debtors, the office of the United States Trustee, counsel for the Debtors, counsel for any official committee, if any, monitoring the expenses of the Debtors and any party-in-interest who specifically requests service of the monthly invoices.

11. If any dispute arises relating to the Services Agreement or BMC's monthly invoices, BMC and the Debtors will meet in an attempt to resolve the dispute. If a resolution is not achieved, BMC and the Debtors will seek resolution of the matter from the Court.

12. As of the Petition Date, the Debtors do not owe BMC any amounts for services rendered before the Petition Date. Although certain expenses and fees may have been incurred but not yet applied to the retainer, such amounts, if any, would be less than the balance of the retainer as of the Petition Date.

Disinterestedness

13. BMC is a “disinterested person,” as that term is defined in section 101(14) of the Bankruptcy Code, in that BMC and its professional personnel:

- a. are not creditors, equity security holders or insiders of the Debtors;
- b. are not and were not, within two years before the date of the filing of these cases, directors, officers or employees of the Debtors; and
- c. do not have an interest materially adverse to the interests of the Debtors’ estate or any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the Debtors.

See 11 U.S.C. § 101(14).

14. Further, BMC represents that:

- a. it will not consider itself employed by the United States government and shall not seek any compensation from the United States government in its capacity as claims agent;
- b. by accepting employment in these chapter 11 cases, BMC waives any right to receive compensation from the United States government; and
- c. in its capacity as claims agent, BMC will not be an agent of the United States and will not act on behalf of the United States.

15. In connection with the preparation of this Declaration, I caused to be submitted for review by our conflicts system the names of all known potential parties-in-interest (the “*Potential Parties in Interest*”) in these cases. The list of Potential Parties in Interest was

provided by the Debtors and included the Debtors, non-debtor affiliates, current and former directors and officers of the Debtors, significant stockholders, secured creditors, top 30 unsecured creditors, and other parties. The results of the conflict check were compiled and reviewed by employees of BMC, under my supervision. To the best of my knowledge, BMC is a "disinterested person" within the meaning of section 101(14) of the Bankruptcy Code and neither BMC, nor any of its professional personnel, have any relationship with the Debtors that would impair BMC's ability to serve as noticing and claims agent in these chapter 11 cases. Furthermore, at this time, BMC is not aware of any relationship which would present a disqualifying conflict of interest.

16. BMC has not been retained to assist any entity or person other than the Debtors on matters relating to, or in connection with, these chapter 11 cases. If BMC's proposed retention is approved by this Court, BMC will not accept any engagement or perform any service for any entity or person other than the Debtors in these chapter 11 cases. BMC may, however, provide professional services to entities or persons that may be creditors or parties in interest in these chapter 11 cases, which services do not relate to, or have any direct connection with, these chapter 11 cases or the Debtors.

17. BMC will comply with all requests of or by the Clerk's Office and the guidelines promulgated by the Judicial Conference of the United States for the implementation of section 156(c) of the Judicial Code.

18. Should BMC discover any relevant facts or relationships bearing on the matters described herein, BMC will use reasonable efforts to promptly file a supplemental declaration with the Court.

Indemnification

19. As part of the overall compensation payable to BMC under the terms of the Services Agreement, BMC is entitled to certain indemnification obligations, which are described in detail in the Services Agreement. Specifically, the Services Agreement provides that the Debtors will indemnify and hold harmless BMC, its subcontractors and their respective personnel under certain circumstances specified in the Services Agreement. [BMC has, however, agreed to the modifications described in the Application and provided for in the proposed Order].

20. The terms of the Services Agreement and indemnification provisions were negotiated between BMC and the Debtors at arm's-length and I believe that these indemnification provisions, the Debtors' proposed modifications thereto and the Services Agreement are reasonable.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Executed on: February 28, 2013

By:

/s/ Tinamarie Feil

Tinamarie Feil
President, Client Services
BMC Group, Inc.