

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

In re:)	
)	Chapter 11
CONEXANT SYSTEMS, INC., <i>et al.</i> ¹)	Case No. 13-10367 (MFW)
)	
Debtors.)	Joint Administration Requested
)	
)	Related to Docket No. 4

**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Declaration establish just cause for the relief granted herein; and any objections to the requested relief having been withdrawn or overruled on the merits; and after due deliberation and sufficient cause appearing therefor, it is hereby ORDERED: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: March, 2013
Wilmington, Delaware



United States Bankruptcy Judge

Exhibit 1

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: tfeil@bmcgroup.com Tel: 206.516.3300 Fax: 206.516.3304</p>	<p>Conexant Systems, Inc. Attn: <u>Carl Mills</u> 4000 MacArthur Blvd Newport Beach, CA 92660</p> <p>Email: carl.mills@conexant.com Tel: 949 483 4684 Fax: 949 483 5050</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>Carl M. Minis</i></u> Name: Carl M. Minis Title: CFO Date: February 7, 2013
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INFORMATION MANAGEMENT

2013 Pricing

The total charge for BMC to support this project will be based on time spent plus payment of print/mail costs and any other out-of-pocket reimbursable items. The basic services we provide include acting as claims and notice agent (featuring our direct electronic claims filing system), schedules preparation, claims reconciliation, plan solicitation, distribution, and post-confirmation services. Our billing practices are transparent and we engage in constant communication so that there are no surprises in the cost of services rendered. A \$10,000 retainer is requested for this project.

Case Management

Average < \$125/hour

Data Entry/Call Center/ Administrative Support	\$25/45 per hour
Analysts	\$55 per hour
Consultants	\$125 per hour
Project Managers	\$175 per hour
Principal/Directors	\$205 per hour

No surcharge for overtime, weekends or holiday hours required to support your case

Claims Management

Claim Receipt, Process & Docketing	\$2.50 per claim (no hourly rates)
b-Linx Database & Systems Access	\$0.085 per month / first three months waived
Detailed Claim Analysis and Reconciliation	upon request at applicable Case Management rates

Print Mail and Noticing Services

Copy/Print	\$.08 per page subject to volume discount
Finishing (Fold/Collate, Insert, Label, Envelope)	\$.13 per standard, or \$.20 per catalog sized package
Postage, Courier	At cost (includes optimization recommendations)
Certified Electronic Noticing Service	\$40 per 1000 (no per page charge – includes receipt tracking)
Certified Fax Noticing Service	\$0.15 per image (includes delivery acknowledgment)
Processing of Undeliverables	\$0.25 each + cost of re-mails as applicable
Legal Notice Experts / Publication	Quote (leverage BMC negotiated discounts with publishers)

Document and Information Management

Data Per Field Import	Waived
Document Imaging	\$0.12 per image
Live Operator Call Center	\$45 per hour
Automated (IVR) Call Center	Quote based on anticipated volume – typically \$0.30/min
Website Hosting	Waived
Secure Virtual Data Room	Set up + \$0.15/page per month
Physical Document Storage	\$1.45 per box/month
Document Analysis & Call Center Management	at applicable Case Management rates

Distribution

Distribution Consulting	at applicable Case Management rates
Check Issuance or Tax Reporting (1099, W-2)	Quote
Issuance Stock, Notes, Warrants	Quote
Registrar of New Issuers	Quote