
AMENDED AND RESTATED MASTER SERVICES AGREEMENT

by and among

ACCENTURE BUSINESS SERVICES OF BRITISH COLUMBIA LIMITED PARTNERSHIP,

ACCENTURE BUSINESS SERVICES GENERAL PARTNER INC.

and

BRITISH COLUMBIA HYDRO AND POWER AUTHORITY

April 1, 2006

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MASTER SERVICES AGREEMENT

This AMENDED AND RESTATED MASTER SERVICES AGREEMENT is entered into as of April 1, 2006 (the “*AMSA Effective Date*”), by and among Accenture Business Services of British Columbia Limited Partnership, a limited partnership organized under the laws of the Province of British Columbia (“*ABSBC*”), its general partner, Accenture Business Services General Partner Inc., a corporation organized under the laws of Canada, and British Columbia Hydro and Power Authority, a corporation organized under the laws of British Columbia (“*BCH*”). ABSBC and BCH are sometimes referred to herein individually as a “*Party*,” and collectively as the “*Parties*.”

WITNESSETH:

WHEREAS, ABSBC, Accenture Business Services General Partner Inc. and BCH originally entered into a Master Services Agreement (the “*Existing Agreement*”) dated as of January 31, 2003 (the “*Effective Date*”);

WHEREAS, prior to entering into the Existing Agreement, BCH desired that the operations and functions of certain business units then operated by BCH be transferred to and performed and managed by a third party experienced in performing and managing such operations and functions. BCH selected ABSBC as its vendor of choice to provide services during the term of the Existing Agreement. The Existing Agreement documented the terms and conditions under which BCH agreed to purchase, and ABSBC agreed to provide, such services;

WHEREAS, in connection with the outsourcing of services to ABSBC as contemplated in the Existing Agreement, the Parties and/or certain of their affiliates entered into, simultaneously with the execution of the Existing Agreement, (i) a Limited Partnership Agreement providing for the organization and operation of, and the pursuit of additional outsourcing clients of, ABSBC, (ii) a Master Transfer Agreement governing the transfer of certain business units, including employees and employee-related liabilities from BCH to ABSBC, (iii) an Asset Conveyance Agreement governing the transfer of assets from BCH to BCH Services Asset Corp., a company organized under the laws of the Province of British Columbia (“*Newco*”), (iv) a Marketing Alliance Agreement providing for the pursuit of additional outsourcing clients by ABSBC, (v) the CIS Agreement providing for the separate development of the SAP Customer Care platform, and (vi) a Support Services Agreement pursuant to which BCH agreed to provide certain services in support of ABSBC’s activities under the Existing Agreement;

WHEREAS, in addition, certain Affiliates of ABSBC named therein, simultaneously with the execution of the Existing Agreement, executed and delivered to BCH a guaranty (the “*Guaranty*”) guaranteeing the obligations of ABSBC under the Existing Agreement;

WHEREAS, the Parties have determined that it is to their mutual benefit to amend and restate the Existing Agreement in order to:

- (a) set out a finalized pricing methodology for all In-Scope Services (as described in Schedule 10.1, the “*Permanent Pricing Methodology*” or “*PPM*”);
- (b) modify, refine and clarify the description of the In-Scope Services and the process for making changes to the Services during the Agreement Term;
- (c) modify, refine and clarify existing, and adopt new, Service Level standards and metrics (including demerit and earn back credit terms);
- (d) modify, refine and clarify terms and conditions relating to the benchmarking program, relationship management protocol, change order protocol, termination, force majeure and dispute resolution;
- (e) adopt New Services and Discretionary Services, including PE Services; and
- (f) attend to miscellaneous updating and refinement to various other provisions;

WHEREAS, the parties intend that certain provisions of this AMSA be retained as a matter of historical record only, as further described in Section 2.1(f) below;

WHEREAS, the Parties also wish to amend and restate the Limited Partnership Agreement, the Support Services Agreement, and the Marketing Alliance Agreement;

WHEREAS, this AMSA, the Limited Partnership Agreement (as amended), the Master Transfer Agreement, the Marketing Alliance Agreement (as amended), the CIS Agreement and the Support Services Agreement (as amended), along with all other documents executed or delivered in connection with such agreements, shall be collectively referred to as the “*Transaction Documents*”; and

WHEREAS, the provisions of this preamble are intended as a statement of purpose of this AMSA and are not intended to alter the plain meaning of the terms and conditions of this AMSA or to require either Party to undertake specific performance obligations not required by this AMSA. To the extent that the terms and conditions of this AMSA are unclear or ambiguous, such terms and conditions are to be interpreted and construed consistent with the purposes set forth in this preamble.

NOW, THEREFORE, the Parties agree that the Existing Agreement shall be amended and restated to read in its entirety as set forth below:

ARTICLE I DEFINITIONS

1.1. *Definitions.* As used in this AMSA, the terms set forth in Schedule 1.1 will have the respective meanings set forth therein. Other terms used in this AMSA are defined in the context in which they are used and will have the meanings therein indicated.

ARTICLE II
AGREEMENT TERM; RENEWAL

- 2.1. *Agreement Term.* The term of this AMSA will continue to run generally from the Effective Date until the expiry of the Agreement Term. Unless earlier terminated in accordance with the terms of this AMSA, the initial term of this AMSA (the “**Initial Term**”) will continue until the ten-year anniversary of the Service Commencement Date according to the following transitional rules:
- (a) Subject to Sections 2.1(b), (c) and (d) below, the Existing Agreement shall be amended and restated in its entirety as of, and this AMSA shall take effect from, the AMSA Commencement Date, such that:
 - (i) the terms and conditions of the Existing Agreement in the form existing immediately prior to the AMSA Effective Date (with such amendments as may be subsequently agreed upon by the Parties) shall be effective and enforceable with respect to events, acts and omissions occurring between the Effective Date and immediately prior to the AMSA Commencement Date; and
 - (ii) the terms and conditions of this AMSA shall be effective and enforceable with respect to events, acts and omissions occurring from and including the AMSA Commencement Date.
 - (b) Notwithstanding Section 2.1(a) above, the following provisions of this AMSA shall be effective and enforceable from the AMSA Effective Date with respect to events, acts and omissions occurring from and including August 31, 2005 (being the date when the Parties executed a comprehensive AMSA term sheet):
 - (i) this Section 2.1;
 - (ii) Section 3.9 (Transitional Period Pricing and Payments), relating to the one-time Transitional Payment and Adjustment Payment;
 - (iii) Section 4.14(c)(vi) (Freedom of Information Legislation), relating to the obligations of ABSBC and its Affiliates with respect to Freedom of Information Legislation;
 - (iv) Section 4.15 (PPM Initiatives), relating to the performance of, and payment for, the PPM Initiatives;
 - (v) Section 5.3 (Benchmarking), relating to the Benchmarking Process applicable to the period leading up to, and following, the AMSA Commencement Date;
 - (c) Notwithstanding Section 2.1(a) above, the following provisions of this AMSA shall be effective and enforceable from the AMSA Effective Date with respect to

events, acts and omissions occurring from and including the AMSA Effective Date:

- (i) Article III (Transition), relating to the AMSA Transition;
 - (ii) Schedule 4.4(d) (Procurement Enhancement Services), relating to the establishment of the Procurement Enhancement Services;
 - (iii) Sections 2.3, 2.8 and 2.9 of Schedule 5.1 (Establishment of Service Levels), relating to the establishment of Service Levels for the period following the AMSA Commencement Date;
 - (iv) Section 17.2.1 (Transitional Termination), relating to termination of the AMSA prior to the AMSA Commencement Date; and
 - (v) Article XIX (Force Majeure), relating to force majeure.
- (d) Notwithstanding Section 2.1(a) above, Article XVIII (Dispute Resolution) and Section 6.2 (ABSBC-Managed BCH Resources) shall be effective and enforceable from the AMSA Effective Date with respect to events, acts and omissions occurring from and including the Effective Date.
- (e) Notwithstanding the foregoing, either Party may terminate the AMSA in accordance with and subject to Section 17.2.1 in the event that the AMSA Transition Plan milestones identified in Schedule 3.8(a) as “critical” are not completed by March 31, 2006.
- (f) The terms and conditions set forth in Sections 3.2, 3.3, 3.4, 3.5, 3.7, 4.3, 4.7, 10.13, 10.14, 10.15, 10.16 and 10.17, and Section 4.1(d) of Schedule 10.1, apply solely to events, acts or omissions occurring prior to the AMSA Commencement Date, and have no further effect with respect to events, acts or omissions following the AMSA Commencement Date.

2.2. *Renewal.* BCH, at its sole option, may renew the term of this AMSA for an additional five-year period by delivering written notice of such renewal to ABSBC at least 12 months before the scheduled date of expiration of the Initial Term. Unless otherwise agreed to by the Parties, the terms and conditions of this AMSA, including the Service Charges applicable immediately prior to the expiration of the Initial Term, shall apply during any renewal term (as such Service Charges may be adjusted from time to time in accordance with this AMSA and Schedule 10.1). The Initial Term of this AMSA, together with any renewal term and the period during which ABSBC provides Termination Assistance Services, is referred to herein as the “*Agreement Term.*”

ARTICLE III TRANSITION

3.1. *Service Commencement Date.*

- (a) As of April 1, 2003 or such other date as the Parties may mutually agree in accordance with the Master Transfer Agreement and following completion of the Transition in accordance with Section 3.3 (the “***Service Commencement Date***”), ABSBC shall assume operational responsibility for, and commence providing, the In-Scope Services. BCH will retain responsibility for all operations that will comprise the In-Scope Services until the Service Commencement Date. If the Master Transfer Agreement terminates prior to the Service Commencement Date for any reason, then this AMSA shall simultaneously terminate without the further action of any Party.
- (b) As of April 1, 2006 or such other date as the Parties may mutually agree in writing following completion of the AMSA Transition in accordance with Section 3.8(a) (the “***AMSA Commencement Date***”), ABSBC shall commence (or continue, as the case may be) providing, the In-Scope Services according to the terms of this AMSA.

3.2. *Transition Services.*

- (a) The terms and conditions set forth in this Section 3.2 apply solely to events, acts or omissions occurring prior to the AMSA Commencement Date, and have no further effect with respect to events, acts or omissions following the AMSA Commencement Date.
- (b) ABSBC will perform such tasks described in the Transition Plan (“***Transition Services***”) in order to facilitate the transition of resources and operational responsibilities on the Service Commencement Date (the “***Transition***”).

3.3. *Transition Plan.*

- (a) The terms and conditions set forth in this Section 3.3 apply solely to events, acts or omissions occurring prior to the AMSA Commencement Date, and have no further effect with respect to events, acts or omissions following the AMSA Commencement Date.
- (b) ABSBC shall plan, prepare for and conduct the Transition in accordance with a written transition plan (the “***Transition Plan***”). Schedule 3.3 sets forth the initial Transition Plan, which is a high-level timeline for transition activities. The final Transition Plan shall describe the transition activities in detail, contain a detailed timeline and be mutually-agreed upon by the Parties not later than March 7, 2003. The Transition Plan will contemplate that prior to April 1, 2003, a senior executive from each of BCH and ABSBC shall meet and mutually determine whether the implementation and completion of tasks contemplated by the

Transition Plan will be sufficiently completed on April 1, 2003 in order for ABSBC to assume operational responsibility for and to commence providing the In-Scope Services. It being understood that both Parties desire that the Transition be completed by April 1, 2003, or such other agreed date that is as promptly as practicable thereafter, and to accomplish such goal the Parties will use their commercially reasonable efforts to complete the activities set forth in the Transition Plan and cooperate with each other to make such reasonable changes to the Transition Plan and do such other things as may be reasonably necessary to allow the Parties to complete the Transition by April 1, 2003. The final Transition Plan may be further updated and modified from time to time as mutually agreed by the Parties in writing. Each revision of the Transition Plan shall include such modifications that do not, individually or in the aggregate, materially increase ABSBC's or BCH's costs for the Transition Services. The Transition Plan will constitute part of this AMSA.

3.4. *Conduct of the Transition.*

- (a) The terms and conditions set forth in this Section 3.4 apply solely to events, acts or omissions occurring prior to the AMSA Commencement Date, and have no further effect with respect to events, acts or omissions following the AMSA Commencement Date.
- (b) ABSBC will be responsible for the overall management of the Transition and shall use commercially reasonable efforts to minimize disruption to BCH's business operations where reasonably practicable. ABSBC and BCH will each perform the respective tasks required of it by the Transition Plan and will each use commercially reasonable efforts to complete such tasks in accordance with the Transition Plan's schedule for the completion of such tasks. BCH will cooperate with ABSBC and provide to ABSBC resources, information and other input reasonably requested by ABSBC to effect the Transition in accordance with the Transition Plan.

3.5. *Transition Cost Allocation.*

- (a) The terms and conditions set forth in this Section 3.5 apply solely to events, acts or omissions occurring prior to the AMSA Commencement Date, and have no further effect with respect to events, acts or omissions following the AMSA Commencement Date.
- (b) The Parties shall allocate and bear transition costs in accordance with the principles set forth in Schedule 3.5.

3.6. *Third Party Consents.*

- (a) During the Transition and the AMSA Transition, the Parties will cooperate to identify those third party consents which must be obtained in accordance with Article VI and Article XVII of the Limited Partnership Agreement (the

“*Necessary Consents*”). Subject to paragraphs (b) and (c) below, the Parties shall use commercially reasonable efforts to cooperate with each other and do such things as may be necessary to obtain the Necessary Consents prior to April 1, 2003 (in the case of the Transition) or April 1, 2006 (in the case of the AMSA Transition), or such other date that is as promptly as practicable thereafter, and on terms that are satisfactory to each Party, acting reasonably.

(b) [Redacted]

(c) [Redacted]

3.7. *Work in Progress.*

(a) The terms and conditions set forth in this Section 3.7 apply solely to events, acts or omissions occurring prior to the AMSA Commencement Date, and have no further effect with respect to events, acts or omissions following the AMSA Commencement Date.

(b) General. The Parties recognize that at the Effective Date there are certain application development projects that constitute work in process (“*WIP*”), the most significant of which are set forth in Schedule 3.7. The Parties acknowledge that Schedule 3.7 is not complete at the Effective Date but shall be completed by mutual agreement of the Parties prior to the Service Commencement Date. The Parties agree that (i) ABSBC shall not become financially or operationally responsible as described in Schedule 4.2 for any WIP at the Service Commencement Date (provided, however, that Accenture will be responsible for its obligations under the CIS Agreement) and (ii) with respect to each WIP, the date on which ABSBC will become financially and operationally responsible for such WIP as described in Schedule 4.2 shall be the date on which the provisions of this Section 3.7 are fully satisfied (the “*Responsibility Transfer Date*”). Notwithstanding the foregoing, employees of ABSBC shall perform application development work for WIP to the extent such persons were performing such work prior to the Service Commencement Date, but ABSBC shall not otherwise be financially or operationally responsible for any such WIP until the Responsibility Transfer Date for such WIP.

(c) *Establishment of Acceptance Criteria; Acceptance Testing.*

(i) For each WIP, the Parties shall establish objective acceptance criteria based upon industry standards and the particular requirements of such WIP (the “*WIP Acceptance Criteria*”). WIP Acceptance Criteria may vary among the WIP, and all WIP Acceptance Criteria shall be mutually agreed upon in writing by the Parties in the Transition Plan, to the extent reasonably practicable, and where not practicable, as soon as is practicable after the Effective Date.

- (ii) Prior to the Responsibility Transfer Date for a WIP, the Parties shall subject such WIP to acceptance testing to verify that it satisfies the applicable WIP Acceptance Criteria. If the acceptance testing indicates that the WIP does not satisfy the applicable WIP Acceptance Criteria, ABSBC will delay its assumption of financial or operational responsibility for such WIP until such time as it does satisfy the applicable WIP Acceptance Criteria. If the Parties agree that, notwithstanding the failure of such WIP to meet the applicable WIP Acceptance Criteria, ABSBC shall assume responsibility for such WIP, the Parties shall make all appropriate adjustments to the Service Charges and Service Levels to reflect any incremental costs and operational issues regarding such WIP.

3.8. *AMSA Transition.*

- (a) *AMSA Transition Services.* The Parties shall perform such tasks described in the written transition plan set forth in Schedule 3.8(a) (the “*AMSA Transition Plan*”) in order to facilitate the implementation of the AMSA, including related operational and administrative changes, by the AMSA Commencement Date (the “*AMSA Transition*”). It being understood that both Parties desire that the AMSA Transition be completed by April 1, 2006, or such other date as soon thereafter as is reasonably practicable, the Parties shall use their commercially reasonable efforts to complete the activities set forth in the AMSA Transition Plan and cooperate with each other to make such reasonable changes to the AMSA Transition Plan and do such other things as may be reasonably necessary to allow the Parties to complete the AMSA Transition by April 1, 2006.
- (b) *Conduct of the AMSA Transition.* BCH and ABSBC shall be jointly responsible for the overall management of the AMSA Transition, and shall cooperate to ensure that the AMSA Transition is implemented in accordance with the AMSA Transition Plan (which, shall include using reasonable commercial efforts to minimize disruption to the Services and BCH’s business operations). Each of ABSBC and BCH shall perform the tasks required of it by the AMSA Transition Plan and shall use commercially reasonable efforts to complete such tasks in accordance with the AMSA Transition Plan’s schedule for the completion of such tasks.
- (c) *Reporting.* Every two weeks between the AMSA Effective Date and the completion of the AMSA Transition Plan, each Party shall provide its CEO (or designate) with a written report on the implementation of the AMSA Transition Plan (which shall include identifying any missed deadlines for “critical” milestones identified in Schedule 3.8(a)).
- (d) *Costs of AMSA Implementation.*
 - (i) Subject to Sections 3.8(d)(ii) and 3.8(d)(iii) below, each Party shall bear their own costs (including labour costs and capital expenditures)

associated with the review and negotiation of the amendments to the Existing Agreement as reflected in this AMSA, and the implementation of such amendments (including the AMSA Transition, and any new required processes or data collection).

- (ii) With respect to those amendments to the Existing Agreement as reflected in this AMSA that require ABSBC to implement new Service performance metrics, Service Levels or reporting procedures and which either Party (acting reasonably) determines could result in BCH incurring increased costs, ABSBC shall prepare and present to BCH alternative plans, one of which plans shall not result in any increased cost to BCH. The preparation of the alternative plans shall form a part of the AMSA Transition Plan, and ABSBC shall make the plans available for BCH's review promptly following the identification by either Party of the possibility that BCH may incur increased costs. BCH (in its sole discretion) shall select which plan it wishes ABSBC to implement, and shall advise ABSBC of its selection within 30 days of the presentation of the plans to BCH by ABSBC.
- (iii) The Parties acknowledge that they will need to incur certain costs to enable the implementation and delivery of those In-Scope Services identified in the comments column of Attachment B of Schedule 4.2 with the notation "May require BCH Software Investment to Implement". The Parties agree that such costs shall be allocated between the Parties as follows:
 - (A) BCH shall be responsible for (x) the purchase cost of the hardware and software initially required to provide such In-Scope Services, (y) ongoing third party licensing costs associated with such hardware and software (which costs shall be charged to BCH as TPC Service Charges in accordance with, and subject to, Section 3.4 of Schedule 10.1), and (z) ABSBC's labour costs to initially install and configure such hardware and software; and
 - (B) **[Redacted]**

3.9. *AMSA Transitional Period Pricing and Payments.*

- (a) From August 31, 2005 until the AMSA Commencement Date, the terms and conditions of the Existing Agreement with respect to the pricing of the Services (including the interim pricing structure set forth in Schedule 10.1 of the Existing Agreement) shall apply.
- (b) As described in Attachment F to Schedule 10.1, BCH has agreed to make a non-interest bearing payment to ABSBC in the aggregate amount of **[Redacted]** for the period between April 1, 2005 through March 31, 2006 (the "**Adjustment Payment**"). In part payment of the Adjustment Payment, BCH has paid to

ABSBC (i) one installment of **[Redacted]** on September 30, 2005, and (ii) monthly installments of **[Redacted]** on each of October 31, 2005, November 30, 2005, December 31, 2005, January 31, 2006 and February 28, 2006. BCH shall make one final monthly payment to ABSBC of **[Redacted]** on March 31, 2006. The Adjustment Payment shall be non-refundable to BCH, notwithstanding the termination of the AMSA or failure to implement the AMSA Transition Plan.

- (c) Subject to Section 3.9(d) below, and as described in Attachment F to Schedule 10.1, BCH has also agreed to make a non-interest bearing one-time payment to ABSBC in the aggregate amount of **[Redacted]** in respect of Services provided between September 1, 2005 through March 31, 2006 (the “*Transitional Payment*”). In part payment of the Transitional Payment, BCH has paid to ABSBC six equal monthly installments of **[Redacted]** commencing on September 30, 2005, and ending on February 28, 2006. BCH shall make one final monthly payment to ABSBC of **[Redacted]** on March 30, 2006.
- (d) In the event that this AMSA is terminated prior to the AMSA Commencement Date pursuant to Section 17.2.1, BCH shall be released from its obligation to pay the Transitional Payment to ABSBC, and ABSBC shall promptly repay to BCH all amounts paid by BCH to ABSBC pursuant to Section 3.9(c), together with interest calculated at BCH’s then applicable weighted average cost of capital as published on BCH’s corporate website under the corporate controller’s division (or such other location as BCH may advise in writing from time to time) (the “*Transitional Payment Refund*”).

3.10. *Interval Projects*. The Parties recognize that there may be projects that form a part of the In-Scope Services that began prior to the AMSA Commencement Date, and that will continue to be executed following the AMSA Commencement Date (“*Interval Projects*”). The Parties agree that:

- (a) prior to the AMSA Commencement Date, the terms and conditions of the Existing Agreement (including the interim pricing provisions) shall apply to the Interval Projects; and
- (b) as of the AMSA Commencement Date, the terms and conditions of this AMSA (including the PPM) shall apply to the Interval Projects, and BCH (in its sole discretion) shall elect to pay for Services rendered in performing the Interval Projects following the AMSA Commencement Date either (i) by using its Discretionary Service capacity or (ii) by application of VRC Hourly Rates (pursuant to Section 3.4 of Schedule 10.1).

ARTICLE IV SERVICES

4.1. *Overview*. During the Agreement Term and except as provided in Sections 4.6 and 17.6, ABSBC shall provide to BCH, and BCH shall obtain from ABSBC, (i) the Transition Services in accordance with Article III, (ii) the In-Scope Services in accordance with

Section 4.2, (iii) the New Services (including the Procurement Enhancement Services) in accordance with Section 4.4, and (iv) the Termination Assistance Services in accordance with Section 17.5 (collectively, the “**Services**”). At all times during the Agreement Term, ABSBC shall provide, and/or will cause its Affiliates to provide, the necessary complement of skilled personnel and other resources assigned to perform the Services at the required capacity and according to the applicable Service Levels.

4.2. *In-Scope Services.*

4.2.1 *General*

- (a) Commencing on the Service Commencement Date and during the remainder of the Agreement Term and except as provided in Sections 4.6 and 17.6, ABSBC shall provide to BCH, and BCH shall obtain from ABSBC, the services set forth from time to time on the attachments and appendices comprising Schedule 4.2 (the “***In-Scope Services***”).
- (b) As set forth in Schedule 4.2, the In-Scope Services are grouped into the following Service Categories:
 - (i) Customer Care Services;
 - (ii) IT Services;
 - (iii) BOS Services;
 - (iv) HR Services;
 - (v) Finance Services; and
 - (vi) Purchasing Services.
- (c) As set forth in Schedule 4.2 and for billing purposes, the In-Scope Services are divided as follows:
 - (i) “***Base Services***”, representing the recurring and consistent scope of certain In-Scope Services required by BCH on a sustained month to month basis, to be charged on the fixed base fee basis set forth in Section 3.1 of Schedule 10.1. As described in Schedule 4.2, the Base Services are further divided into one or more Base Service domains (each a “***Base Service Domain***”);
 - (ii) “***Customer Care Services***”, representing certain customer care specific In-Scope Services required by BCH on a variable volume consumption basis, to be charged as set forth in Section 3.2 of Schedule 10.1. As described in Schedule 4.2, the Customer Care Services are further divided into one or

more Customer Care Service domains (each a “*Customer Care Service Domain*”);

- (iii) “*IT-AM Services*”, representing the recurring and consistent scope of IT application maintenance specific In-Scope Services required by BCH on a sustained month to month basis, to be charged on a fixed fee basis as set forth in Section 3.3 of Schedule 10.1;
 - (iv) “*Discretionary Services*”, representing certain non-recurring In-Scope Services, which BCH may at its discretion use for those service support requirements which BCH determines it requires from time to time on the take or pay fee basis for a defined capacity of resources to be made available by ABSBC and allocated evenly over the course of each Contract Year as set forth in Section 4.2.2 below and Section 3.5 of Schedule 10.1. Discretionary Services shall be deemed to have been performed in the month that they were made available. As described in Section 4.2.2 below, the Discretionary Services are further divided into one or more Discretionary Service Domains; and
 - (v) “*Tempwork Services*”, representing certain non-recurring Aligned Services required by BCH on a variable volume consumption basis, to be charged as set forth in Section 3.6 of Schedule 10.1.
- (d) The Parties acknowledge that there are functions, tasks and activities not specifically described in this AMSA that are reasonably and logically required for the proper performance and provision of the In-Scope Services and that such functions, tasks and activities are deemed to be included or inherent in the In-Scope Services. Such functions, tasks and activities shall be deemed to be implied and included within the scope of the In-Scope Services to the same extent and in the same manner as if specifically described in this AMSA.
- (e) Notwithstanding anything to the contrary in this Section 4.2, this provision is not intended to expand the In-Scope Services beyond those Services set forth in Schedule 4.2 and Schedule 4.4(d), and from the AMSA Commencement Date no reference or resort back to BCH activities prior to the Service Commencement Date shall be made as an aid to the interpretation of what is included or excluded from the In-Scope Services.
- (f) Subject to Section 8.12(g), functions, tasks and activities associated with ABSBC and/or its Affiliates providing pricing or fee estimates associated with a proposed Change Order (collectively, a “*COR Estimate*”) are expressly included as Base Services in Schedule 4.2, and costs arising from any COR Estimate (“*COR Estimate Costs*”) are deemed to be fully embedded into the Base Service Charges and shall not be passed through to BCH as extra costs.
- (g) Functions, tasks and activities associated with ABSBC and/or its Affiliates providing pricing or fee estimates associated with SOWs are included as

Discretionary Services, for which BCH shall be charged pursuant to Section 3.5 of Schedule 10.1.

- (h) Upon occurrence of a Scope Dispute, ABSBC shall continue to provide the Disputed Services pursuant to Section 18.7.

4.2.2 *Discretionary Services Protocol*

- (a) *Initial Discretionary Services.* The Discretionary Services available to BCH as at the AMSA Commencement Date are set forth in Schedule 4.2 (including attachments and appendices) and at the capacity set forth in Attachment B to Schedule 10.1. As described in Schedule 4.2, the Discretionary Services are grouped into one or more of the following Discretionary Service domains (each a “*Discretionary Service Domain*”):

- (i) Customer Care;
- (ii) IT Infrastructure;
- (iii) IT Application Sustainment;
- (iv) IT Application Development;
- (v) HR Services; and
- (vi) BOS Energy Diversions and Security Services.

- (b) *Normal Course Protocol.*

- (i) BCH may request the performance of Discretionary Services by providing ABSBC with reasonable written notice of (x) the specific Discretionary Services that BCH requires (the “*Required Discretionary Services*”), (y) the location where BCH requires the Required Discretionary Services to be performed, and (z) the desired start or end date for the Required Discretionary Services (a “*Discretionary Service Request*”).
- (ii) Upon receipt of a Discretionary Service Request, ABSBC shall promptly prepare and provide to BCH a SOW for the delivery of the Required Discretionary Services, in accordance with the timeframes set out in the governance metrics set forth in Attachment A to Schedule 5.1 (a “*Discretionary Service SOW*”), which shall include (x) a confirmation of the capacity available for the applicable Discretionary Service Domain, and (y) a description of the timeline and draw-down of the applicable Discretionary Service Domain. With respect to IT Discretionary Service Domains only, and unless otherwise agreed in writing between the Parties, ABSBC shall obtain the draw-down of the available capacity within the applicable Discretionary Service Domain by application of standard

estimating models as described in Section 3 of Appendix B3.1 to Schedule 4.2, which draw-down (as calculated by the standard estimating models) shall be final, and not otherwise subject to validation, adjustment, negotiation or approval.

- (iii) BCH, in its sole discretion, may accept or reject a Discretionary Service SOW. In the event that BCH accepts a Discretionary Service SOW, the Parties shall implement the Discretionary Service SOW. For the avoidance of doubt, in the event that there is insufficient allocated capacity available in the applicable Discretionary Service Domain, BCH (in its sole discretion) may elect to pay for the incremental capacity by application of VRC Hourly Rates (as described in Section 3.7 of Schedule 10.1).
- (c) *Reallocation of Discretionary Services and Base Services.* ABSBC may reallocate or reassign resources between Discretionary Services and Base Services at its discretion, *provided that* (i) committed project schedules set out in Discretionary Service SOWs are not delayed or changed as a result of such resource movement, and (ii) such resource movement does not affect the delivery of the Base Services.
- (d) *Changes to Discretionary Services.* BCH may, upon providing ABSBC with **[Redacted]** prior written notice, change, reorganize and re-prioritize the portfolio of its service requirements within the Discretionary Service Domains in order to:
 - (i) create a new Discretionary Service Domain; and/or
 - (ii) change the type or nature of the service function, activity or task (and skills required by BCH) within a Discretionary Service Domain;

and ABSBC shall make available such new or modified Discretionary Services, *provided that* the services requested by BCH are Aligned Services. The skills required by BCH in respect of the IT Application Sustainment and IT Application Development Discretionary Service Domains are set out at Attachment H to Schedule 10.1 (as it may be amended from time to time as agreed in writing between the Parties).

In addition, BCH may, upon providing ABSBC with **[Redacted]** prior written notice, change, reorganize and re-prioritize the portfolio of its service requirements within the Discretionary Service Domains in order to create additional capacity of Discretionary Services for those Discretionary Service Domains identified by BCH from time to time.

- (e) *Periodic Reporting.* The Parties shall comply with the reporting protocol applicable to the Discretionary Services as set forth in the attachments and appendices to Schedule 4.2, and Section 8.5.

- (f) *IT Discretionary Services.* The Parties shall implement the Discretionary Services contained within the IT Infrastructure, IT Application Development and IT Application Sustainment Discretionary Service Domains in accordance with the protocol set forth in Appendix B3.1 to Schedule 4.2.

4.3. *Additional Scheduled Services.*

- (a) The terms and conditions set forth in this Section 4.3 (including Schedule 4.3(a)) apply solely to events, acts or omissions occurring prior to the AMSA Commencement Date, and have no further effect with respect to events, acts or omission following the AMSA Commencement Date.
- (b) Commencing on the Service Commencement Date and during the remainder of the Agreement Term, BCH may request ABSBC or its Affiliates to provide, and upon such request ABSBC shall provide, in addition to the In-Scope Services, those services listed in Schedule 4.3 at the prices determined using the pricing methodology set forth therein (the “***Additional Scheduled Services***”). On an annual basis, ABSBC shall update the listed prices or pricing methodologies, as applicable, for such Additional Scheduled Services. Additional Scheduled Services shall be requested and implemented pursuant to Section 8.12 and shall also become an In-Scope Service and be listed in the appropriate service schedule comprising Schedule 4.2. Notwithstanding the foregoing, the Service Charges for an Additional Scheduled Service that becomes an In-Scope Service pursuant to the foregoing sentence shall not be eligible for the discounts otherwise provided for In-Scope Services pursuant to Section 2.4 of Schedule 10.1.

4.4. *New Services.*

- (a) BCH may request ABSBC or its Affiliates to provide services outside of the In-Scope Services (“***New Services***”). Any agreement of the Parties with respect to such New Services will be in writing, will constitute an amendment to this AMSA and shall also become an In-Scope Service and be listed in the appropriate service schedule comprising Schedule 4.2.
- (b) To request a New Service, BCH will deliver a written request (the “***New Service Request***”) to the ABSBC Contract Manager specifying in reasonable detail to the extent known (i) the proposed New Service, (ii) the objective or purpose of such New Service, (iii) the requirements and specifications of the deliverables to be delivered pursuant to such New Service (including an estimation of anticipated additional volumes of services required), and (iv) the requested prioritization and schedule for such New Service.
- (c) The Parties shall cooperate with each other in good faith in discussing the scope and nature of the requirements contemplated by the New Service Request, the availability of ABSBC personnel and resources to provide such New Service and the time period in which such New Service will be implemented. As soon as practicable thereafter and to the extent applicable, ABSBC will prepare and

deliver to the BCH Contract Manager a written statement (the “*New Service Response*”) describing any changes in products, services, assignment of personnel and other resources that ABSBC believes would be required. In addition, such New Service Response shall include, as appropriate or applicable, (i) an estimation of the increase or decrease, if any, in the pricing that would be required (including changes, if any, required to Schedule 10.1), (ii) a description of how the proposed New Service would be implemented, (iii) a description of the effect, if any, such New Service would have on this AMSA, including, without limitation, on Service Levels and Termination Fees, (iv) an estimation of all resources required to implement such New Service, including a description of the delivery risks and associated risk mitigation plans, and (v) such other information as may be relevant to the proposed New Service. The ABSBC Contract Manager, the BCH Contract Manager and the applicable ABSBC Functional Owners and BCH Functional Owners will meet to determine whether they desire for ABSBC to proceed with the implementation of the proposed New Service in accordance with the New Service Response. No New Service implementation shall occur without the mutual agreement of the Parties. ABSBC may not recover from BCH **[Redacted]** for New Services unless BCH agrees in writing in advance to either pay such costs or permit such costs to be recovered as part of the pricing for such New Services.

- (d) As a New Service, commencing on the AMSA Effective Date and during the remainder of the Agreement Term, ABSBC shall provide to BCH, and BCH shall obtain from ABSBC, the Procurement Enhancement Services as described, and in the manner set forth, in Schedule 4.4(d) (the “*PE Services*”).

4.5. *Other Services.*

- (a) *Other Providers.* BCH retains the right to solicit and use providers other than ABSBC or its Affiliates:
 - (i) for services other than the In-Scope Services; and
 - (ii) **[Redacted]**
- (b) *Aligned Services Performed at VRC Hourly Rates.* From time to time during the Agreement Term, BCH (in its sole discretion) may request that ABSBC perform, and ABSBC shall perform, Aligned Services, and the labour required to perform such Aligned Services shall be priced in accordance with the VRC Hourly Rates (as described in Section 3.7 of Schedule 10.1).

4.6. *Service Discontinuance.*

- (a) BCH may from time to time **[Redacted]** elect to insource, resource or discontinue any component of a Service Category (each, a “*Service Discontinuance*”) in accordance with this Section 4.6. The designated In-Scope Service shall be discontinued in accordance with the remainder of this Section 4.6. **[Redacted]**.

- (b) To effect a Service Discontinuance, BCH will deliver a written request (a “*Discontinuance Notice*”) to the ABSBC Contract Manager, specifying in reasonable detail the proposed Service Discontinuance and the requested date of such discontinuance. In no event shall the requested date for a Service Discontinuance be less than [Redacted] from the date of the Discontinuance Notice.
- (c) As soon as practicable after receipt of a Discontinuance Notice (but in no event more than [Redacted] thereafter), ABSBC will prepare and deliver to the BCH Contract Manager a written statement (the “*Discontinuance Response*”) describing any changes in products, services, assignment of personnel and other resources that ABSBC believes would be required to implement the Service Discontinuance. In addition, such Discontinuance Response shall include, as applicable, (i) an estimation of the increase or decrease in applicable ABSBC charges, including appropriate back-up documentation to justify such estimates, (ii) an estimation of the Demobilization Costs and Stranded Costs that would result from such Service Discontinuance and any adjustment to Service Charges affected by such Service Discontinuance, (iii) a description of how the proposed Service Discontinuance would be implemented, (iv) a description of the effect, if any, such Service Discontinuance would have on this AMSA, including without limitation, any directly affected and other materially affected Service Levels, (v) a description of any transition or termination services that will be provided in respect of such Service Discontinuance and (vi) such other information as may be relevant to the proposed Service Discontinuance.
- (d) The ABSBC Contract Manager and the BCH Contract Manager will meet to discuss the implementation requirements contemplated by the Discontinuance Response, including any disagreement in respect of such Discontinuance Response, and to determine the appropriate schedule for such Service Discontinuance. Upon a Service Discontinuance, BCH shall pay to ABSBC the amount of any Demobilization Costs and Stranded Costs set forth in the Discontinuance Response and resulting from such Service Discontinuance. Each Party shall take commercially reasonable measures to mitigate Demobilization Costs and Stranded Costs incurred in order to effect such Service Discontinuance. [Redacted].

4.7. *Service Reallocation.*

- (a) The terms and conditions set forth in this Section 4.7 apply solely to events, acts or omissions occurring prior to the AMSA Commencement Date, and have no further effect with respect to events, acts or omissions following the AMSA Commencement Date.
- (b) BCH may from time to time elect to (x) insource, resource or discontinue any part of any Service or (y) contract with a third party to provide any part of a Service whether or not at such time ABSBC is providing that part of the Service (each, a

“**Service Reallocation**”). Upon BCH’s decision to effect a Service Reallocation, BCH shall as promptly as is practicable deliver a written notice (a “**Reallocation Notice**”) to the ABSBC Contract Manager, specifying in reasonable detail the proposed Service Reallocation and the targeted date of such reallocation. The Parties will cooperate with each other in good faith in discussing the scope and nature of the implementation requirements associated with each Service Reallocation, including, without limitation, the involvement of BCH or a third party in providing the portion of the In-Scope Service subject to the Service Reallocation, the impact of such arrangement on ABSBC’s ability to satisfy its continuing obligations with respect to such In-Scope Service and the effect, if any, that such Service Reallocation would have on Service Charges and Service Levels. The Parties shall follow the Change Order procedures provided in Section 8.12 to implement any changes to the Services required by the Service Reallocation.

- 4.8. *Primary Supplier.* BCH shall notify ABSBC as soon as reasonably practicable of all future opportunities to provide services similar to those being provided to BCH by ABSBC, including services related to information technology, customer care, procurement, human resources or finance and accounting as well as opportunities related to Service Discontinuances (a “**Covered Opportunity**”). If BCH solicits bids from third parties in respect of any Covered Opportunity, ABSBC shall also be afforded an opportunity to bid on such Covered Opportunity in any such bid process. Additionally, where not prohibited by Law or BCH policy, BCH shall use commercially reasonable efforts to notify ABSBC in writing as soon as is practicable in advance of BCH’s intended insourcing or award of each such Covered Opportunity to another service provider.
- 4.9. *Reliance on Instructions.* In performing its obligations under this AMSA, ABSBC will be entitled to reasonably rely upon any routine instructions, authorizations, approvals or other information provided to ABSBC by the BCH Contract Manager or applicable BCH Functional Owner or, as to areas of competency specifically identified by the BCH Contract Manager or applicable BCH Functional Owner, by any other BCH personnel identified by the BCH Contract Manager or applicable BCH Functional Owner, from time to time, as having authority to provide routine instructions, authorizations, approvals or other information on behalf of BCH in such person’s area of competency.
- 4.10. *BCH Service Responsibilities.*
- (a) During the Agreement Term and in connection with ABSBC’s performance of its obligations hereunder, BCH will, at its own cost and expense, have the obligations to ABSBC, and retain the responsibilities, assigned to BCH in Schedule 4.2 (including Attachments) (the “**BCH Service Responsibilities**”).
 - (b) In addition to the BCH Service Responsibilities, BCH shall also perform the obligations assigned specifically to BCH and provide the space and facilities and

other services required to be provided pursuant to the terms and conditions of the Support Services Agreement (the “*SSA Responsibilities*”).

- (c) The ability of ABSBC to provide Services and to meet the Service Levels may be affected by BCH failing to perform its obligations under this AMSA and under the Support Services Agreement. ABSBC shall, for any period and to the extent that it is prevented from or hindered in performing the Services by BCH’s failure to perform its obligations under this AMSA, including, without limitation, the BCH Service Responsibilities or the SSA Responsibilities, be excused in the performance of its obligations (including meeting Service Levels) that are affected by BCH’s failure to perform. ABSBC shall notify BCH in writing of any such failure to perform within a reasonable period of time after ABSBC has become aware of such failure. ABSBC shall use commercially reasonable efforts to perform, notwithstanding any failure to perform by BCH, and BCH shall reimburse ABSBC for its incremental costs and expenses incurred in such effort to perform; *provided, however*, that ABSBC shall notify BCH prior to incurring any material costs and expenses in connection with such performance. Notwithstanding any provision of this AMSA to the contrary, under no circumstances will ABSBC be deemed to be in breach of this AMSA for any failure or delay in performing any of BCH’s responsibilities set forth in this AMSA.

4.11. *BCH Responsibility for Policy and Internal Controls.*

- (a) *Accounting Policy.* In addition to its responsibilities specified elsewhere in this AMSA and as may be described in Section 4.10, BCH is responsible for (i) management oversight, determining accounting policies, accounting transaction initiation, and authorizing, interpreting and creating specifications for BCH financial reporting information; (ii) establishing, maintaining and evaluating the effectiveness of its disclosure controls and procedures and internal controls; (iii) determining the quality and other standards for the Services with which ABSBC (upon its agreement therewith) will be required to comply; (iv) determining when, whether and how any recommendations made by ABSBC regarding accounting policies are to be implemented by BCH; and (v) providing ABSBC with accurate and complete source data and information and reviewing all data and financial and accounting reports provided by ABSBC under this AMSA. The scope of the financial and accounting services included within the Services is limited to: (a) processing and administration, as more fully described in Schedule 4.2, (b) functions, including supervisory or oversight functions, performed by professionally trained ABSBC employees, as more fully described in Schedule 4.2, and (c) establishing and maintaining appropriate input and output data control procedures or mechanisms in accordance with Schedule 4.2 and this AMSA. BCH acknowledges and agrees that (a) ABSBC is not licensed, chartered or certified in any jurisdiction as an accounting or auditing firm; (b) ABSBC cannot represent or express any opinions or assurances that the Services, or any reports generated thereby, will conform to any recognized third-party accounting

standard; and (c) the Services shall be deemed to exclude functions that by Law or custom are provided by, or reserved to, audit firms, chartered accountancy firms, or other similar professional entities.

(b) *Human Resources Policy.* BCH is responsible for (i) determining human resources policies and establishing, maintaining and evaluating the effectiveness of such policies; (ii) determining the quality, criteria and other standards for the Services with which ABSBC (upon its agreement therewith) will be required to comply; and (iii) determining when, whether and how any recommendations made by ABSBC regarding human resources policies are to be implemented by BCH. BCH will be responsible for providing ABSBC with accurate and complete source data and information and for reviewing all data and reports provided by ABSBC under this AMSA in connection with its human resources policies.

(c) *Other BCH Policies.*

(i) Without limiting or modifying in any way the Service obligations, including Service Level requirements of ABSBC, BCH shall continue to retain and take responsibility for the adoption and implementation, on an ongoing basis, of corporate policies of general application to contractors of BCH, including ABSBC, in the following areas:

(A) *Codes of Conduct.* Policies regarding the ownership, confidentiality and protection of customer data and private information of employees, customer relations, political contributions, conflicts of interest and corporate ethics, including use of promotional gifts and entertainment activities.

(B) *Environmental and Workplace Safety.* Policies, procedures, guidelines and safeguards applying to the access to and use or occupation of any BCH facility and related facilities and the protection of individual worker safety.

(C) *Customer Relations.* Policies or guidelines regarding all dealings with BCH customers and ratepayers, including any credit policies, tariff terms and conditions, policies and/or directives that may be imposed on BCH by the BCUC in relation to billing and meter reading practices.

The credit policies of BCH include the requirement that all amounts collected (or dispersed) on behalf of BCH by a designated third party (including ABSBC) be collected and held (or dispersed) in trust for BCH in a segregated account to be used exclusively for such collected (or dispersed) amounts. Additionally, BCH at its discretion may require from time to time that specifically identified transactions be separately managed and controlled by BCH outside of this AMSA.

- (D) *Procurement Policies.* Policies and guidelines relating to the procurement of goods and services for or on behalf of BCH, (including the Code of Conduct Guidelines applicable to BC Hydro contracts (being Attachment 1 to the BCH Director and Employee Code of Conduct)), and all other public tendering or bidding protocol requirements, supply or conflict of interest rules and any required technical specifications or standards adopted by, or otherwise applicable to, BCH.
 - (E) *Freedom of Information and Privacy.* Policy and guidelines regarding compliance with Freedom of Information Legislation, including in relation to the custody, collection, handling, safeguarding and transfer of employee information and records and any obligations of disclosure that may apply to BCH. ABSBC shall appoint a senior manager to oversee compliance with Freedom of Information Legislation and to serve as a contact for BCH, regulatory officials and others in respect of matters that may arise under Freedom of Information Legislation.
 - (F) *IT Policy and Standards.* Policies and/or guidelines relating to technology standards and specifications, and safeguarding and protecting all IT systems, equipment and software, and all related data (including customer data).
 - (G) *Other Service Policies.* In addition to the retention of policy functions specified in this AMSA, BCH shall generally retain responsibility for policy making in relation to the other Service Categories to the extent that these policies are of general application to contractors and may, consequently, apply to or affect the performance of the Services or ABSBC.
- (ii) In providing Services to BCH, ABSBC shall comply, and shall cause each of its employees and subcontractors to comply at all times, with the foregoing BCH corporate policies, provided that such policies are of general application to BCH contractors or ABSBC has otherwise agreed to comply with such policies, and updated written copies of these policies, to the extent applicable to ABSBC and the Services, are made available to ABSBC. Additionally, BCH acknowledges that ABSBC may have its own operational policies to which it will be subject, though ABSBC shall in all cases comply with any higher standards in the aforementioned BCH policies.
 - (iii) Throughout the Agreement Term, ABSBC shall, and shall cause its Affiliates to, establish, maintain and comply with internal operational policies that properly manage the conflict of interest that may arise from ABSBC and/or its Affiliates acting in a dual capacity as both a potential

supplier and procurer of services and supplies to BCH (“**Procurement Policies**”). The Procurement Policies shall include:

- (A) the prompt disclosure to BCH of any conflict of interest or potential conflict of interest, and the provision to BCH of specific steps being taken by ABSBC and its Affiliates to manage the conflict;
- (B) the creation and maintenance of appropriate conflict walls which maintain the confidentiality of information in circumstances where a conflict of interest exists, or could reasonably be expected to exist;
- (C) policies to segregate (i) personnel utilized by ABSBC or its Affiliates to procure services or supplies for BCH, from (ii) personnel utilized by ABSBC or its Affiliates to supply non-procurement services or supplies to BCH, so as to minimize the potential occurrence of a conflict of interest; and
- (D) a requirement that no personnel utilized by ABSBC and/or its Affiliates may participate in either the supply or procurement of services and supplies to BCH unless such personnel have first been provided, and notified that they must comply, with the Procurement Policies.

BCH may disclose to third parties the fact (if applicable) that ABSBC (directly or indirectly through an Affiliate) is participating as both a supplier and procurer of services to BCH, and the actions undertaken by ABSBC and its Affiliates to address conflict of interest situations.

(d) *Internal Controls.*

- (i) BCH shall continue to retain and take responsibility for the adoption and implementation, on an ongoing basis, of corporate controls relating to the Services provided by ABSBC under this AMSA (the “**BCH Internal Controls**”). From time to time during the Agreement Term, ABSBC shall proactively assess, and shall make recommendations (as necessary) with respect to, the BCH Internal Controls, including the design, modification or enhancement of such controls. BCH retains responsibility for assessing the appropriateness of any such recommendations made by ABSBC, and BCH shall approve in writing any changes to the BCH Internal Controls resulting from recommendations made by ABSBC. ABSBC shall promptly implement any recommended changes to the BCH Internal Controls, *provided that* ABSBC shall not make any change to BCH Internal Controls without the prior written approval of BCH.

- (ii) In providing the Services to BCH, ABSBC shall comply, and shall cause each of its employees and subcontractors to comply at all times, with the foregoing BCH Internal Controls, and updated written copies of the BCH Internal Controls, to the extent applicable to ABSBC and the Services, are made available to ABSBC. Notwithstanding the foregoing, from time to time ABSBC may modify the processes and procedures it uses to provide the Services; *provided, however*, that any such change to ABSBC processes and procedures shall comply with applicable BCH policies and controls then in effect.

 - (e) *Notifications and Modifications.* As of the Service Commencement Date, BCH will provide to ABSBC copies of the BCH corporate policies and BCH Internal Controls having application to ABSBC as an independent contractor and service provider. For the avoidance of doubt, BCH Internal Controls are comprised of the process steps that the Parties agreed upon as part of the development of Schedule 4.2, and documented internal control procedures in existence as at the Service Commencement Date. BCH shall notify ABSBC of any changes, updates, modifications or amendments that BCH may make to such policies and BCH Internal Controls. Any such changes, updates, modifications or amendments shall be requested and implemented pursuant to Section 8.12. ABSBC will be responsible for any modifications to the Services as a result of changes, updates, modifications and amendments after the Parties' execution and delivery of a Change Order.
- 4.12. *Third-Party Products.* ABSBC Affiliates have established relationships with many major hardware and software technology providers, which relationships enable ABSBC to resell these providers' hardware and software products. To the extent that ABSBC's pricing is competitive for hardware and software and to the extent that such acquisition complies with any procurement regulation applicable to BCH or BCH policy, BCH agrees to consider in good faith any ABSBC proposal to acquire hardware and software products required for the provision of the Services through ABSBC by utilizing ABSBC's reseller agreements. It being understood that BCH shall not be obligated to accept any such proposal, and any such proposal that is accepted will be effected pursuant to mutually agreed terms and conditions between BCH and ABSBC.
- 4.13. *BCH Reorganization.*
- (a) *General.* The Parties recognize that BCH may, during the Agreement Term, reorganize by dividing its business into two or more successor entities by spinning off or divesting one or more of its divisions or by executing some other reorganization transaction (each such transaction, a "***BCH Reorganization***" and each successor entity or transferee, a "***Successor Entity***"). BCH shall notify ABSBC as soon as practicably possible regarding any decision to effect a BCH Reorganization. At the request of BCH, upon the implementation of a BCH Reorganization, ABSBC shall provide the Services to each Successor Entity, but only if (i) each such Successor Entity enters into a separate agreement with

ABSBC incorporating substantially similar terms and conditions to this AMSA (with such changes as are required as a result of the changed scope or circumstances of the successor agreements), (ii) ABSBC receives reasonable compensation for ABSBC's incremental administrative costs associated with providing the Services to multiple entities (e.g., contract governance costs, provincial sales taxes or other tax costs), and (iii) suitable arrangements are entered into to ensure the performance and payment of all amounts due under any successor agreements (e.g., a guaranty from BCH or other financially responsible party). [Redacted].

(b) *BCTC*.

- (i) The Parties acknowledge that on April 1, 2005, BCTC separated from BCH.
- (ii) ABSBC has agreed to continue to provide certain Services contained within the In-Scope Services that are provided solely for the benefit of BCTC as if BCTC were an Affiliate of BCH, and notwithstanding that BCH is responsible for the Service Charges that accrue in relation to such Services. Billing arrangements applicable to the provision of In-Scope Services provided to BCTC are set forth in a letter agreement among BCH, BCTC and ABSBC dated February 25, 2004.
- (iii) Between the [Redacted], the Parties shall engage in good faith negotiations with BCTC with a view to having BCTC and ABSBC enter into a separate agreement with respect to Services consumed by BCTC (and associated Service Charges) on terms and conditions that are substantially similar to the terms and conditions set forth in this AMSA (with such changes as are required as a result of the changed scope or circumstances of the successor master service agreements for each of BCH and BCTC), and such that the aggregate Service Charges contemplated under the resultant contractual arrangements between ABSBC and each of BCTC and BCH are equal to the aggregate forecasted spend for the Agreement Term (as set forth in Attachment A to Schedule 10.1, as at the AMSA Effective Date) (the "*BCTC Agreement*"). ABSBC agrees to provide such assistance as BCH (acting reasonably) may request to facilitate the negotiation of the BCTC Agreement, which assistance may include providing BCTC and BCH with supporting information in relation to BCTC specific Services and Service Charges. In conjunction with the BCTC Agreement, the Parties shall agree upon necessary amendments to this AMSA (including Schedules 4.2 and 10.1) to appropriately reflect the BCTC Agreement. For the avoidance of doubt, upon execution of the BCTC Agreement, BCH shall not be required to hold harmless ABSBC for any acts or omissions of BCTC under the BCTC Agreement.

- (iv) ABSBC's entry into the BCTC Agreement shall be conditional upon the Parties agreeing upon amendments to this AMSA (including Schedules 4.2 and 10.1) that are required as a direct consequence of creating the BCTC Agreement. The AMSA shall continue to govern the provision of Services to BCTC until such time as ABSBC and BCTC enter into the BCTC Agreement.
- (v) If the aggregate charges for services provided for under the BCTC Agreement and this AMSA (as amended to reflect the BCTC Agreement) are equal to or greater than the Service Charges currently provided for under this AMSA over the Agreement Term (as set forth in Attachment A to Schedule 10.1, as at the AMSA Effective Date), BCH shall make a non-interest bearing payment to ABSBC in an aggregate amount not to exceed **[Redacted]** for ABSBC's incremental administrative costs associated with being a party to both the AMSA and the BCTC Agreement, payable as follows:
 - (A) **[Redacted]**, payable on the effective date of the BCTC Agreement; and
 - (B) **[Redacted]** on **[Redacted]** following the payment described in paragraph (A) above, up to an aggregate amount of **[Redacted]**.

For the avoidance of doubt, ABSBC's incremental administrative costs associated with being a party to both the AMSA and the BCTC Agreement include all of ABSBC's costs associated with those categories and activities agreed upon by ABSBC and BCTC as of January 31, 2005, which for the avoidance of doubt include (w) BCTC tax planning, (x) compliance with BCTC policies, (y) required changes to the invoice procedure and/or service level reporting requirements in place as at January 31, 2005, and (z) new client service support required as a result of the BCTC Agreement (e.g., contract governance in respect of the BCTC Agreement, demand management for BCTC, and meetings and communications with BCTC stakeholders).

- (vi) If the aggregate charges for services contemplated under the BCTC Agreement and this AMSA (as amended to reflect the BCTC Agreement) are less than the Service Charges currently provided for under this AMSA over the Agreement Term (as as set forth in Attachment A to Schedule 10.1, as at the AMSA Effective Date):
 - (A) BCH shall make a non-interest bearing payment to ABSBC in an aggregate amount not to exceed **[Redacted]** for ABSBC's incremental administrative costs associated with being a party to both the AMSA and the BCTC Agreement, payable as provided in Section 4.13(b)(v) above; and

- (B) BCH shall also pay to ABSBC an amount equal to the termination costs arising under this AMSA associated with the aggregate reduction in In-Scope Services (if any) occurring as a result of ABSBC entering into the BCTC Agreement and the consequent amendment to this AMSA, which amount shall be payable as and when such termination costs arise (as determined and agreed by the Parties at the time the BCTC Agreement and consequent amendment to this AMSA are executed). For the purposes of this Section 4.13(b)(vi)(B), the aggregate reduction of In-Scope Services shall represent those In-Scope Services that are reduced under the AMSA as a result of ABSBC entering into the BCTC Agreement, and which are not replaced under the BCTC Agreement by equivalent services.

4.14. *Compliance with Laws and Regulations.*

- (a) *General.* Each of the Parties shall comply and perform their respective obligations hereunder in accordance with, and shall use reasonable efforts to ensure that its respective contractors and subcontractors comply and perform their obligations in accordance with, all Laws applicable to its respective business and facilities and all Laws applicable to the other Party's business and facilities that are made known to it. In performing their respective obligations under this AMSA, neither Party shall be required to undertake any activity that would violate any applicable Laws.
- (b) *Notice of Regulatory Change.* Each Party will be responsible for identifying and notifying the other Party of any Regulatory Change applicable to its respective business and facilities that relates in a material way to this AMSA or the Services. In giving such notice, the notifying Party shall identify the applicable Regulatory Change and the anticipated or actual impact on the notifying Party, this AMSA or the Services. Any changes to this AMSA or the Services that are required due to a Regulatory Change shall be requested and implemented pursuant to Section 8.12. ABSBC will be responsible for any modifications to the Services as a result of such Regulatory Changes in accordance with the Change Order process described in Section 8.12.
- (c) *Specific Legislation.* For clarity, and without limiting the generality of the foregoing, the Parties acknowledge and agree that ABSBC shall comply with the following Laws in performing the Services (but only to the extent that, with respect to all of such Laws other than under paragraphs (ii) and (vii) below, the applicable provisions and requirements of such Laws are made known to ABSBC prior to the Service Commencement Date, as may be modified from time to time in accordance with paragraph (b) above) and that the incremental costs of complying with any changes to such Laws, shall be fully borne by BCH:

- (i) *Ombudsman Act.* ABSBC acknowledges that BCH is an “authority” for the purposes of the *Ombudsman Act*, R.S.B.C. 1996, c.340, and ABSBC, under the direction of BCH, will at all times support and assist BCH in respect of any investigation under the *Ombudsman Act* undertaken in relation to the provision of Services as such may relate to any BCH customer, rate payer or supplier or any other interested person having dealings with BCH and having rights under the *Ombudsman Act*. BCH shall continue to retain full legal responsibility for ultimately responding to and dealing with investigations made by, and all complaints made to, the Ombudsman in accordance with the requirements and procedures of this legislation and BCH’s written procedures and policies. ABSBC shall provide Services in relation to the administration of the BCH complaints system and procedure maintained by BCH pursuant to the *Ombudsman Act*. ABSBC further acknowledges that under the *Ombudsman Act* the Ombudsman has the power to obtain information and evidence from persons other than BCH in the course of investigating complaints made under the *Ombudsman Act*. Accordingly, ABSBC shall provide reasonable cooperation with respect to inquiries by the Ombudsman regarding BCH-related matters, but only regarding information relating to BCH and its customers and not information related to ABSBC, its Affiliates or its other customers.
- (ii) *Debt Collections Act.* Prior to the Service Commencement Date, ABSBC shall obtain all necessary licences and approvals that may be required under the *Debt Collections Act*, R.S.B.C. 1996, c. 92, to act as a debt collection agent and to otherwise comply with the applicable requirements of this legislation.

ABSBC shall administer the collection of all BCH customer receivables in the name of and on behalf of BCH. ABSBC, however, shall not commence any legal proceedings regarding the collection of such receivables without obtaining the prior written consent and direction of BCH, and ABSBC shall not settle or compromise any such collection action without the prior written consent of BCH. Upon written request to BCH, the administration, management and responsibility for the collection of particular customer receivables shall be turned over to BCH, and in such circumstances ABSBC shall not take and shall not be obligated to take any further steps or actions in relation to such receivables (except as specifically required by BCH in accordance with this AMSA). ABSBC shall, for any period and to the extent it is prevented or hindered in performing any Service by any action or inaction of BCH with respect to BCH customer receivables, be excused in the performance of its obligations (including meeting Service Levels) that are affected by such action or inaction of BCH.

- (iii) *Financial Administration Legislation.* As a government corporation, BCH is required to comply with the requirements of the *Financial Administration Act*, R.S.B.C. 1996, c.140, *Financial Information Act*, R.S.B.C. 1996, c. 138, and regulations made thereunder, regarding the maintenance of financial records, the reporting of financial results of the corporation, the granting of guarantees and indemnities and similar financial matters. In performing the Services, ABSBC shall comply with all requirements of such legislation to the extent applicable to BCH and to the extent such requirements are made known to ABSBC by BCH, but only regarding information relating to BCH and its customers and not information related to ABSBC, its Affiliates or other customers (by providing information to the extent that it relates to BCH, but not information relating to ABSBC generally or to matters not involving BCH).
- (iv) *Utilities Commission Act.* ABSBC acknowledges and agrees that nothing in this AMSA alters the legal relationship between BCH and its customers and that BCH shall continue to retain full legal responsibility of the contractual and commercial relationship with its customers and rate payers. ABSBC shall perform the Services in such a manner as to allow BCH to comply with all applicable requirements of the *Utilities Commission Act*, R.S.B.C. 1996, c. 473, and any regulatory directive, order or policy to the extent applicable to BCH, all to the extent such requirements are made known to ABSBC by BCH.

ABSBC shall comply with the written directions and directives of BCH in respect of any communications with BCH customers or ratepayers, including responding to any customer, ratepayer or other stakeholder inquiries or complaints. ABSBC shall not communicate directly with the BCUC in relation to BCH matters except as specifically requested and directed by BCH. ABSBC shall, for any period and to the extent it is prevented or hindered in performing any Services by any action or inaction of BCH with respect to its obligations regarding BCH customer communications, be excused in the performance of its obligations (including meeting Service Levels) that are affected by such action or inaction of BCH. ABSBC shall use commercially reasonable efforts at all times to mitigate the risk of ABSBC being found to be a “public utility” within the meaning of the *Utilities Commission Act*, and ABSBC shall not produce, sell or provide electricity on its own account, or on behalf of BCH.

- (v) *B.C. Hydro and Power Authority Act.* In performing the Services, ABSBC shall comply with all applicable requirements of the *Hydro and Power Authority Act*, R.S.B.C. 1996, c. 212, to the extent applicable to BCH and to the extent such requirements are made known to ABSBC by BCH.

- (vi) *Freedom of Information Legislation.* ABSBC acknowledges that BCH is subject to the *Freedom of Information and Protection of Privacy Act*, R.S.B.C. 1996, c. 165, as it may be amended from time to time, (“**FOIPPA**”) and the equivalent federal legislation, if applicable (collectively, the “**Freedom of Information Legislation**”), and that BCH may from time to time be required to provide information in accordance with the requirements of the Freedom of Information Legislation. ABSBC shall, subject to Sections 8.12 and 12.1 of the AMSA, cooperate with and assist BCH in complying with any orders or directives made by the Commissioner under or in contemplation of the Freedom of Information Legislation, any agreements or protocols relating to the administration of the Freedom of Information Legislation and any other requirements arising under the Freedom of Information Legislation. ABSBC further acknowledges that BCH is transferring to ABSBC physical custody of “records” as defined under that legislation but is not transferring control of those records, or control of any personal information regarding customers or BCH employees and their employment with BCH that may be contained in those records. In performing its Services and managing those records, ABSBC will comply, and will cause its Affiliates, employees, representatives, agents, contractors and advisors to comply, with (x) all requirements of the Freedom of Information Legislation and (y) any applicable policies and directives, and in particular the Guidelines for Data Service Contracts (all to the extent applicable to BCH and to the extent such policies and directives are made known to ABSBC by BCH).

ABSBC shall perform its duties, and be bound by its obligations, under the Freedom of Information Legislation and this Section 4.14(c)(vi) notwithstanding the threatened or actual application or operation of foreign laws or processes (including, without limitation, the *Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (the USA PATRIOT Act) of 2001*, Pub L. No. 107-56, 115 Stat 272 (2001), as it may be amended from time to time, and any applicable policies and directives (collectively, the “**Patriot Act Legislation**”)), and the application or operation of such foreign laws or processes shall not release ABSBC from any liability arising from ABSBC’s failure to comply with its duties or obligations under the Freedom of Information Legislation or this Section 4.14(c)(vi).

ABSBC currently applies amongst other practices, and shall continue to apply, the following privacy protocols (the “**Privacy Protocol**”):

- (A) access to BCH applications is restricted to authorized ABSBC and BCH employees using protected IDs and passwords at both the network and the application level;

- (B) physical access to ABSBC facilities is restricted to authorized personnel using a combination of card readers and security badges;
- (C) physical access to the hardware and physical storage media for BCH applications is restricted to authorized personnel;
- (D) strict policies prohibiting the storage or disclosure of any BCH Data constituting “personal information” under FOIPPA, including BCH employee and customer data, outside of Canada, and such BCH Data is not permitted to be accessed from outside of Canada; and
- (E) policies which prohibit unauthorized use, disclosure or changes to BCH Data (which includes, for the avoidance of doubt, BCH employee and customer data) and related information by ABSBC employees.

Subject to Section 8.12, from time to time ABSBC, in collaboration with BCH and subject to its approval, shall develop, adopt and maintain revisions to the Privacy Protocol as needed to satisfy compliance with the Freedom of Information Legislation and any policies and directives thereunder, as required by this Section 4.14(c)(vi). The Privacy Protocol shall include a process for identifying and promptly remedying privacy breaches, and shall specifically identify ABSBC personnel responsible for privacy compliance issues. ABSBC shall provide BCH with copies of the Privacy Protocol (as it may be amended from time to time) as and when requested by BCH.

BCH and its auditors may perform audits of ABSBC, pursuant to Article XIV, to verify compliance with this Section 4.14(c)(vi)). Promptly upon request by BCH, ABSBC shall disclose in writing to BCH all instances of non-compliance with ABSBC’s duties and obligations under this Section 4.14(c)(vi) of which ABSBC is aware.

Any non-compliance with ABSBC’s duties and obligations under this Section 4.14(c)(vi) shall constitute a material breach for the purposes of Section 17.1(a).

- (vii) *NAFTA*. ABSBC agrees on its own behalf, and on behalf of all others who may claim through or under it (including without limitation partners, shareholders, investors, successors and assigns) to waive any and all rights that it may have under the *North American Free Trade Agreement* (“*NAFTA*”), including, but not limited to, all rights under NAFTA Chapter Eleven. ABSBC specifically acknowledges and agrees that this waiver precludes any of ABSBC, or its Affiliates, successors or assigns, from providing their consent to arbitration under NAFTA Article 1121 and from thereby commencing or assisting in any claim under Section B of

NAFTA Chapter Eleven concerning any dispute arising out of or relating to this AMSA.

4.15. *Implementation of PPM Initiatives.* The Parties have agreed upon the implementation of certain matters relating to the Permanent Pricing Methodology (the “**PPM Initiatives**”) as set forth in the SOWs contained in Schedule 4.15 (the “**PPM SOWs**”). The Parties shall implement the PPM Initiatives in accordance with the terms and conditions set forth in the PPM SOWs. ABSBC shall be liable for the **[Redacted]** that are associated with, and are identified in, the PPM SOWs and that in the aggregate amount **[Redacted]**, provided that BCH substantially performs its obligations as set forth in the PPM SOWs. If the **[Redacted]**, calculated as provided in the applicable SOWs, in the aggregate do not equal or exceed **[Redacted]** as of March 31, 2007 (or execution of the applicable PPM SOW TPCs, if sooner), ABSBC will promptly issue BCH a **[Redacted]** equal to the **[Redacted]** A **[Redacted]** in the **[Redacted]** in one PPM SOW may be offset by a **[Redacted]** benefit in another PPM SOW that exceeds its **[Redacted]** level. Demobilization Costs and/or Adjustment Demobilization Costs (as defined in Schedule 10.1) that arise as a consequence of the implementation of the PPM Initiatives shall not be passed through to BCH. A calculation and final reconciliation of the **[Redacted]** will be made on March 31, 2007 (or execution of the applicable PPM SOW TPCs if sooner) based upon the executed TPCs and the stipulated FTE reductions in the PPM SOWs. The calculation will be for all periods reflected in the PPM SOWs through the Agreement Term. For the avoidance of doubt, ABSBC shall be released from its liability for the **[Redacted]** identified in a PPM SOW if (i) BCH fails to substantially fulfill its obligations as set out in the applicable PPM SOW, (ii) BCH (in its sole discretion) elects in writing not to implement such PPM SOW, or (iii) the applicable PPM SOW is amended pursuant to an agreed upon Change Order, but only to the extent that such amendment modifies the **[Redacted]** benefit identified in the PPM SOW.

ARTICLE V ABSBC PARTNERSHIP PERFORMANCE METRICS

5.1. *Service Levels.*

- (a) *General.* For each Service Category, Schedule 5.1 sets forth certain Service Levels that will be used to measure ABSBC’s performance of the In-Scope Services under this AMSA. ABSBC agrees that its performance of the In-Scope Services will meet or exceed such Service Levels, subject to the limitations and in accordance with the provisions set forth in this AMSA and in Schedule 5.1.
- (b) *Governance Service Levels.* The Service Levels set forth in Attachment B to Schedule 5.1 (collectively the “**Governance Service Levels**”) pertain to certain contract administration, and governance and administrative process matters. For the purposes of this Agreement, a report of ABSBC’s performance as measured by the Governance Service Levels shall be included in the information provided to BCH executives for the purpose of completing the Executive Satisfaction Surveys.

(c) *Failure to Perform.*

- (i) If ABSBC fails to meet any Service Level, then ABSBC shall (x) promptly perform a root-cause analysis to identify the cause of such failure, (y) as promptly as practicable, use commercially reasonable efforts to correct both such failure and (if within ABSBC's control) the cause of the failure, and to begin meeting such Service Level, and (z) provide BCH with a report detailing the cause of, and procedure for correcting, such failure.
- (ii) **[Redacted]**. If BCH elects to receive a Service Level Demerit **[Redacted]**, ABSBC shall credit the corresponding amount to BCH's invoice in the month immediately following the occurrence of such Service Level Default in accordance with Section 2.8 of Schedule 5.1.

(d) *Periodic Review.*

- (i) Industry-wide technological advancements and improvements in service delivery methods may affect and may lead to potential improvements in the Services, including the Service Levels. **[Redacted]**.
- (ii) On an annual basis during the Agreement Term in accordance with Section 8.7, the Parties shall jointly review (i) the then-current Service Levels, (ii) generally available information indicating industry-wide improvements in delivery of substantially similar services, (iii) improved performance capabilities, including those associated with advances in technology and methods used to provide the Services and (iv) reduced performance capabilities, including those associated with resource reductions requested or approved by BCH. On the basis of such review, the Parties will discuss whether any of the Service Levels will be adjusted. Any such adjustment shall be subject to the mutual agreement of the Parties.
- (iii) Throughout the Agreement Term, ABSBC shall use commercially reasonable efforts to regularly monitor and measure, and provide reports to BCH regarding, the actual performance levels and standards achieved by ABSBC measured against Service Levels, and such information shall be used to facilitate continuous improvement in the delivery of the Services.

(e) *Temporary Adjustments.*

- (i) In order to address unexpected or unplanned Service requirements that arise due to extraordinary events or unexpected circumstances that are not Force Majeure Events, BCH may, on a short-term and temporary basis, request that ABSBC perform specified Aligned Services by utilizing available ABSBC resources which would otherwise be committed to In-

Scope Services according to the terms of this AMSA (“**Temporary Adjustments**”) by providing as much prior written notice to ABSBC as is reasonably possible in the circumstances, and by setting out in such notice (x) the Aligned Services required, and (y) the timetable for providing the Aligned Services.

- (ii) ABSBC shall promptly advise BCH in writing of (x) the Service Categories affected by the proposed Temporary Adjustments, (y) any adjustments to, or suspensions of, the Service Levels (if any) required to perform the proposed Temporary Adjustments (the “**Temporary Service Level Adjustments**”), and (z) the timetable for the Temporary Service Level Adjustments.
- (iii) Upon receipt of the notice from ABSBC described in Section 5.1(e)(ii) above, BCH (in its sole discretion) shall advise ABSBC whether to proceed with implementing the Temporary Adjustments. If requested to implement the Temporary Adjustments by BCH:
 - (A) ABSBC shall use reasonable commercial efforts to (x) promptly respond to any Temporary Adjustments, and (y) provide the Aligned Services as requested by BCH, all to the extent that such Aligned Services can be provided using resources (including personnel), and accessing capacity, which ABSBC is otherwise required to provide and/or maintain under this AMSA; and
 - (B) ABSBC shall implement the agreed upon Temporary Service Level Adjustments.
- (iv) BCH shall compensate ABSBC for the net incremental costs reasonably incurred by ABSBC as a result of the performance of the Aligned Services associated with the Temporary Adjustments.

(f) *Clearing Service Level Bank.*

- (i) In BCH’s first invoice following the AMSA Commencement Date, ABSBC shall credit to BCH’s account 50% of the aggregate value of all outstanding Service Level Demerits accrued immediately prior to the AMSA Commencement Date pursuant to the terms of the Existing Agreement.
- (ii) Effective as at the AMSA Commencement Date, and subject to ABSBC making the credit described in Section 5.1(f)(i) above, the Parties shall waive all Service Level Demerits and Earn-Back Credits (as existing and defined under the Existing Agreement immediately prior to the AMSA Commencement Date), and the Service Level Bank (as existing and defined under the Existing Agreement immediately prior to the AMSA

Commencement Date) shall be deemed to be zeroed out of all such Service Level Demerits and Earn-Back Credits.

- (iii) For the avoidance of doubt, the Service Level Bank (as defined and applied in the Existing Agreement) shall cease to exist as of the AMSA Commencement Date.

5.2. *Client and Executive Satisfaction.*

- (a) *Client Satisfaction:* No later than the **[Redacted]**-year anniversary of the Service Commencement Date and on an annual basis thereafter during the Agreement Term, ABSBC and BCH shall jointly conduct, for each Service Category, a satisfaction survey designed to capture internal end-user client perceptions in respect of the quality, value and delivery of the applicable In-Scope Services. Results of each survey will be reviewed with BCH by the ABSBC Contract Manager. If such results fall below any Internal Client Satisfaction Service Level pursuant to Section 2.9 of Schedule 5.1, ABSBC shall prepare and implement a remedial plan to correct the affected Services and to prevent reoccurrence of the problem and shall do such other things as are required in Section 2.9 of Schedule 5.1, *provided that:*
 - (i) a copy of the remedial plan shall be provided to BCH for review and comment prior to its implementation; and
 - (ii) if the affected Services have not been corrected to the applicable Internal Client Satisfaction Level within 6 months following the completion of the client survey that triggered the remedial plan, the problems associated with the affected Services will automatically be included as a survey topic for the Executive Satisfaction Survey.
- (b) *Executive Satisfaction.* Not later than the **[Redacted]**-year anniversary of the AMSA Commencement Date and on an annual basis thereafter during the Agreement Term, ABSBC and BCH shall jointly conduct a satisfaction survey (an “*Executive Satisfaction Survey*”) designed to determine BCH’s executive management committee’s good faith assessment of the overall relationship between the Parties and ABSBC’s performance of its obligations under this AMSA. The Executive Satisfaction Survey shall be in the form set forth in Schedule 5.2(b), and shall be implemented as set forth in Section 2.10 in Schedule 5.1.

The Parties confirm that the underlying objective of the Executive Satisfaction Survey is to fairly measure on a reasonable basis whether BCH’s executive management committee is satisfied or dissatisfied with ABSBC’s performance against its obligations under this AMSA, taking into account (x) objective data or evidence where reasonably possible, and (y) the extent to which BCH and its actions (or inaction) may have caused or materially contributed to any dissatisfaction expressed by BCH’s executive management committee.

5.3. *Benchmarking.*

- (a) *Establishment of Process.* **[Redacted]**, the Parties will complete an objective measurement and comparison process to measure the pricing competitiveness of the In-Scope Services and related Service Levels provided under this AMSA as compared to the pricing for similar services customarily being provided by third parties (and not specialty providers) to other organizations at equivalent service levels (the “***Benchmarking Process***”).

Such Benchmarking Process shall take into account all information necessary to conduct a “like-for-like” comparison of the Services on a normalized basis as compared to other services in the comparison group (including comparing the type of service provided, service levels, volume of service, term, capital costs, investments made and other material terms and conditions and taking into account labour cost premiums directly associated with the British Columbia locus requirements set out in Section 11.4, and any unique or unusual customer requirements and disregarding unique or uneconomic terms (*e.g.*, introductory discounts)), but shall not take into account the method by which ABSBC provides the Services.

The Parties shall determine the scope of the Benchmarking Process prior to each commencement thereof. Unless otherwise agreed by the Parties, the Benchmarking Process for any given Contract Year will review (i) the Services contained in the Customer Care Service Category and IT Service Categories **[Redacted]** and (ii) Service Category components designated by BCH, and BCH shall notify ABSBC of such **[Redacted]** and Service Category components not less than 60 days prior to commencement of the applicable Benchmarking Process; *provided that* ABSBC may designate additional Services **[Redacted]** by notifying BCH of such designated additional Services not less than 30 days prior to the commencement of the applicable Benchmarking Process. Prior to any Benchmarking Process, BCH may determine that certain Service Categories or **[Redacted]** should be excluded from the particular Benchmarking Process.

With respect only to the Benchmarking Process carried out prior to the AMSA Commencement Date, such Benchmarking Process shall also be organized and carried out in a manner that will assist BCH’s validation of the volume bands and rates described in Schedule 10.1.

The Benchmarking Process shall not take into account internal IT departments or shops (*i.e.*, entities providing services for themselves and not provided by a third-party provider) if the Third-Party Benchmarker reasonably determines that there are a sufficient number of third-party service providers in any available sample to effectively conduct the Benchmarking Process. **[Redacted]**.

- (b) *Third Party Benchmarker.* Prior to the commencement of each Benchmarking Process, the Parties shall mutually select and engage one of the parties identified

on Schedule 5.3(b) or such other third party experienced in benchmarking as mutually agreed upon by the Parties (the “**Third-Party Benchmark**er”) to perform the Benchmarking Process. The Parties shall review and update Schedule 5.3(b) on an annual basis. The cost of the Benchmarking Process, including the fees and expenses of the Third-Party Benchmarker, shall be borne equally by both Parties. As a condition to its engagement, the Third-Party Benchmarker shall execute a confidentiality agreement reasonably satisfactory to each of the Parties.

- (c) *Determination of Applicable Information.* BCH and ABSBC shall jointly give all instructions to the Third-Party Benchmarker and shall cooperate to facilitate the Benchmarking Process, including by providing such reasonable information as is necessary to conduct the Benchmarking Process; *provided, however,* that ABSBC will not be required to (i) provide any information relating to ABSBC’s margins, costs or cost elements or (ii) disclose any proprietary or trade secret information. Additionally, neither BCH nor the Third-Party Benchmarker shall contact, directly or indirectly, other customers or clients of ABSBC, Accenture or their Affiliates or any ABSBC subcontractor during and in connection with such Benchmarking Process without the prior written consent of ABSBC. For the avoidance of doubt, the Parties acknowledge that the Third-Party Benchmarker will have discretion within the parameters of the joint instructions of the Parties and this Section 5.3 to (i) conduct the Benchmarking Process and utilize such information as the Third-Party Benchmarker deems appropriate, and (ii) for the purposes of determining whether the Services included in the Benchmarking Process are **[Redacted]**, allocating each such Service into a Service Category component (a “**Benchmarked Component**”).
- (d) *Review of Benchmarking Report.* Promptly after delivery of a report by the Third-Party Benchmarker summarizing the results of a particular Benchmarking Process (the “**Benchmarking Report**”), including any assumptions, cost estimates or other information used by the Third-Party Benchmarker to evaluate the Services, BCH and ABSBC shall meet to review the results of such Benchmarking Process. A “**Benchmarking Condition**” will be deemed to exist if the results reflect that the Benchmarked Components are not **[Redacted]** in the aggregate (after taking into account all information necessary to conduct a “like-for-like” comparison (on a normalized basis as provided for in Section 5.3(a)), with similar services then being provided by third parties (and not specialty providers) to other organizations. **[Redacted]**.
- (e) **[Redacted]**
 - (i) **[Redacted]**
 - (ii) **[Redacted]**
- (f) **[Redacted]**
 - (i) **[Redacted]**

- (ii) **[Redacted]**
- (g) *Disputes.* Either BCH or ABSBC may in good faith dispute the results of the Benchmarking Process, whether a Benchmarking Condition exists or how to implement the results of the Benchmarking Process in accordance with Article XVIII. Any such dispute shall be conducted **[Redacted]** in accordance with Section 18.4, provided that the Benchmarking Report itself (either in whole or in part) may not be disclosed to a mediator in the course of any dispute resolution process conducted pursuant to Section 18.4. Any price adjustment to be made as a result of such dispute shall be made on a retroactive basis back to the beginning of the Contract Year in which the results of any Benchmarking Process were to be effective.

5.4. *Critical Customer Care Performance Assessment.*

- (a) *General.* BCH shall apply the Performance Assessment Customer Care Service Levels and Performance Assessment Customer Care Service Level Weights to evaluate ABSBC's performance of the Customer Care Services on **[Redacted]** in accordance with the protocol described in Section 5.4(b) below. For the purposes of this Section 5.4 only:
 - (i) *"Performance Assessment Customer Care Service Levels"* means those specific Critical Customer Care Service Levels identified in Attachment A to Schedule 5.1 as at the AMSA Commencement Date; and
 - (ii) *"Performance Assessment Customer Care Service Level Weights"* means those Critical Customer Care Service Level Weights that are assigned to the Performance Assessment Customer Care Service Levels on the AMSA Commencement Date pursuant to the process described in Schedule 5.1 (which, for the avoidance of doubt, shall not **[Redacted]**), and which BCH may adjust from time to time as provided at Section 5.4(b)(ii).
- (b) **[Redacted]**
 - (i) **[Redacted]**
 - (ii) **[Redacted]**
 - (iii) **[Redacted]**
- (c) *Application of Schedule 5.1.* For the avoidance of doubt, the performance assessment of the Critical Customer Care Services described in this Section 5.4 is in addition to, and does not replace, the normal course assessment procedure applicable to Customer Care Services described in Schedule 5.1.

ARTICLE VI RESOURCES

6.1. *ABSBC-Managed BCH Agreements; ABSBC-Assumed BCH Agreements.*

- (a) Commencing on the Service Commencement Date, ABSBC will manage, administer and maintain hardware and software maintenance and other third party agreements identified in Schedule 6.1(a) (such schedule to be completed by the Parties no later than five business days prior to the Service Commencement Date) (collectively, the “***ABSBC-Managed BCH Agreements***”). As part of its management responsibilities, but subject to Section 3.4(c) of Schedule 10.1 (which applies to TPC Service Charges), ABSBC may renew, modify, terminate or cancel, request any waivers or grant any consents or waivers under each such ABSBC-Managed BCH Agreement and do such other things and take such other steps as are necessary to perform its obligations under this AMSA. In addition, ABSBC shall be financially responsible after the Service Commencement Date for such ABSBC Managed BCH Agreements, including the payment of all invoices in respect of such agreements. At the request of ABSBC, BCH shall take all reasonably necessary actions, including, but not limited to, the execution of documents, to effect the provisions of the prior sentence. This AMSA does not effect an assignment of the ABSBC-Managed BCH Agreements to ABSBC.
- (b) ABSBC and its applicable subcontractors will use such ABSBC Managed-BCH Agreements (i) solely for purposes of this AMSA and to provide services to third parties in connection with activities undertaken in accordance with the Marketing Alliance Agreement and the Limited Partnership Agreement (in each case, subject to Section 6.9), (ii) solely during the Agreement Term and (iii) in compliance with any applicable use restrictions that are contained in the ABSBC-Managed BCH Agreements that were provided by BCH to ABSBC prior to the Service Commencement Date.
- (c) Commencing on the Service Commencement Date, ABSBC will assume hardware and software maintenance and other third party agreements identified in Schedule 6.1(c) (such schedule to be completed by the Parties no later than five business days prior to the Service Commencement Date) (collectively, the “***ABSBC-Assumed BCH Agreements***”). Upon such assignment, but subject to Section 3.4(c) of Schedule 10.1 (which applies to TPC Service Charges), ABSBC shall be administratively, operationally and financially responsible for such ABSBC-Assumed BCH Agreements.

6.2. *ABSBC-Managed BCH Resources.*

- (a) Schedule 6.2(a) (such schedule to be completed by the Parties no later than five business days prior to the Service Commencement Date) sets forth certain hardware and equipment owned or leased by BCH (the “***Original ABSBC-Managed BCH Resources***”). Commencing on the Service Commencement Date,

ABSBC will manage, administer and maintain such Original ABSBC-Managed BCH Resources, together with such additional hardware and equipment owned or leased by BCH that may be agreed upon by the Parties pursuant to Section 8.12 or otherwise (collectively, the “**ABSBC-Managed BCH Resources**”). This AMSA does not effect an assignment of the ABSBC-Managed BCH Resources to ABSBC. BCH will be the sole and exclusive owner of the ABSBC-Managed BCH Resources.

- (b) ABSBC and its applicable subcontractors will use such ABSBC-Managed BCH Resources (i) solely for purposes of this AMSA and to provide services to third parties in connection with activities undertaken in accordance with the Marketing Alliance Agreement and the Limited Partnership Agreement (in each case, subject to Section 6.9), (ii) solely during the Agreement Term and (iii) in compliance with any applicable use restrictions that are contained in the agreements governing use of the ABSBC-Managed BCH Resources that were provided by BCH to ABSBC prior to the Service Commencement Date. ABSBC shall establish an access control procedure designed to limit ABSBC’s access and use accordingly.

6.3. *BCH-Licensed Software.*

- (a) Schedule 6.3(a) (such schedule to be completed by the Parties no later than five business days prior to the Service Commencement Date) sets forth certain third-party software, tools, databases, processes and methodologies (and documentation related to the foregoing) licensed by BCH, to which ABSBC needs access for purposes of this AMSA. Such items together with any other subsequently identified third-party software, tools, databases, processes and methodologies (and documentation related to the foregoing) licensed by BCH access to which will be provided to ABSBC (or its subcontractors) under this AMSA are collectively referred to herein as “**BCH-Licensed Software.**”
- (b) ABSBC and its applicable subcontractors will access, use, copy, modify and enhance such BCH-Licensed Software (i) solely for purposes of this AMSA and to provide services to third parties in connection with activities undertaken in accordance with the Marketing Alliance Agreement and the Limited Partnership Agreement (in each case, subject to Section 6.9), (ii) solely during the Agreement Term and (iii) in compliance with any applicable use restrictions that are contained in the agreements governing the use of the BCH-Licensed Software that were provided by BCH to ABSBC prior to the Service Commencement Date. ABSBC shall establish an access control procedure designed to limit ABSBC’s access and use accordingly.

6.4. *BCH-Owned Software.*

- (a) Schedule 6.4(a) (such schedule to be completed by the Parties no later than five business days prior to the Service Commencement Date) sets forth certain

software, tools, databases, processes and methodologies (and documentation related to the foregoing) owned by BCH, to which ABSBC needs access for purposes of this AMSA. Such items together with any other subsequently identified software, tools, databases, processes and methodologies (and documentation related to the foregoing) owned by BCH access to which will be provided to ABSBC (or its subcontractors) under this AMSA are collectively referred to herein as “*BCH-Owned Software.*”

- (b) BCH is the sole and exclusive owner of the BCH-Owned Software. BCH hereby grants to ABSBC (and applicable ABSBC subcontractors) the right to access, use, copy, modify and enhance such BCH-Owned Software, all to the extent necessary for ABSBC’s performance under this AMSA, the Marketing Alliance Agreement and the Limited Partnership Agreement.
- (c) ABSBC and its applicable subcontractors will access, use, copy, modify and enhance such BCH-Owned Software (i) solely for purposes of this AMSA and, except as provided in Section 6.5, to provide services to third parties in connection with activities undertaken in accordance with the Marketing Alliance Agreement and the Limited Partnership Agreement (in each case, subject to Section 6.9), (ii) solely during the Agreement Term and (iii) in compliance with any applicable use restrictions disclosed by BCH to ABSBC prior to the Service Commencement Date. ABSBC shall establish an access control procedure designed to limit ABSBC’s access and use accordingly.

6.5. *BCH-Protected Software.*

- (a) Not later than March 15, 2003, BCH shall provide to ABSBC a proposed list of the software that will be considered the BCH-Protected Software. The definitive list of BCH-Protected Software shall be completed by the Parties no later than five business days prior to the Service Commencement Date, which definitive list shall become Schedule 6.5 to this AMSA. The designation of additional software as BCH-Protected Software shall be implemented pursuant to Section 8.12, and Schedule 6.5 shall be updated accordingly, *provided that* BCH gives prior written notice to ABSBC that BCH considers such proposed BCH-Protected Software to be proprietary to BCH and in need of protection.
- (b) Notwithstanding anything to the contrary herein, ABSBC and ABSBC Affiliates (and applicable subcontractors of ABSBC and ABSBC Affiliates) shall be permitted to access, use, copy, modify and enhance BCH-Protected Software solely for the purposes of this AMSA (and not for third parties in accordance with the Marketing Alliance Agreement) and subject to Section 12.1 of this AMSA.

6.6. *ABSBC Software.*

- (a) Any software, tools, data, databases, processes or methodologies that are (i) owned by ABSBC or ABSBC Affiliates before the Effective Date or acquired by ABSBC after the Effective Date, (ii) developed by ABSBC or ABSBC Affiliates

other than pursuant to this AMSA or any other agreement with BCH, or (iii) licensed by ABSBC or ABSBC Affiliates from a third party, including any such items used by ABSBC or ABSBC Affiliates to provide the Services to BCH, are collectively referred to herein as the “*ABSBC Software*.” As between the Parties, ABSBC will be the sole and exclusive owner of the ABSBC Software.

- (b) ABSBC will be financially and administratively responsible for obtaining any Consents required to provide the Services using the ABSBC Software.
- (c) With respect to BCH’s view-only access and use of any ABSBC Software, BCH shall comply with any applicable use restrictions that are identified in writing to, and acknowledged by, BCH. BCH shall establish an access control procedure designed to limit BCH’s access and use accordingly.

6.7. *Refresh*. Responsibility for the upgrading and refresh of the Assets shall be borne by the Parties:

- (a) as set forth in Schedule 6.7; or
- (b) in accordance with such allocation of expenditures as the Parties may agree in writing pursuant to the Change Order procedures specified in Section 8.12.

6.8. *Access to Assets*.

- (a) The ability of ABSBC to provide the Services is directly related to ABSBC having full access to use all Available Assets. ABSBC shall be excused in its performance of its obligations or for any failure or deficiency in performance, including the payment of any Service Level Demerits, for any period and to the extent that such failure or deficiency is caused by ABSBC not having access to the Available Assets. ABSBC shall notify BCH in writing of any such lack of access within a reasonable period of time after ABSBC has become aware of such lack of access. If any lack of access, individually or in the aggregate, materially affects ABSBC’s ability to perform any of its obligations hereunder and ABSBC is not provided access to the applicable Available Assets or a mutually agreeable substitute within 30 days after ABSBC has notified BCH of such lack of access, ABSBC may terminate this AMSA. Such termination shall be deemed a “for cause” termination by ABSBC in accordance with Section 17.1. Notwithstanding the foregoing, ABSBC may not terminate this AMSA pursuant to this Section 6.8(a) if the failure to provide full access occurs as a result of a Force Majeure Event in accordance with Section 19.1.
- (b) ABSBC shall use commercially reasonable efforts to perform notwithstanding its inability to access the Available Assets, and BCH shall reimburse ABSBC for its incremental costs and expenses incurred in such effort to perform; *provided, however* that ABSBC shall notify BCH prior to incurring any material costs and expenses in connection with such performance. Notwithstanding any provision of this AMSA to the contrary, under no circumstances will ABSBC be deemed to be

in breach of this AMSA for any failure or deficiency in the Services arising pursuant to this Section 6.8.

- (c) The Parties agree that the ability of ABSBC to provide services to third parties in accordance with the Marketing Alliance Agreement and the Limited Partnership Agreement is dependent on having full access to use the BCH Available Assets. In order to avoid disruption to the operations and business of ABSBC, BCH must provide ABSBC with not less than 90 days prior written notice (each, an “**Asset Withdrawal Notice**”) prior to withdrawing any or all of the BCH Available Assets, such Asset Withdrawal Notice to include a reasonably detailed description of the specific BCH Available Assets to be withdrawn and the date or dates as of which such withdrawal is to occur. In the event that BCH does withdraw the BCH Available Assets, then ABSBC may, in its sole discretion, exercise one or more of the following options: (i) discontinue the performance of Services to BCH in accordance with subparagraph (a) above or (ii) obtain substantially similar assets from one or more third parties at the expense of BCH. At any time prior to the exercise by ABSBC of any of the foregoing options, BCH may cure any withdrawal by making the BCH Available Assets available to ABSBC.
- (d) For all BCH Available Assets and any Newco Available Assets that Newco makes available to ABSBC under the Limited Partnership Agreement, ABSBC shall determine in its discretion and report to BCH and/or Newco in accordance with its obligations under this AMSA, including the Service Levels and its obligations under the Limited Partnership Agreement, which of such Available Assets will be used in the provision of Services, how such Available Assets will be used in the provision of Services and when the use of such Available Assets in the provision of Services will be discontinued. Prior to any disposal of Available Assets, ABSBC will notify BCH or Newco, as the case may be, of the need to dispose of such assets. ABSBC shall provide to BCH or Newco quarterly summaries of all such Available Assets (other than Assets purchased by ABSBC pursuant to Section 6.7) that were processed for disposal during the preceding quarter along with the net proceeds from such disposals (if any). All such disposals shall be made in accordance with the requirements set forth in Schedule 4.2.

6.9. *Third Party Consents.*

- (a) BCH will be financially and administratively responsible for obtaining any Consents required for ABSBC (and applicable ABSBC subcontractors) to manage, administer and maintain, to access, use, copy, modify and enhance, or to assume, as the case may be, the Available Assets, all to the extent necessary for ABSBC’s performance under this AMSA and the Limited Partnership Agreement, and ABSBC shall reasonably cooperate with BCH to obtain such Consents.
- (b) If requested by ABSBC, BCH will use commercially reasonable efforts to obtain consents for ABSBC (and its applicable subcontractors) to use the Available

Assets for third parties, and ABSBC shall reasonably cooperate with BCH to obtain such consents. ABSBC will cooperate with BCH to obtain all such consents and be responsible for any incremental fees and consent costs paid to the third party which are associated with obtaining such third party consents.

- (c) The Parties acknowledge that after the Effective Date ABSBC may enter agreements with third parties for the provision of products or services to be used for the provision of Services to BCH. ABSBC shall use commercially reasonable efforts to include in each such agreement the right to assign that agreement to BCH upon the expiration or termination of this AMSA. Any incremental costs associated with obtaining such rights shall be borne by BCH.

6.10. *Third Party Contracts.*

- (a) *TPC Service Charges.* BCH shall be responsible for paying the TPC Service Charges as described in Section 3.4 of Schedule 10.1.
- (b) *Cost Reduction Initiatives.* Annually throughout the Agreement Term as part of the Annual Review described in Section 8.7, ABSBC shall proactively propose to BCH initiatives to reduce the TPC Service Charges.

**ARTICLE VII
SERVICE LOCATIONS**

- 7.1. *Service Locations.* On the Service Commencement Date, the Services will be provided to BCH from the same service delivery locations as those set out in the Support Services Agreement.
- 7.2. *Access to BCH Service Locations and Items.* During the Agreement Term (i) BCH shall provide ABSBC with access to the BCH Service Locations as may be reasonably required to perform the Services, (ii) ABSBC shall occupy and use certain of the BCH Service Locations in accordance with the Support Services Agreement and (iii) BCH shall provide ABSBC with all resources, facilities and support services to the extent required under the Support Services Agreement ((ii) and (iii) collectively, “**BCH Service Location Items**”).
- 7.3. *BCH Service Location Policies.* When working at any BCH Service Locations or other BCH facilities, ABSBC personnel will comply with BCH’s standard workplace security, administrative, safety and other policies and procedures applicable to BCH’s own employees. BCH shall provide ABSBC with a copy of each such policy and procedure and shall notify ABSBC of any subsequent modifications or amendments thereto. To the extent that any of such policies or procedures prevent ABSBC personnel from performing ABSBC’s obligations under this AMSA, ABSBC will not be deemed to be in breach of this AMSA. If any such policies or procedures impose increased material costs or obligations on ABSBC, the Parties shall seek to establish mutually acceptable alternative arrangements and to make appropriate adjustments to their respective obligations under this AMSA (including the charges payable to ABSBC). The Parties agree that ABSBC

may provide services to third parties from the BCH Service Locations in accordance with the Support Services Agreement.

7.4. *Relocation from BCH Service Locations.* The Parties currently anticipate that ABSBC will provide a significant portion of the Services on-site at the BCH Service Locations. If ABSBC elects to relocate from a BCH Service Location without BCH having requested the relocation, ABSBC will be financially responsible for the related relocation expenses and new facility expenses (subject to the continuing obligation of BCH to pay the Occupancy Costs as set forth in Schedule 10.1). If ABSBC personnel are relocated from a BCH Service Location to another site at BCH's request, BCH will be financially responsible for the related relocation expenses and, during the Agreement Term, for any on-going incremental new facilities expenses (including rent and other overhead expenses) that are reasonably incurred by ABSBC in accordance with the Support Services Agreement. If ABSBC personnel are relocated from a BCH Service Location to another site by mutual written agreement of the Parties, all related relocation expenses and new facility expenses shall be allocated as set out in such agreement.

7.5. *Control of Service Locations.*

- (a) No interest in or obligation of the BCH Service Locations or BCH Service Location Items is conferred upon ABSBC beyond the limited right to use such BCH Service Locations and related items for purposes of this AMSA. All such items will remain in the care, custody and control of BCH.
- (b) No interest in or obligation of the ABSBC Service Locations is conferred upon BCH. All such facilities will remain in the care, custody and control of ABSBC.

ARTICLE VIII RELATIONSHIP MANAGEMENT

8.1. *ABSBC Contract Manager, Contract Executive, and Functional Owners.*

- (a) During the Agreement Term, ABSBC will designate (i) a senior-level individual who will be dedicated to the administration of BCH's account and the AMSA (the "**ABSBC Contract Manager**"), (ii) a senior executive who is a member of the ABSBC Board of Directors (as defined in the Limited Partnership Agreement) and who will be dedicated to the overall management of the BCH relationship (the "**ABSBC Contract Executive**"), and (iii) with respect to each Service Category, a senior level manager who will be primarily dedicated to the delivery of Services under this AMSA (each an "**ABSBC Functional Owner**").
- (b) The ABSBC Contract Manager (i) will be the primary day-to-day contact for BCH in dealing with ABSBC in matters involving the administration of the AMSA, (ii) will meet regularly with the BCH Contract Manager and the BCH Functional Owners, and (iii) will have the authority to make decisions with respect to actions to be taken by ABSBC in the ordinary course of day-to-day management of this AMSA, and (iv) will work together with the ABSBC

Functional Owners (as required), the BCH Contract Manager and the BCH Functional Owners in resolving day-to-day contractual issues that arise as a result of the provision of Services under this AMSA.

- (c) The ABSBC Functional Owners will (i) be authorized to act as ABSBC's primary contact for BCH in dealing with BCH under this AMSA with respect to the delivery of the applicable Services under this AMSA, (ii) have the authority to make decisions with respect to actions to be taken by ABSBC in the ordinary course of day-to-day delivery of such Services and (iii) serve (together with the ABSBC Contract Manager and the BCH Contract Manager) as an escalated point of contact for any Service delivery issues not resolved by an applicable Service Review Team.
- (d) The ABSBC Contract Executive (i) will be the primary contact for the BCH Contract Executive and other BCH executives in dealing with ABSBC under this AMSA, (ii) will have overall responsibility for managing the BCH relationship and coordinating the delivery of the Services, (iii) will have the overall authority to make decisions with respect to actions to be taken by ABSBC in accordance with this AMSA, and (iv) will (together with the BCH Contract Executive) serve as an escalated point of contact for any contract issues not resolved by the Contract Managers or any issues pertaining to Service delivery not resolved by the Contract Managers and the BCH Functional Owners.
- (e) ABSBC may from time to time replace the individuals serving as the ABSBC Contract Manager, ABSBC Contract Executive, or the ABSBC appointed members of the Service Review Team by providing 5 days prior written notice to BCH, provided that BCH shall be consulted before a replacement of the Contract Executive is made.

8.2. *BCH Functional Owners and Contract Manager.*

- (a) During the Agreement Term, BCH will designate a senior level individual who (i) will be the primary contact for ABSBC in dealing with ABSBC in matters of common interest of two or more Service Categories, or which otherwise apply on a BCH enterprise-wide basis, (ii) will meet regularly with the ABSBC Contract Manager and the ABSBC Functional Owners (as required), (iii) will have the authority to make decisions with respect to actions to be taken by BCH in the ordinary course of day-to-day management of this AMSA, and (iv) will work together with the ABSBC Contract Manager and the BCH Functional Owners in resolving day to day contractual issues that arise as a result of the provision of Services under this AMSA (the "***BCH Contract Manager***").
- (b) During the Agreement Term, BCH will designate, with respect to each Service Category, a senior level individual who will (i) be authorized to act as BCH's primary contact for ABSBC in dealing with BCH under this AMSA with respect to such Service Category, (ii) have the authority to make decisions with respect to

actions to be taken by BCH in the ordinary course of day-to-day management of this AMSA with respect to such Service Category and (iii) serve (together with the ABSBC Contract Manager and the BCH Contract Manager) as an escalated point of contact for any Service delivery issues not resolved by an applicable Service Review Team (each, a “**BCH Functional Owner**”).

- (c) During the Agreement Term, BCH will designate a senior executive who (i) will be the primary contact for the ABSBC Contract Executive in dealing with BCH under this AMSA, (ii) will have overall responsibility for managing the ABSBC relationship, (iii) will have the overall authority to make decisions with respect to actions to be taken by BCH in accordance with this AMSA, (iv) will (together with the ABSBC Contract Executive) serve as an escalated point of contact for any contract issues not resolved by the Contract Managers or any issues pertaining to Service delivery not resolved by the Contract Managers and the BCH Functional Owners, and (v) who is also a member of the ABSBC Board of Directors (the “**BCH Contract Executive**”).
- (d) BCH may from time to time replace the individuals serving as the BCH Contract Manager, the BCH Contract Executive and any BCH Functional Owners by providing 5 days prior written notice to ABSBC.

8.3. *Establishment of Service Review Teams.* With respect to each Service Category, ABSBC and BCH shall mutually determine the appropriate number of Service Review Teams required to serve as the initial point of escalation for Service delivery issues with respect to such Service Category (each, a “**Service Review Team**”). ABSBC and BCH will appoint such number of representatives to each Service Review Team as the Parties shall mutually determine, but each Service Review Team shall (i) consist of no less than two individuals and (ii) contain an equal number of representatives appointed by each Party. Either Party may from time to time replace any of its representatives on any Service Review Team by providing written notice to the other Party. Service delivery matters not resolved by a Service Review Team shall be promptly directed to the ABSBC Contract Manager, the BCH Contract Manager and the applicable BCH Functional Owner and ABSBC Functional Owner.

8.4. *Establishment of Executive Steering Committee.* There shall be a six member Executive Steering Committee (the “**Executive Steering Committee**”), made up of the members of ABSBC’s Board of Directors exclusive of the chairman, which shall meet quarterly on the same date as meetings of ABSBC’s Board of Directors, and at such other times as the Contract Executives deem appropriate, to (i) review and analyze the monthly performance reports for the preceding period and ABSBC’s overall performance under this AMSA, (ii) review progress on the resolution of issues raised by the Contract Managers, the Functional Owners and the Service Review Teams, (iii) provide a strategic outlook for the overall delivery of the Services, (iv) attempt to resolve, or designate individuals to attempt to resolve, any disputes or disagreements under this AMSA and (v) make decisions regarding New Services, or Services to be terminated pursuant to the terms of this AMSA.

8.5. *Reports.*

- (a) Beginning on the AMSA Commencement Date, ABSBC shall provide BCH with such regular and timely reports as BCH may request from time to time (which reports include, but are not limited to, those set forth in Schedule 8.5(a)), at the frequency designated by BCH (acting reasonably) at the time that BCH identifies the reports to ABSBC. Such reports shall, as appropriate:
 - (i) separately address ABSBC's Service delivery activities;
 - (ii) summarize the status of projects, problem resolution efforts and other initiatives;
 - (iii) set forth performance data for the Services;
 - (iv) explain deviations from the Service Levels and include a plan for corrective action where appropriate;
 - (v) describe, since the date of the last report, all significant System Changes and Service Changes that have been made by ABSBC; and
 - (vi) describe any ongoing or planned significant System Changes and Service Changes during the upcoming month.
- (b) All reports prepared and provided by ABSBC pursuant to this Section 8.5 must (i) be presented in a simple format that can be easily understood and interpreted by third parties unfamiliar with outsourcing processes or procedures, (ii) as applicable, create transparency and traceability from Service delivery to the payment of Service Charges, and (iii) be substantiated by back-up material including source data.
- (c) As of the AMSA Commencement Date, ABSBC shall provide BCH with electronic access to all delivered reports through a portal or website. ABSBC shall make all such reports available in a centralized forum within the portal or website, and shall create a logical, functional flow between the reports. ABSBC shall use commercially reasonable efforts to automate report generation by the AMSA Commencement Date. If ABSBC is unable to provide automated report generation by the AMSA Commencement Date, ABSBC shall promptly either (i) provide BCH with a timeline for moving to automated reporting, and move to automated reporting within such timeline, or (ii) provide BCH with the reason why such automated reporting cannot be implemented.
- (d) The preparation and delivery by ABSBC during the Agreement Term of reports associated with the implementation of this AMSA (including PPM) that BCH (acting reasonably) has identified to ABSBC on or before May 31, 2006 (and which, for the avoidance of doubt, include those reports listed in Schedule 8.5(a))

constitute Base Services, and the costs arising therefrom shall not be passed through to BCH.

8.6. *Refresh Management.*

- (a) On an annual basis, the ABSBC Functional Owner for the IT Service Category shall supervise the creation of a report (i) recommending technology initiatives with respect to Refreshed Hardware, refreshed Software Tools, and the Services, (ii) forecasting the Refreshed Hardware and refreshed Software Tools recommended for the following year and (iii) discussing any other material recommendations with respect to Refreshed Hardware and refreshed Software Tools (the “**Refresh Forecast**”). Each such Refresh Forecast shall be prepared in accordance with BCH policies and Section 6.7. Following preparation, such ABSBC Service Manager shall present such Refresh Forecast to the BCH Functional Owner for the IT Service Category for review and approval, including approval of any ABSBC-recommended technology strategy and architecture. **[Redacted]**.
- (b) With respect to any Refreshed Hardware or refreshed Software Tools used by ABSBC for the benefit of BCH or its Affiliates, ABSBC shall not use such Refreshed Hardware or refreshed Software Tools to provide services to any new third party, or increasing the the scope of services provided to any existing third party, without the prior consent of BCH.

8.7. *Annual Review.* On an annual basis during the Agreement Term, the Executive Steering Committee and the Contract Managers shall conduct an annual performance review attended by the senior management of each Party (the “**Annual Review**”). The Parties contemplate that such Annual Review will include at least the following:

- (a) Review of the previous Contract Year’s periodic performance reports prepared by ABSBC for each Service Category;
- (b) Review of any Benchmarking Reports generated pursuant to Section 5.3 from the prior Contract Year;
- (c) Review of any reports generated from client satisfaction surveys and Executive Satisfaction Surveys conducted during the prior Contract Year in accordance with Sections 5.2 and 5.2(b);
- (d) Review and adjustment of the Service Levels and the associated performance measures and metrics, and continuous improvement obligations, pursuant to Section 5.1(d);
- (e) Review of the Refresh Forecast and associated activities to be conducted in accordance with Section 8.6;
- (f) Adjustments to the Service Charges in accordance with Schedule 10.1;

- (g) Consideration of incentives for ABSBC in its collection of receivables from BCH customers and management of bad debt expenses;
- (h) Review of emergency response and disaster recovery plans that have been adopted and implemented by ABSBC for the Services, it being understood by the Parties that at the Service Commencement Date such plans (but excluding the Contingency Plan) shall include only the emergency response and disaster recovery plans maintained by BCH immediately prior to the Service Commencement Date and that all changes and additions to such plans (but excluding the Contingency Plan) will be subject to the Change Order procedures provided in Section 8.12; and
- (i) Review, update and validate the TPC List, and Schedule 17.1(a) of the Limited Partnership Agreement and the allocations of financial spend associated with each TPC as set forth in Attachment E to Schedule 10.1.

Any adjustments undertaken pursuant to this Section 8.7 shall be governed by Section 8.12, provided that the aforementioned review and adjustment process shall not preclude the Parties from making or requesting changes and/or adjustments to the Services and/or Service Levels as otherwise provided in this AMSA, or as may be mutually agreed in writing between the Parties.

8.8. *Meetings and Conference Calls.* On or before the AMSA Commencement Date, the Parties shall determine an appropriate set of periodic meetings or telephone conference calls to be held between representatives of BCH and ABSBC. The Parties contemplate that such meetings will include the following:

- (a) monthly meetings of the Service Review Teams;
- (b) with respect to each Service Category, monthly meetings of the applicable Functional Owners and Contract Managers, and any other necessary personnel to discuss daily performance and planned or anticipated activities that may adversely affect performance or any changes that apply to such Service Category during the next month; and
- (c) a monthly meeting among the BCH Contract Manager, the ABSBC Contract Manager and any other necessary operational personnel to discuss overall daily performance and planned or anticipated activities that may adversely affect overall performance or any changes to the In-Scope Services during the next month.

At either Party's request, the other Party shall publish its proposed agenda for any meeting sufficiently in advance of the meeting to allow meeting participants a reasonable opportunity to prepare. All meetings will be held in such location as mutually agreed by the Parties

8.9. *Relationship with BCH Contractors.*

- (a) ABSBC shall cooperate with BCH and any other third-party contractor employed by BCH ("**BCH Contractors**") in the integration, where required, of ABSBC's work under this AMSA with any other work, materials and equipment supplied by BCH or any BCH Contractor, *provided* that the requirements of (c) below are satisfied by BCH. Such cooperation will include providing, to the extent reasonably necessary, (i) written requirements, standards and policies for systems operation so that the enhancements or developments of BCH Contractors may be operated by ABSBC, as applicable, (ii) assistance and support services to BCH Contractors at the charges specified herein if such charges are so specified, and at ABSBC's standard commercial rates, if none are specified, and (iii) access to the systems and the architecture configurations to the extent reasonably required for the activities of such BCH Contractors. ABSBC shall promptly notify BCH if ABSBC determines that an act or omission of a BCH Contractor will delay or otherwise impair the provision of Services, including the Service Levels, and ABSBC shall be excused from any delay or impairment to the provision of Services, including the Service Levels, that arises from an act or omission of a BCH Contractor. BCH shall be responsible for managing and supervising BCH Contractors and for any failure of BCH Contractors to comply with BCH's applicable obligations under this AMSA.
- (b) If the work performed by any BCH Contractor affects the Services being performed by ABSBC under this AMSA or such BCH Contractor otherwise uses resources furnished by ABSBC, BCH shall use commercially reasonable efforts to ensure that such BCH Contractor (i) cooperates with ABSBC, (ii) follows all ABSBC standards, methodologies and procedures (including confidentiality and security procedures), (iii) complies with the license and confidentiality requirements of vendors of all software on which such BCH Contractor is performing work and (iv) executes, delivers and complies with all confidentiality and nondisclosure agreements (in addition to the nondisclosure agreement required by (c) below) reasonably requested by ABSBC or required by such vendors.
- (c) Before providing any ABSBC Confidential Information to any BCH Contractor, BCH shall cause such BCH Contractor to enter into, at BCH's sole discretion, either (i) a customary non-disclosure agreement with BCH containing third party beneficiary rights in favour of ABSBC with respect to the ABSBC Confidential Information, or (ii) a customary non-disclosure agreement with ABSBC. Thereafter, BCH may provide ABSBC Confidential Information to such BCH Contractor in compliance with BCH's obligations regarding confidentiality pursuant to this AMSA. If BCH elects to obtain a non-disclosure agreement from a BCH Contractor pursuant to sub-paragraph (i) above, BCH shall promptly provide a copy of such agreement (as executed by the parties thereto) to ABSBC.

8.10. *ABSBC Subcontractors.*

- (a) Subject to Section 11.4, ABSBC may subcontract any part of the Services to one or more subcontractors except that ABSBC shall not subcontract any portion of the Services reasonably expected to constitute at any time more than **[Redacted]** of the aggregate dollar value of the In-Scope Services purchased during the then-current Contract Year (which dollar value shall include all accrued Service Charges for the In-Scope Services) without the prior written consent of BCH, which consent shall not be unreasonably withheld or delayed. Promptly following the conclusion of each Contract Year, ABSBC shall advise BCH in writing whether or not the total value of the Services subcontracted by ABSBC at any time exceeded **[Redacted]** of the aggregate dollar value of the In-Scope Services purchased during that Contract Year. Notwithstanding the foregoing, ABSBC may subcontract, and it shall not constitute a violation of Section 11.4 to subcontract, (i) any part of the Services to Affiliates of ABSBC or of Accenture, including Accenture HR Services, Inc. and (ii) routine services and other services customarily purchased from third parties, including facilities maintenance, hardware and software maintenance, security, storage and other ancillary services.
- (b) ABSBC will remain responsible for obligations under this AMSA performed by any ABSBC subcontractors to the same extent as if such obligations were performed by ABSBC's employees. ABSBC will remain BCH's sole point of contact regarding the Services.
- (c) If BCH expresses any concerns to ABSBC regarding performance issues with any ABSBC subcontractors (other than Affiliates of the ABSBC or Affiliates of Accenture), ABSBC shall cooperate with BCH to resolve such concerns on a mutually acceptable basis. ABSBC shall not be required to remove any such ABSBC subcontractor at the direction of BCH unless BCH (acting reasonably under the circumstances) asks ABSBC to remove the subcontractor and the Parties have not been able to resolve the underlying performance issue. If removal of any such ABSBC subcontractor is required at the direction of BCH in accordance with this Section 8.10, BCH shall not be responsible for any resulting termination fees, penalties, damages, compensation or other amounts payable upon termination of the subcontract.
- (d) **[Redacted]**
 - (i) **[Redacted]**
 - (ii) **[Redacted]**

8.11. *Change Control.*

8.11.1 *System Change Procedures.* ABSBC shall comply with the following system change procedures:

- (a) Any System Changes affecting BCH shall be subject to mutually agreed acceptance testing prior to implementation. For any System Changes initiated by ABSBC, other than temporary System Changes implemented pursuant to paragraph (b) below, the Parties shall determine in advance (i) the acceptance testing procedure most appropriate for the proposed System Change and, (ii) as between the Parties, the allocation of costs associated with such testing. The result of such determination shall be evidenced by a written agreement executed by both Parties in advance of any acceptance testing or implementation.
- (b) Notwithstanding the foregoing, ABSBC shall make no System Changes that would materially alter the functionality of the systems used to provide the Services or materially degrade the performance of the Services, without first obtaining BCH's approval. ABSBC may make temporary System Changes at any time and without BCH approval to the extent such System Changes are necessary, in ABSBC's good faith judgment, (i) to maintain the continuity of the Services, or (ii) to correct an event or occurrence that would substantially prevent, hinder or delay the operation of BCH's critical business functions. ABSBC shall promptly notify BCH of all such temporary changes, and shall as soon thereafter as reasonably practicable return the affected systems to their normal state or implement a permanent System Change in accordance with this Section 8.11.1.
- (c) Prior to using any software or equipment to provide the Services affected by the System Change, ABSBC shall utilize customary testing efforts to verify that the item has been properly installed, is operating substantially in conformance to its specifications, and is performing its intended functions in a reliable manner and providing adequate performance consistent with the performance standards applicable immediately prior to the System Change.
- (d) ABSBC shall follow a formalized methodology in migrating programs from development and testing environments into production environments.

8.11.2 *SOWs.* In order to properly confirm the variable terms on which a Discretionary Service will be provided from time to time during the Agreement Term, a SOW shall be required for all Services that are not included as a Base Service. Each SOW must contain, at a minimum, the following elements:

- (a) a summary;
- (b) a business requirement overview;
- (c) objectives and scope;

- (d) a work breakdown (phase level);
- (e) a description of the applicable team responsible for the SOW;
- (f) pricing and resource effort;
- (g) a statement of any risks, assumptions and/or dependencies;
- (h) identification of any impact on In-Scope Services and/or Service Charges; and
- (i) identification of any impact on the Baseline Volume Bands (both temporary and permanent) for Base Services.

8.11.3 *Change Order Requests.* Except as otherwise expressly provided in this AMSA, a Change Order Request and Change Order shall be required for all amendments to the AMSA, including changes to Service Charges, Service Levels, or Service volumes, or scope changes, in respect of any In-Scope Service.

8.12. *Change Order Procedures.*

- (a) *Initiating a Service Change, and Change Order Requests.* Either Party may request in writing that ABSBC make changes, modifications or enhancements (each a “**Service Change**”) to the In-Scope Services being provided pursuant to this AMSA (including corresponding changes to the Service descriptions, Service Charges and Service Levels), *provided* that (i) such Service Change is within the scope of the Services and is not a New Service and (ii) that the Service Change will not result in a termination of any Service (other than a Service Discontinuance pursuant to Section 4.6). Service Changes may be requested by written notice delivered to the applicable BCH Functional Owner (if delivered by ABSBC) or to the ABSBC Contract Manager (if delivered by BCH) specifying in detail the proposed Service Change (a “**Change Order Request**”), and indicating that such notice constitutes a Change Order Request. Any requested change that constitutes a New Service shall be handled in accordance with Section 4.4. For the avoidance of doubt, any new service location to which Services will be provided or changes to a service location to which Services are provided as of the Service Commencement Date shall require a Change Order.
- (b) *Change Order Request Protocol.* BCH and ABSBC shall cooperate with each other in good faith in discussing the scope and nature of each Change Order Request, the availability of ABSBC personnel and resources to accommodate such Service Change and the timetable for implementation of such Service Change. In addition, BCH and ABSBC will work together to manage the volume of Change Order Requests and the level of effort required to perform Change Analyses. The process (including timelines) by which Change Order Requests shall be resolved and escalated (if necessary) is set forth at Schedule 8.12(b).

- (c) *Change Analyses.* As soon as reasonably practicable following receipt of a Change Order Request or notification of a Regulatory Change by BCH or simultaneously with ABSBC's delivery of a Change Order Request, ABSBC will prepare and deliver to both the BCH Contract Manager and the applicable BCH Functional Owner a written analysis (a "*Change Analysis*") describing any changes in products, services, assignment of personnel and other resources that ABSBC believes would be required. In addition, such Change Analysis shall include, as appropriate or applicable, (i) an estimation of the increase or decrease, if any, in the Service Charges that would be required, (ii) a description of how the Change Order Request would be implemented, (iii) a description of the effect, if any, such Change Order Request would have on this AMSA, including, without limitation, on Service Levels and Termination Fees, (iv) an estimation of all resources required to implement such Change Order Request, including a description of the delivery risks and associated risk mitigation plans, and (v) such other information as may be relevant to the Change Order Request. ABSBC shall base all proposed Service Charge adjustments (if any) arising from an increase or decrease in labour resources utilized to perform a Service and that are associated with a Change Order Request or Regulatory Change upon the applicable ARCs and RRCs (if any) associated with such labour resources (as described in Attachment C to Schedule 10.1).
- (d) *Finalizing Change Orders.* The ABSBC Contract Manager, BCH Contract Manager and applicable BCH Functional Owner will meet to determine whether they desire for ABSBC to proceed with the implementation of the proposed Service Change in accordance with the applicable Change Analysis, and if the ABSBC Contract Manager, BCH Contract Manager and BCH Functional Owner desire to proceed with the implementation of the proposed Service Changes, they shall evidence such agreement in writing (a "*Change Order*"). Any disputes with respect to Change Order Requests, Change Analyses or written agreements to proceed with implementation of proposed Service Changes shall be handled as a Dispute in accordance with Article XVIII, *provided, however*, that (i) Section 18.2 shall not apply to any Dispute arising from a Change Order Request initiated by ABSBC and (ii) ABSBC shall begin to implement modifications to the Services as a result of any Regulatory Change (as determined and directed by BCH acting reasonably and in good faith) notwithstanding any dispute regarding such Regulatory Change under this Section 8.12(d).
- (e) *Expedited Change Order Requests.* Notwithstanding the foregoing Sections 8.12(c) and 8.12(d), and unless otherwise agreed in writing between the Contract Managers, Service Changes that would entail a Service Charge increase of **[Redacted]** shall be implemented by application of the expedited Change Order Request protocol set out in Schedule 8.12(b).
- (f) *Minor Service Changes.* Notwithstanding Sections 8.12(c) and 8.12(d) above, subject to Section 8.12(h) below, and unless otherwise agreed in writing between the Contract Managers, ABSBC (acting reasonably and in good faith) shall

promptly implement, without referral to the process set forth at Sections 8.12(c) and 8.12(d), any Service Change to In-Scope Services (but excluding Discretionary Services) requested in writing by either Party that does not constitute a Change Order Request that ABSBC (acting reasonably and in good faith), determines, prior to the issuance of a Change Order, would entail a Service Charge increase of less than **[Redacted]** (a “*Minor Service Change*”).

- (g) *Minor COR Estimates.* Notwithstanding Section 4.2(f), with respect to COR Estimates that BCH has requested and that relate to proposed Change Orders that ABSBC determines will result in Service Charges of **[Redacted]** (“*Minor COR Estimates*”), if BCH elects not to proceed with the proposed Change Order (each such proposed Change Order which BCH elects not to proceed with being a “*Cancelled Minor Change Order*”), BCH shall be responsible for certain COR Estimate Costs arising therefrom (“*Minor COR Estimate Costs*”) as provided in Section 8.12(h).
- (h) *Threshold Pricing for Minor Service Changes and Minor COR Estimates.* Notwithstanding Section 8.12(f) above:
 - (i) in any Contract Year, BCH shall not be required to pay for either Service Charges associated with Minor Service Changes implemented in that Contract Year, or Minor COR Estimate Costs associated with Cancelled Minor Change Orders in that Contract Year, if the aggregate of (x) Service Charges of all Minor Service Changes implemented in that Contract Year and (y) the aggregate estimated price (at the implied Discretionary Services Charge rate) associated with preparing all Cancelled Minor Change Orders in that Contract Year (collectively the “*De Minimis Annual Total*”) is less **[Redacted]**; and
 - (ii) if the De Minimis Annual Total in any Contract Year becomes **[Redacted]** either as a result of (x) the implementation of a Minor Service Change in that Contract Year, and/or (y) the addition to the De Minimis Annual Total of the estimated price (at the implied Discretionary Services Charge rate) associated with preparing a Cancelled Minor Change Order that BCH elects not to proceed with in that Contract Year, then:
 - (A) Section 8.12(f) shall not apply to any subsequent Minor Service Changes in that Contract Year, and such Minor Service Changes shall be implemented in accordance with the procedures set forth in Section 8.12(a) through 8.12(d); and
 - (B) notwithstanding Section 4.2(f), BCH shall be responsible for paying all Minor COR Estimate Costs associated with all Cancelled Minor Change Orders that BCH subsequently elects not to proceed with in that Contract Year.

ABSBC shall maintain records of all Minor Service Changes implemented pursuant to Section 8.12(f) (including the Service Changes associated with each such Minor Service Change), and within five days following the end of every quarter during each Contract Year shall provide BCH with a written report summarizing all Service Changes implemented (including associated Service Charges) to date during that Contract Year. ABSBC shall also monitor the De Minimis Annual Total in each Contract Year, and shall promptly advise BCH if the De Minimis Annual Total in any Contract Year **[Redacted]**. Any Disputes with respect to the Minor Service Changes implemented pursuant to this Section 8.12(f), or the application of this Section 8.12(h), shall be resolved by the Contract Managers as the final point of escalation, and Article XVIII shall not apply.

- (i) *Charges and Schedule Adjustments.* Charges associated with Service Change or Regulatory Change implementation will be included within the appropriate monthly invoices. Following implementation of any Service Change, all affected Schedules to this AMSA, including, without limitation, Schedule 10.1, shall be updated in accordance with the applicable Change Analysis.
- (j) *BCUC Orders.* Notwithstanding anything herein to the contrary, in the event of any change to the Services or the Service Charges in accordance with the provisions of this Section 8.12 as a result of any disallowance or disapproval or similar order or directive by the BCUC of any Service Charges, or any portion thereof paid or payable under this AMSA, any Service Charges that are disallowed by the BCUC and the costs of implementing any change to the Services or Services Charges resulting from such a determination by the BCUC, shall be fully borne by BCH.

8.13. *Proposed Changes.* From time to time, either Party may identify opportunities or risk mitigation strategies for improving the delivery and/or consumption of the Services (which may include BCH or ABSBC initiated process changes or modifications). If requested, each Party shall co-operate with the other Party in good faith in discussing the scope and nature of any given opportunity or risk mitigation strategies identified by the other Party, and in assessing the potential for implementing such opportunity. In addition, throughout the Agreement Term, ABSBC shall use reasonable commercial efforts to pro-actively consider and investigate opportunities or risk mitigation strategies for improving the delivery and/or consumption of the Services so as to create cost-savings for BCH, and shall inform BCH of any such identified opportunities.

8.14. *Relationship Management and Disputes.* Notwithstanding the authority and responsibilities accorded to BCH and ABSBC representatives pursuant to Sections 8.1, 8.2, 8.3 and 8.4, for any issues that constitute a Dispute the Parties shall at all times have recourse to the Dispute resolution process as set forth at Article XVIII.

**ARTICLE IX
HUMAN RESOURCE MATTERS**

- 9.1. *Transition of BCH Personnel.* The Master Transfer Agreement sets forth the terms and conditions under which ABSBC (or its subcontractors) will employ certain employees of BCH and assume certain human resource and related obligations of the Parties.
- 9.2. *General Principles Regarding ABSBC Personnel.* The personnel assigned to the BCH account by ABSBC (or its subcontractors) will be and remain employees of ABSBC (or such subcontractors), and ABSBC (or such subcontractors) will provide for and pay the compensation and other benefits of such personnel, including salary, health, accident and workers' compensation benefits and all taxes and contributions that an employer is required to pay with respect to the employment of employees.
- 9.3. *Limitations on Recruiting.* Except as provided in Schedule 17.5 and subject to the Master Transfer Agreement, including the Transition Agreement (as defined therein), and unless otherwise agreed by the Parties in writing, during the Agreement Term, neither Party shall, directly or indirectly, knowingly solicit for employment, offer employment to or employ or retain (whether as an employee, officer, agent, consultant, advisor or in any other capacity) any employee of the other Party who is or was actively involved in the performance or evaluation of the Services. Notwithstanding the foregoing, the Parties acknowledge and agree that this AMSA will not prohibit (i) solicitations through general public advertising or other publications of general public circulation or (ii) the hiring of any employee of a Party who contacts the other Party without such other Party having solicited such employee.

**ARTICLE X
PAYMENT**

- 10.1. *Service Charges.* In consideration for the performance of the Services, BCH shall pay to ABSBC the charges for the Services (the "*Service Charges*") and certain other amounts specified in Schedule 10.1. For greater certainty, BCH shall pay to ABSBC the Service Charges regardless of whether BCH is permitted by the BCUC to recover any or all of the Service Charges.
- 10.2. *Reimbursement of Expenses.* Except as expressly provided in this AMSA, expenses that ABSBC expects to incur in performing the Services are included in ABSBC's charges and rates set forth in this AMSA. Accordingly, such ABSBC expenses are not separately reimbursable by BCH, except as otherwise approved by BCH.
- 10.3. *No Reduction in Service or Service Levels.* Application of the Service Charges set forth in Schedule 10.1 during the Agreement Term shall not negatively affect the quality or level of service provided by ABSBC pursuant to this AMSA.
- 10.4. *Retained Expenses.* In addition to any other financial responsibilities of BCH contemplated by this AMSA, BCH will pay all costs and expenses with respect to which

financial responsibility has not been expressly assigned to ABSBC, and which are not reasonably related to ABSBC's express obligations under this AMSA.

10.5. *Cost of Living Adjustments.* The Service Charges (but excluding the TPC Service Charges, Service Charges arising from the PE Services, and the VRC Hourly Rates) are subject to annual adjustment as set forth in this Section 10.5. If the **[Redacted]** immediately prior to any anniversary of the Service Commencement Date (the "*Inflation Index*") beginning with the **[Redacted]** such anniversary (the "*Current Index*"), increases by more than **[Redacted]** from the Inflation Index applicable **[Redacted]** prior thereto (the "*Applicable Base Index*"), then effective as of such anniversary, the Service Charges, as previously adjusted by any increase made pursuant to this Section 10.5 in a prior Contract Year, will be further increased by the percentage amount over **[Redacted]** that the Current Index increased from the Applicable Base Index. In such event, ABSBC will provide to BCH a recalculation of the Service Charges. If **[Redacted]** stops publishing the Inflation Index or substantially changes the content of the Inflation Index, the Parties shall substitute another comparable measure published by a mutually agreeable source. If such change by **[Redacted]** is merely to redefine the base year for the Inflation Index, the Parties shall continue to use the Inflation Index but shall, if necessary, convert either the Applicable Base Index or the Current Index to the same basis as the other by multiplying such index by the appropriate conversion factor. **[Redacted]**.

10.6. *Other Payments.* **[Redacted]**

10.7. *Invoices; Method of Payment.*

(a) ABSBC shall render a single consolidated invoice in the form set forth in Schedule 10.7(a) on or before the fifteenth business day of each calendar month (except the calendar month which includes the Service Commencement Date, in which case such invoice shall be delivered on the Service Commencement Date) which shall reflect (i) such current month's Service Charges estimated in accordance with Schedule 10.1, (ii) any reimbursable expenses under this AMSA accrued during the preceding month, (iii) any reconciliation of actual versus estimated charges due for the preceding month, (iv) when applicable pursuant to Schedule 5.1, any credit for a credit balance in respect of Service Demerits, **[Redacted]** and Earn-Back Credits, or additional expense for a negative balance in respect thereof (as determined pursuant to Schedule 5.1), (v) any applicable taxes, (vi) when applicable pursuant to Section 10.6, any **[Redacted]** and (vii) such other amounts as may from time to time arise under this AMSA that may appropriately be reflected on invoices hereunder. The Service Charges set forth in Schedule 10.1 which are associated with the IT Service Category shall be further broken down into Services provided to BCH Available Assets and Services provided to Newco Available Assets made available for use by ABSBC in carrying out its business activities.

- (b) Each consolidated invoice shall be provided in electronic format compatible with BCH's financial computer systems and shall set forth the amounts owing by BCH in respect of Service Charges, divided into taxable and non-taxable services.
- (c) All amounts due to ABSBC and set forth on the consolidated invoice delivered pursuant to subparagraph (a) shall be due and payable the last business day of the calendar month in which such invoice has been received.
- (d) All amounts to be paid to ABSBC under this AMSA shall be paid in Canadian dollars by electronic funds transfer to the account or accounts designated by ABSBC from time to time or by such other method as is mutually determined by the Parties. Any amount not paid when due will bear interest until paid at a rate equal to the [Redacted] (i) [Redacted] per month or (ii) the maximum rate of interest allowed by Law.
- (e) Periodic charges under this AMSA are to be computed on a calendar month basis and will be prorated on a per diem basis for any partial month.

10.8. *Cost Distribution Files.*

- (a) Monthly during the Agreement Term as instructed by BCH, ABSBC shall provide a cost-distribution file to BCH (a "***Cost Distribution File***"), as described in this Section 10.8.
- (b) No less than 60 days prior to the commencement of each Contract Year, BCH (acting reasonably) shall deliver to ABSBC cost distribution details and requirements for the upcoming Contract Year. Each Cost Distribution File rendered by ABSBC during that Contract Year shall include, the detail that BCH requires during that Contract Year to satisfy BCH's internal cost distribution and chargeback requirements, which shall include a calculation for internal BCH purposes of the "total cost" of Services consumed by the various BCH user groups, equal to the sum of (i) applicable Service Charges, (ii) the portion of BCH's share of allocable Depreciation (as defined below), (iii) the portion of allocable amounts due to ABSBC from BCH under the Support Services Agreement, and (iv) the portion of BCH's share of allocable management fees charged by BCH to Newco (as determined by BCH, in its sole discretion). For the purposes of this Section 10.8(b), "***Depreciation***" means the aggregate amount of depreciation for the applicable invoice period relating to assets used to provide the In-Scope Services and which are owned by BCH and/or Newco, all as determined by BCH (acting reasonably). The Cost Distribution File shall also include all other allocations of cost relating to Service Charges consistent with BCH's cost distribution and chargeback requirements. ABSBC shall provide each Cost Distribution File to BCH in substantially the same format as ABSBC provided Cost Distribution Files to BCH as at the AMSA Effective Date. ABSBC shall also provide BCH with at least the same level of administrative support in respect of each Cost Distribution File as ABSBC provided to BCH as at the

AMSA Effective Date, which for the avoidance of doubt shall include tracking the consumption of Services to meet BCH's cost distribution details and criteria (as determined by BCH, in its sole discretion), and acting as a central point of contact with respect to questions originating from BCH concerning such consumption of Services.

- (c) BCH may request changes to its cost distribution requirements in accordance with the Change Order procedures set forth in Section 8.12, provided that BCH shall not request cost distribution requirements that are more onerous or complex than those routinely employed by BCH prior to the AMSA Commencement Date
- (d) ABSBC shall provide each Cost Distribution File in electronic format compatible with BCH's financial computer systems to the extent and on the terms and schedule determined in accordance with the AMSA Transition Plan.

10.9. *Unused Credits.* Any unused credits against future payments owed to either Party by the other pursuant to this AMSA will be paid to the applicable Party within 30 days after the expiration or termination of this AMSA.

10.10. *Refundable Items.*

- (a) If it is determined that BCH has prepaid for a service or function for which ABSBC is assuming financial responsibility under this AMSA, ABSBC shall credit BCH that portion of such prepaid expense that is attributable to periods after the Service Commencement Date against ABSBC's invoice for such applicable period. BCH shall reimburse ABSBC, upon expiration or termination of this AMSA, for that portion of any amounts prepaid by or on behalf of ABSBC that are attributable to periods on and after the effective date of expiration or termination of this AMSA.
- (b) If ABSBC receives a refund, credit or other rebate for goods or services paid for by BCH on a pass through basis (*i.e.*, at the actual, direct cost, with no handling fees, overhead or other markup) or reimbursed by BCH to ABSBC, ABSBC shall promptly notify BCH of such refund, credit or rebate and pay the full amount thereof to BCH.
- (c) If BCH receives a refund, credit or other rebate for goods or services paid for by ABSBC pursuant to this AMSA, BCH shall promptly notify ABSBC of such refund, credit or rebate and pay the full amount thereof to ABSBC.
- (d) If any Service Level Demerit or other monetary penalty set forth in Schedule 5.1 remains outstanding upon the expiration or termination of this AMSA and no Service Charges remain payable, ABSBC shall pay BCH such remaining amount in cash within 30 days after such expiration or termination.

10.11. *Disputed Charges.* **[Redacted]**

10.12. [Redacted]

- (a) [Redacted]
- (b) [Redacted]
- (c) [Redacted]
- (d) [Redacted]
- (e) [Redacted]

10.13. *True Up.*

- (a) *Application.* The terms and conditions set forth in this Section 10.13 apply entirely to events, acts or omissions occurring prior to the AMSA Commencement Date, and have no further effect with respect to events, acts or omissions following the AMSA Commencement Date.
- (b) *General.* The Parties acknowledge that despite doing everything reasonably possible to accurately determine the Baseline, describe the scope of services and determine the baseline volumes and baseline pricing, there are likely to be errors and omissions. Since both Parties desire that the Baseline, the Service Charges and the baseline volumes set forth on Schedule 10.1 herein (collectively, the “*Baseline Components*”) and the description of Services on Schedule 4.2 (the “*Service Components*”) be as accurate as possible and reflect BCH’s historical costs at the Service Commencement Date, the Parties hereby agree to the process set forth in this Section 10.13 to identify such errors and omissions and to amend this AMSA and the Schedules hereto to reflect these findings. Notwithstanding any provision of this Section 10.13 to the contrary, all such amendments to “true up” the Baseline Components and Service Components will be performed only during the Reconciliation Period.
- (c) *Adjustments.* From time to time during the Reconciliation Period, ABSBC shall provide written notice to BCH of any error or omission requiring adjustment to the Baseline Components (either upwards or downwards) or the Service Components, setting forth a description and the amount of the proposed adjustment and accompanied by reasonable and appropriate supporting documentation. In addition, BCH may identify to ABSBC any error or omission adjustments that it identifies. Each time a Party provides notice to the other of a proposed adjustment, the Parties shall meet within 15 days after the date of such notice and shall cooperate with each other for a period not to exceed 30 days to determine whether the proposed adjustment is appropriate. Upon mutual agreement of the Parties, the applicable Baseline Components and Service Components shall be adjusted accordingly (including, without limitation, any Baseline Volume Bands, Base Band Charges, Additional Service Charges and Reduced Service Charges). In addition, ABSBC shall adjust (either upwards or

downwards and on a retroactive basis) the next invoice sent by ABSBC to BCH to reflect any increase or decrease in the pricing for Services that would have been paid by BCH if such adjustment had been made on the New Service Commencement Date.

- (d) *Unscheduled Resources.* If in the course of the process set forth in this Section 10.13, the Parties identify any agreement, Asset or service not previously identified on the appropriate Schedule under Article VI (each an “*Unscheduled Resource*”), the following shall apply:
- (i) If ABSBC uses any *Unscheduled Resource* prior to its inclusion on the appropriate Schedule under Article VI, ABSBC shall not be deemed to have used such *Unscheduled Resource* without authorization.
 - (ii) Upon identification, the *Unscheduled Resource* shall be added to the appropriate Schedule under Article VI and ABSBC shall have the use of, and the Parties shall have such responsibility for, such *Unscheduled Resource* (including responsibility for obtaining any Consents) as though such resource had originally been listed on the applicable Schedule.
 - (iii) The Parties acknowledge and agree that certain of the Baseline Components and Service Components may be adjusted upon identification of *Unscheduled Resources* and as the Parties agree to reflect *Unscheduled Resources* on the applicable Schedules.
- (e) *Cooperation.* The Parties shall cooperate with each other, participate in meetings that are reasonably requested by the other Party and provide access to such personnel, resources, records, reports and other information as is reasonably necessary or desirable to conduct the reviews contemplated by this Section 10.13. Moreover, the Parties shall use commercially reasonable efforts in connection with all such reviews and in order to bring each such review to a timely conclusion.

10.14. *Management Fees.*

- (a) The terms and conditions set forth in this Section 10.14 apply solely to events, acts or omissions occurring prior to the AMSA Commencement Date, and have no further effect with respect to events, acts or omissions following the AMSA Commencement Date. The Parties further acknowledge that this provision has never taken effect as a consequence of the Parties pursuing alternative capital financing solutions.
- (b) **[Redacted]**
- (c) **[Redacted]**

10.15. *BCH End-User Hardware Charges.*

- (a) The terms and conditions set forth in this Section 10.15 apply solely to events, acts or omissions occurring prior to the AMSA Commencement Date, and have no further effect with respect to events, acts or omissions following the AMSA Commencement Date. The Parties further acknowledge that this provision has never taken effect as a consequence of the Parties pursuing alternative capital financing solutions.
- (b) **[Redacted]**
- (c) **[Redacted]**

10.16. *Put Right.*

- (a) The terms and conditions set forth in this Section 10.16 apply solely to events, acts or omissions occurring prior to the AMSA Commencement Date, and have no further effect with respect to events, acts or omissions following the AMSA Commencement Date.
- (b) **[Redacted]**

10.17. *Certain Local Agreements.*

- (a) The terms and conditions set forth in this Section 10.17 apply solely to events, acts or omissions occurring prior to the AMSA Commencement Date, and have no further effect with respect to events, acts or omissions following the AMSA Commencement Date.
- (b) The Parties agree that ABSBC may enter into a separate contract or local agreement for the direct provision of certain application development and maintenance services to Westech Information Systems Inc. Any such local agreement shall incorporate the general terms and conditions of this AMSA, and shall not modify any of the commercial arrangements or obligations in this AMSA, including, without limitation **[Redacted]**.

10.18. *Services to BCH Affiliates.* ABSBC will, if requested by BCH, provide Services under this AMSA to designated Affiliates of BCH, including PowerEx Corp. and PowerTech Labs Inc. Such Services shall be provided to the Affiliates on the terms and conditions set forth herein, and BCH shall be fully responsible for the actions of such Affiliates as if it were receiving such Services directly. If, as a result of the provision of Services to such Affiliates, BCH were to bear an unreasonable administrative burden or incremental tax, the Parties will cooperate to reasonably determine whether there is another method of providing such Services to the Affiliates consistent with this AMSA, including the entering into of any separate contract or local agreement for the direct provision of such Services to the Affiliates. Any such separate or local agreement shall incorporate the general terms and conditions of this AMSA, and shall not modify any of the commercial

arrangements or obligations in this AMSA. BCTC shall, until the BCTC Agreement has been executed (as contemplated at Section 4.13(b)), continue to be considered a designated Affiliate of BCH for the purposes of this Agreement.

ARTICLE XI REPRESENTATIONS, WARRANTIES AND COVENANTS

11.1. *ABSBC Representations and Warranties.* ABSBC hereby represents and warrants to BCH as follows:

- (a) *Organization; Power.* ABSBC is a limited partnership duly organized, validly existing and in good standing under the laws of the Province of British Columbia. ABSBC has all requisite partnership power and capacity to execute and deliver this AMSA and to perform its obligations hereunder.
- (b) *Authority; Enforceability.* The execution and delivery of this AMSA and the consummation of the transactions contemplated hereby have been duly authorized by all requisite action on the part of ABSBC. This AMSA constitutes the legal, valid and binding agreement of ABSBC, enforceable against ABSBC in accordance with its terms (except insofar as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting creditors' rights generally, or by principles governing the availability of equitable remedies).
- (c) *Noncontravention.* The execution and delivery of this AMSA and the consummation of the transactions contemplated hereby will not (i) conflict with or result in any violation of any provision of the limited partnership agreement of ABSBC, as amended to date; (ii) conflict with, result in any violation or breach of, constitute a default under, give rise to any right of termination or acceleration (with or without notice or the lapse of time or both) pursuant to, or result in being declared void or voidable, any term or provision of any note, bond, mortgage, indenture, lease, licence, contract or other instrument to which ABSBC is a party or by which any of its properties or assets are or may be bound; or (iii) violate any Law applicable to ABSBC.

11.2. *BCH Representations and Warranties.* BCH hereby represents and warrants to ABSBC as follows:

- (a) *Organization; Power.* BCH is continued under the *Hydro Power and Authority Act*, R.S.B.C. 1996, c.212 and is duly organized and validly existing under the laws of the Province of British Columbia. BCH has all requisite corporate power and capacity to perform its obligations hereunder.
- (b) *Authority; Enforceability.* The execution and delivery of this AMSA and the consummation of the transactions contemplated hereby, have been duly authorized by all requisite corporate action on the part of BCH. This AMSA

constitutes the legal, valid and binding agreement of BCH, enforceable against BCH in accordance with its terms (except insofar as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting creditors' rights generally, or by principles governing the availability of equitable remedies).

- (c) *Noncontravention.* The execution and delivery of this AMSA and the consummation of the transactions contemplated hereby will not (i) conflict with or result in any violation of any provision of the B.C. *Hydro Power and Authority Act* or the charter or bylaws of BCH, if any, all as amended to date; (ii) conflict with, result in any violation or breach of, constitute a default under, give rise to any right of termination or acceleration (with or without notice or the lapse of time or both) pursuant to, or result in being declared void or voidable, any term or provision of any note, bond, mortgage, indenture, lease, licence, contract or other instrument to which BCH is a party or by which any of its properties or assets are or may be bound; or (iii) violate any Law applicable to BCH.
- (d) *Assets, Resources and Facilities Necessary to Business.* The Available Assets to be made available for use by ABSBC pursuant to this AMSA and the Limited Partnership Agreement and such other Assets to be made available under the Support Services Agreement are all of the Assets used to provide the Services for which ABSBC will assume operational responsibility on the Service Commencement Date. All of the Available Assets that are material to the provision of the Services are in good operating condition and repair, normal wear and tear excepted.
- (e) *Employees Offered Employment.* Subject to the terms of the Master Transfer Agreement, the BCH employees who are offered employment in accordance with the Master Transfer Agreement (the “*Employees Offered Employment*”) and the union employees of BCH that become employees of ABSBC by operation of law comprise all employees of BCH or any affiliates that provide services for which ABSBC will assume operational responsibility on the Service Commencement Date.
- (f) *ABSBC-Managed Agreements and ABSBC-Assumed Agreements.* Except as disclosed in writing by BCH to ABSBC prior to the Service Commencement Date, each ABSBC-Managed Agreement or ABSBC-Assumed Agreement is in full force and effect, constitutes a legal, valid and binding obligation of BCH or Newco and, to BCH's knowledge, is enforceable against BCH or Newco in accordance with its terms (except insofar as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting creditors' rights generally, or by principles governing the availability of equitable remedies). BCH and Newco are not, and to BCH's knowledge, no other party to any such ABSBC-Managed Agreement or ABSBC-Assumed Agreement is, in breach or default thereunder, no notice of default, defense, offset, counterclaim, termination, cancellation or acceleration has been received by any

party thereto in connection therewith and, to BCH's knowledge, no event has occurred that would constitute a breach, violation or default or give rise to any right of offset, counterclaim, termination, cancellation or acceleration thereunder. There are no material disputes with respect to any ABSBC-Managed Agreement or ABSBC Assumed Agreement.

- (g) *Intellectual Property.* Except as disclosed in writing by BCH to ABSBC prior to the Service Commencement Date, (i) BCH owns all right, title and interest in and to, free and clear of any encumbrances, the BCH-Owned Software and (ii) Newco owns all right, title and interest in and to, free and clear of any encumbrances, the Newco-Owned Software. To the best knowledge of BCH, none of such BCH-Owned Software or Newco-Owned Software has infringed or violated, or does infringe or violate, or constitutes an unlawful disclosure, use or misappropriation of, any intellectual property rights of any Person. BCH has not received any notice, claim or other protest alleging any such infringement, violation, disclosure, use or misappropriation by BCH or Newco and to the knowledge of BCH, no basis exists for any such notice, claim or other protest. BCH has a valid right to use, free and clear of any encumbrances, the BCH-Licensed Software. Newco has a valid right to use, free and clear of any encumbrances, the Newco-Licensed Software.

11.3. *Additional Warranties.*

- (a) *Performance.* ABSBC warrants that all Services will be performed in a professional manner and with reasonable care and skill consistent with experienced service providers.
- (b) *Correction of Errors.* Except in the case of Work Product, which shall be governed by the warranty terms set forth in Section 11.5, ABSBC warrants that it will use commercially reasonable efforts to correct any errors, inaccuracies, omissions, defects or deficiencies (collectively or individually, an "*Error*") in its performance of the Services, to the extent caused by ABSBC and at no charge to BCH, that are brought to the attention of ABSBC within six months after the date that BCH discovers, **[Redacted]**.

- 11.4. *British Columbia Locus.* During the Agreement Term and unless otherwise mutually agreed, ABSBC will use employees based within the Province of British Columbia for all positions (i) directly serving BCH and its customers and (ii) required as of the Effective Date to service BCH and ABSBC's principal office. During the Agreement Term, ABSBC's principal place of business shall be located within the Province of British Columbia at such specific location or locations within such Province as ABSBC determines to be appropriate. For the avoidance of doubt, the Parties agree that supervisory personnel employed by any Affiliate of ABSBC or specialists employed by any Affiliate of ABSBC who from time to time perform or work on the Services shall not be subject to, and do not constitute a violation of, this Section 11.4. ABSBC's use of subcontractors who are natural persons pursuant to Section 8.10 shall also be subject to

this Section 11.4 (except as expressly provided otherwise in Section 8.10). The Parties agree that notwithstanding the foregoing, it shall not constitute a violation of this Section 11.4 for ABSBC to use for a limited period employees, subcontractors, and facilities located outside of the Province of British Columbia to provide Services (i) in excess of the reasonably expected volumes (based on Service forecasts made in accordance with Section 8.7) and (ii) when the ability or availability of regular employees, subcontractors and facilities employed or used for Services has been or is reasonably expected to be compromised.

11.5. *Warranty Regarding ABSBC Work Product.*

- (a) ABSBC warrants that Work Product or Designated Work Product developed by ABSBC pursuant to this AMSA (the “**ABSBC Warranty Item**”) will substantially conform during the Warranty Period to the applicable specifications agreed upon by the Parties with respect to such item.
- (b) BCH shall notify ABSBC in writing of any defects in such ABSBC Warranty Item that cause it not to substantially conform to the applicable specifications during the Warranty Period and shall provide ABSBC with adequate information to identify the circumstances in which such defects were discovered.
- (c) BCH’s sole and exclusive remedy for any breach of such warranty will be the correction by ABSBC of any defects in such ABSBC Warranty Item that cause it not to substantially conform to the applicable specifications. ABSBC will provide such corrections at no charge to BCH. BCH shall provide to ABSBC access, in a timely manner, to any technical support, facilities, hardware, software or information in BCH’s possession necessary for ABSBC to complete such work. ABSBC shall correct such defects as soon as practicable and furnish BCH with a revised or updated ABSBC Warranty Item reflecting any corrections made thereto pursuant to this Section 11.5.
- (d) Notwithstanding the foregoing, this warranty shall not apply to the extent an ABSBC Warranty Item does not substantially conform to the applicable specifications as a result of a defect arising from (i) any act or omission of BCH, (ii) any Person (other than ABSBC or any Person under the express direction of ABSBC) making any revisions or modifications to the ABSBC Warranty Item after its provision to BCH, (iii) the malfunction of any BCH-supplied software or equipment or (iv) the occurrence of any Force Majeure Event. In any such event, the warranty described herein with respect to the portion of the ABSBC Warranty Item so affected shall be ineffective as to such defect, and the Parties shall seek to establish mutually agreed alternative arrangements thereto through the execution of a Change Order pursuant to Section 8.12.
- (e) This Section 11.5 shall not apply to third-party software.

11.6. *Pass-Through Warranties.* With respect to all third-party products and services purchased by ABSBC for BCH in connection with the provision of the Services, ABSBC

shall pass through or assign to BCH the rights ABSBC obtains from the manufacturers and/or vendors of such products and services (including warranty and indemnification rights), all to the extent that such rights are assignable.

- 11.7. *Disclaimer of Warranties.* Except as otherwise expressly provided in this AMSA, the Parties make no representations, warranties or conditions, express or implied, regarding any matter, including the merchantability, suitability, fitness for a particular use or purpose, or results to be derived from the use of any service, software, hardware, deliverables, work product or other materials provided under this AMSA. ABSBC expressly disclaims any warranty of the accuracy or completeness of data or operational criteria. ABSBC does not represent or warrant that the operation of any software will be uninterrupted or error free.

ARTICLE XII CONFIDENTIALITY; SAFEGUARDING OF DATA

- 12.1. *Confidentiality.*

- (a) *Confidential Information.* In connection with this AMSA, each of the Parties has disclosed and may continue to disclose to the other Party information that relates to the disclosing Party's business operations, financial condition, customers, products, services or technical knowledge. Except as otherwise specifically agreed in writing by the Parties, ABSBC and BCH each agrees that (i) all information communicated to it by the other and identified as confidential or proprietary, whether before or after the Effective Date, (ii) all information identified as confidential or proprietary to which it has access in connection with the performance of its obligations under this AMSA, whether before or after the Effective Date, (iii) all information communicated to it that reasonably should have been understood by the receiving Party, because of confidentiality or similar legends, the circumstances of disclosure or the nature of the information itself, to be proprietary and confidential to the disclosing Party, and (iv) the redacted terms and conditions of this AMSA, including all schedules, exhibits and appendices hereto (collectively, the "***Confidential Information***"), will be and will be deemed to have been received in confidence and will be used only for purposes of this AMSA. In the case of BCH, Confidential Information also will include BCH Data, customer lists, customer information, BCH employee records, information regarding BCH's businesses, plans, operations, markets or other information or data stored on magnetic media or communicated orally, and obtained, received, transmitted, processed, stored, archived or maintained by ABSBC under this AMSA. In the case of ABSBC, Confidential Information also will include ABSBC Software, Proprietary Items, financial information, information regarding ABSBC's businesses, plans and operations, and software, tools and methodologies owned or licensed by ABSBC. The Parties acknowledge that third-party software may be subject to additional confidentiality restrictions imposed by the applicable vendor's licence or other agreement.

- (b) *Safeguarding and Permitted Disclosure.* Each Party's Confidential Information will remain the property of that Party and shall not be disclosed, made available, sold or transferred to any other Person in any manner except as otherwise expressly provided in this AMSA. Each of the Parties shall use at least the same degree of care to safeguard and to prevent disclosing to third parties the Confidential Information of the other as it employs to avoid unauthorized disclosure or publication of its own information (or information of its customers) of a similar nature, and in any event, no less than reasonable care. Each Party may disclose relevant aspects of the other Party's Confidential Information to (i) its employees, Affiliates, subcontractors, professional advisors and agents to the extent such disclosure is reasonably necessary for the performance of its obligations, or the enforcement of its rights, under this AMSA, and (ii) its stockholders or owners (including the Government of British Columbia as owner of BCH) to the extent necessary in connection with routine informational disclosures to such stockholders or owners; *provided, however*, that in each such case such Party uses reasonable efforts to ensure that such employees, Affiliates, subcontractors, professional advisors, agents, stockholders or owners comply with the confidentiality provisions of this Article XII. Without limiting the generality of the foregoing, BCH may disclose Confidential Information to representatives of the Government of British Columbia, as owner of BCH, who have a need to have knowledge of such Confidential Information and who have been informed by BCH of the need, duty and requirement to maintain the confidentiality of such Confidential Information. Each Party will be responsible for any disclosure of Confidential Information by such Party's employees, Affiliates, subcontractors, professional advisors, agents, stockholders or owners in breach or violation of this Article XII.
- (c) *Use of Confidential Information.* Neither Party shall (i) make any use or copies of the Confidential Information of the other Party except as contemplated by this AMSA, (ii) acquire any right or interest in or assert any lien against the Confidential Information of the other Party, or (iii) sell, assign, lease or otherwise commercially exploit the Confidential Information (or any derivative works thereof) of the other Party. Neither Party may withhold the Confidential Information of the other Party, including in the case of BCH, the BCH Data, or refuse for any reason (including due to the other Party's actual or alleged breach of this AMSA) to promptly return to the other Party its Confidential Information (other than the redacted terms and conditions of this AMSA), including copies thereof, if requested to do so. Upon expiration or any termination of this AMSA and completion of a Party's obligations under this AMSA, each Party shall (except as otherwise provided in this AMSA) return or destroy, as the other Party may direct, all documentation in any medium that contains or refers to the other Party's Confidential Information, and retain no copies thereof. Subject to the foregoing confidentiality obligations, either Party may retain copies of the Confidential Information of the other Party to the extent required for (i) in the case of ABSBC, compliance with quality assurance purposes and (ii) in the case of BCH, its continuing operations or internal business purposes.

- (d) *Permitted Disclosures.* This Section 12.1 will not apply to any particular information that either Party can demonstrate (i) was, at the time of disclosure to it, in the public domain; (ii) after disclosure to it, is published or otherwise becomes part of the public domain through no fault of the receiving Party; (iii) was in the possession of the receiving Party at the time of disclosure to it and was not the subject of a pre-existing confidentiality obligation; (iv) was received after disclosure to it from a third party who had a lawful right to disclose such information to it; or (v) was independently developed by the receiving Party without use of the Confidential Information of the disclosing Party. A Party will not be considered to have breached its obligations under this Section 12.1 for disclosing Confidential Information of the other Party (including the portions of this AMSA that constitute Confidential Information) to the extent required to satisfy any legal requirement of a court, tribunal or other competent governmental, administrative or regulatory authority, including any such authority acting under the *Freedom of Information and Protection of Privacy Act* of British Columbia, as amended from time to time (each of the foregoing being hereinafter called an “*Authority*”), *provided* that such Party (the “*Disclosing Party*”):
- (i) promptly upon receiving any such request and within a reasonable time before disclosure notifies the other Party of the terms and the circumstances of the requested disclosure;
 - (ii) consults with the other Party regarding the nature and scope of such request and the response or other position the Disclosing Party intends to take with respect to such request;
 - (iii) does not obstruct or interfere with the other Party’s efforts to object to, enjoin, narrow the scope of or otherwise contest the requested disclosure;
 - (iv) furnishes only information that, according to the advice of legal counsel, the Disclosing Party is legally compelled or advised to disclose; and
 - (v) makes and reasonably pursues a request, that is reasonable and customary in the circumstances, to the applicable Authority for confidential treatment of the information disclosed to or at the behest of such Authority. For greater certainty, the Parties acknowledge and agree that whether a Disclosing Party’s conduct in a given situation or circumstance constitutes “reasonable pursuit” of confidential treatment, as contemplated in this clause (v), may be influenced by, among other factors, which Party’s Confidential Information is proposed to be disclosed, the nature of the Confidential Information proposed to be disclosed, and which of the Parties has the primary or dominant interest in protecting the Confidential Information from disclosure.
- (e) *Regulatory Matters.* Notwithstanding the foregoing, BCH may disclose the Confidential Information of any other Party to the BCUC, provided that BCH:

- (i) notifies ABSBC of such planned disclosure a reasonable time prior to making such disclosure;
 - (ii) furnishes only the Confidential Information that, according to the advice of legal counsel, BCH is legally compelled to disclose, or is advised by its legal counsel that it ought to disclose, whether for reasons of legal compliance or otherwise, to the BCUC, and does so on a confidentiality-requested basis as provided in (iii) below; and
 - (iii) makes and reasonably pursues a request, that is reasonable and customary in the circumstances, to the BCUC for confidential treatment of the information disclosed to or at the behest of the BCUC. BCH's failure to obtain a commitment from the BCUC regarding such confidential treatment, however, shall not preclude the disclosure of the Confidential Information requested by the BCUC.
- (f) *No Licences.* Nothing contained in this Section 12.1 will be construed as obligating a Party to disclose its Confidential Information to the other Party, or as granting to or conferring on a Party, expressly or impliedly, any rights or licence to the Confidential Information of the other Party.
- (g) *Independent Development.* Nothing contained in this Section 12.1 shall be construed to limit either Party's right to independently develop or acquire products without use of the other Party's Confidential Information. The disclosing Party acknowledges that the receiving Party may currently, or in the future, be developing information internally, or receiving information from other Persons, that is similar to the Confidential Information of such disclosing Party. Accordingly, nothing in this Section 12.1 will be construed as a representation or agreement that the receiving Party will not develop or have developed for it products, concepts, systems, or techniques that are similar to or compete with the products, concepts, systems or techniques contemplated by or embodied in the Confidential Information provided that the receiving Party does not violate any of its obligations under this AMSA in connection with such development.
- (h) *Sensitive Information Exempt from FOIPPA.* The Parties acknowledge that their respective Confidential Information constitutes commercial and financial information that has been supplied in confidence and the disclosure of which could reasonably be expected to harm significantly the competitive position, and interfere significantly with the commercial interests, of each of the Parties, and further, could reasonably be expected to harm the financial or economic interests of each of the Parties. Accordingly, the Parties confirm their intention that all Confidential Information disclosed to each other shall be deemed to be confidential and exempt from disclosure to third persons in accordance with Section 21 of the *Freedom of Information and Protection of Privacy Act* of British Columbia, as amended from time to time.

12.2. *BCH Data.*

- (a) As between the Parties, BCH will be the sole and exclusive owner of all BCH Data. ABSBC shall utilize the BCH Data solely for purposes of this AMSA and shall not sell, assign, lease, disclose (except to the extent permitted by Section 12.1) or otherwise commercially exploit the BCH Data. BCH Data will be deemed BCH Confidential Information for purposes of Section 12.1. ABSBC is hereby authorized to have access to and to make use of the BCH Data for the Agreement Term to the extent reasonably necessary or appropriate for the performance by ABSBC of its obligations hereunder.
- (b) ABSBC shall develop and maintain appropriate security procedures, policies and internal controls against the destruction, loss or alteration of BCH Data in the possession of ABSBC, which procedures shall be no less than industry standard and shall include the creation of backup data and such other plans and procedures as may be implemented from time to time in accordance with Section 8.7(h).
- (c) ABSBC may retain archival copies of BCH Data as reasonably necessary to verify ABSBC's compliance with this AMSA. ABSBC shall identify such data to BCH at the time such archival copies are withheld.
- (d) As of the Effective Date, BCH has provided to ABSBC all legal and regulatory requirements applicable to the customer data portion of the BCH Data. Any change in the Services required by any Regulatory Change shall be subject to the operation of Section 8.12.
- (e) **[Redacted]**

12.3. *Global Data Privacy Policy.* As part of ABSBC's global data privacy compliance program and in connection with its desire to uniformly protect personal data by ABSBC and ABSBC's Affiliates worldwide, ABSBC maintains a global Data Privacy Policy. ABSBC has provided BCH a copy of its Data Privacy Policy in effect on the Service Commencement Date, and ABSBC shall notify BCH of changes to its Data Privacy Policy from time to time and as appropriate. BCH hereby consents, in its own right and on behalf (and with the authority) of its employees, directors and other officers to the use by ABSBC and its Affiliates of such Data Privacy Policy, subject to Section 12.1 and 12.2 of this AMSA and applicable BCH policy provided to ABSBC regarding the disclosure of the BCH Data.

12.4. *Unauthorized Acts.* Each Party shall:

- (a) notify the other Party promptly of any material unauthorized possession, use or knowledge, or attempt thereof, of the other Party's Confidential Information by any Person that may become known to such Party;
- (b) promptly furnish to the other Party details of the unauthorized possession, use or knowledge, or attempt thereof, and use reasonable efforts to assist the other Party

in investigating or preventing the recurrence of any unauthorized possession, use or knowledge, or attempt thereof, of the other Party's Confidential Information;

- (c) use reasonable efforts to cooperate with the other Party in any litigation and investigation against third parties deemed necessary by the other Party to protect its proprietary rights and Confidential Information; and
- (d) promptly use reasonable efforts to prevent a recurrence of any such unauthorized possession, use or knowledge of the other Party's Confidential Information.

The Party whose Confidential Information is the subject of such activity will reimburse any out-of-pocket expenses incurred by the other Party as a result of compliance with this Section 12.4.

ARTICLE XIII PROPRIETARY RIGHTS

- 13.1. *Ownership of Newco-Owned Software.* Newco is the sole and exclusive owner of the Newco-Owned Software and the licensee of the Newco-Licensed Software. Any derivatives, modifications, enhancements or improvements to the Newco-Owned Software or the Newco-Licensed Software (or their respective related documentation) developed by ABSBC will be considered Work Product and be subject to Section 13.4.
- 13.2. *Ownership of BCH-Owned Software.* BCH is the sole and exclusive owner of the BCH-Owned Software and the licensee of the BCH-Licensed Software. Any derivations, modifications, enhancements or improvements to the BCH-Owned Software or the BCH-Licensed Software (or their respective related documentation) developed by ABSBC will be considered Work Product and be subject to Section 13.4.
- 13.3. *Ownership of ABSBC Software.* ABSBC is the sole and exclusive owner of the ABSBC Software. Any derivatives, modifications, enhancements or improvements to the ABSBC Software (or its related documentation) developed by ABSBC will be owned by ABSBC. If ABSBC incorporates or embeds any ABSBC Software into any Newco-Owned Software, BCH-Owned Software or Work Product ("***Embedded ABSBC Software***"), ABSBC will not be deemed to have transferred or assigned any rights therein to Newco or to BCH; *provided, however*, that ABSBC will grant BCH or Newco a licence to such Embedded ABSBC Software in accordance with Section 13.5 below.
- 13.4. *Ownership of Work Product.*
 - (a) Subject to the rights of any third-party licensors, all the Work Product developed by ABSBC pursuant to this AMSA or the Limited Partnership Agreement, including all intellectual property rights incidental thereto, will be owned by ABSBC.
 - (b) Subject to Article XII and Schedule 17.5, ABSBC will grant to BCH or Newco a nonexclusive, nontransferable, nonassignable, royalty-free, perpetual licence to

use and modify such Work Product, solely for the normal internal business purposes of BCH or Newco and their Affiliates and not for the benefit of others.

(c) **[Redacted]**

(d) This Section 13.4 shall not be construed to prevent the Parties from agreeing to alternate arrangements concerning the ownership, licensing and/or financing of Work Product.

- 13.5. *Embedded ABSBC Software.* If ABSBC incorporates Embedded ABSBC Software into any Work Product, ABSBC or an Affiliate, as applicable, shall grant to BCH or Newco pursuant to a separate agreement a nonexclusive, nontransferable, nonassignable, royalty-free, perpetual licence to use and modify such Embedded ABSBC Software (i) to the extent necessary to use or maintain such Work Product for the normal internal business purposes of BCH and its Affiliates and not for the benefit of others and (ii) solely as used in such Work Product and not as a “stand-alone” product or separately from such Work Product in which it is embedded.
- 13.6. *Proprietary Items.* In the course of performing under this AMSA, ABSBC may use products, materials, tools and methodologies that are proprietary to ABSBC or to third parties (collectively, “*Proprietary Items*”). As between BCH and Newco on the one hand and ABSBC on the other, Proprietary Items will be deemed Confidential Information of ABSBC for purposes of Section 12.1. BCH and Newco shall not have or obtain any rights in such Proprietary Items (or in any derivatives, modifications or enhancements thereto) other than (i) to use them as authorized by ABSBC or ABSBC Affiliates in writing from time to time solely for purposes of performing its responsibilities under this AMSA, (ii) to the extent any Proprietary Items constitute Embedded ABSBC Software, to use such Proprietary Items in accordance with Section 13.5 or (iii) in the case of Proprietary Items owned by third parties, pursuant to terms acceptable to the applicable third party. If Proprietary Items are made available to BCH or Newco under clause (i) or (ii) above, they will be made available on an “AS IS” basis and without express or implied warranties of any kind. Proprietary Items made available under clause (iii) above shall be subject to the terms of the applicable licence.
- 13.7. *Knowledge Capital.* Nothing in this AMSA will preclude ABSBC from marketing, developing or using for itself or others, services or products that are the same as or similar to those provided to BCH or its Affiliates by ABSBC pursuant to this AMSA. Furthermore, ABSBC will continue to be free to use its general knowledge, skills and experience and any ideas, concepts, know-how and techniques that are acquired or used in the course of providing the Services. This Section 13.7 will not diminish ABSBC’s obligations regarding Confidential Information under Section 12.1 and BCH-Protected Software under Section 6.5.
- 13.8. *Further Assurances.* ABSBC, BCH and Newco agree to execute and deliver such instruments and documents as either Party reasonably requests to evidence or effect the transactions contemplated by this Article XIII.

ARTICLE XIV AUDIT RIGHTS

14.1. *Operational Audits.*

- (a) Subject to the provisions of Section 14.3, ABSBC shall provide to such auditors (including external auditors and BCH's internal audit staff or agents) as BCH may designate in writing, access (including electronic access, as applicable) to any facility at which the Services are being performed, to systems and assets used by ABSBC to provide the Services, to all appropriate ABSBC personnel and material subcontractors, and to the data, records and supporting documentation maintained by ABSBC with respect to the Services for the purpose of (i) performing audits and inspections of BCH and its businesses (including any audits necessary to enable BCH to meet its applicable regulatory requirements or verify compliance with applicable Laws (including, for the avoidance of doubt, Freedom of Information Legislation), (ii) to verify the integrity of BCH Data, (iii) to confirm that the Services are being provided in accordance with this AMSA, including the Service Levels, (iv) to verify the integrity of the ABSBC's reports on Service Levels (including raw data from which such reports are compiled), (v) to verify compliance with Article 4.14(c)(vi), (vi) to audit costs and charges associated with the TPCs, as set forth at Section 3.3 to Schedule 10.1. The scope of such audits may include, without limitation, and when applicable, (i) ABSBC's practices and procedures, (ii) controls (e.g., organizational controls, input/output controls, system modification controls, processing controls, system design controls, and logical and physical access controls) and (iii) disaster recovery and back-up procedures. Any such audits will be conducted at BCH's expense (which shall not include expenses of ABSBC to make its personnel available to BCH pursuant to this Section 14.1(a)). Any reports received as a result of these audits will be addressed to BCH and may not be provided to other ABSBC customers.
- (b) Within a reasonable period of time after ABSBC has one or more customers (in addition to BCH) that provide in the aggregate at least **[Redacted]** of annual revenue, ABSBC shall engage independent external auditors to express an opinion on the design, operation and continuity of control procedures at ABSBC, as contemplated under Section 5970 of the Handbook of the Canadian Institute of Chartered Accountants. Notwithstanding the foregoing, BCH may, at its sole discretion, exercise its rights to conduct operational audits pursuant to paragraph (a) above and exercise its other rights under this Article XIV with respect to such audits.

14.2. *Financial Audits.*

- (a) In order to document the Services and the Service Charges paid or payable by BCH under this AMSA, ABSBC shall retain its standard records and supporting documentation for at least seven years and in accordance with the requirements of all applicable Laws.

- (b) BCH may audit the Service Charges charged to BCH to determine that such Service Charges are accurate and were calculated in accordance with this AMSA. In addition, BCH may audit the SSA Termination Amounts (as defined in the Support Services Agreement) to determine that such SSA Termination Amounts are accurate, and were appropriately calculated, determined and/or incurred (as the case may be) in accordance with the Support Services Agreement. Subject to the provisions of Section 14.3, ABSBC shall provide to such auditors as BCH may designate in writing, access to such records, supporting documentation and ABSBC personnel as may be reasonably requested by BCH in order to conduct such audits.

14.3. *General Principles Regarding Audits.*

- (a) BCH and its auditors shall use commercially reasonable efforts to conduct such audits in a manner that will result in a minimum of inconvenience and disruption to ABSBC's business operations. Audits may be conducted only during normal business hours and only as frequently as reasonably necessary. BCH will provide ABSBC with reasonable prior written notice of each audit. BCH and its auditors will not be entitled to audit (i) data or information of other customers or clients of ABSBC, (ii) any ABSBC proprietary data or (iii) any other Confidential Information of ABSBC that is not relevant for the purposes of the audit. ABSBC will use commercially reasonable efforts to cooperate in the audit, will make available on a timely basis the information reasonably required to conduct the audit and will assist the designated employees and agents of BCH or its auditors as reasonably necessary. Any request for assistance in addition to the foregoing will constitute a New Service Request pursuant to Section 4.4. To the maximum extent possible, audits shall be designed and conducted (in such manner and with such frequency) so as not to interfere with the provision of the Services. All information learned or exchanged in connection with the conduct of an audit, as well as the result of any audit, constitutes Confidential Information and will be subject to Section 12.1. Any reports received as a result of these audits will be addressed to BCH and may not be provided to other ABSBC customers.
- (b) BCH may engage for the performance of financial audits contemplated by this Article any nationally recognized accounting firm, in the event that the services are not provided by BCH's internal audit staff. BCH shall not use as its agent in any operational audit any competitor of ABSBC, Accenture or any of their Affiliates. Upon the request of BCH, ABSBC shall promptly identify any such competitors.
- (c) The auditors, agents and other representatives of BCH will execute and deliver such confidentiality and non-disclosure agreements and comply with such security and confidentiality requirements as ABSBC may reasonably request in connection with such audits.

14.4. *Audit Conferences and Reports.*

- (a) Following any audit or examination, BCH shall conduct (in the case of an internal audit), or request its external auditors or examiners to conduct, an exit conference with ABSBC to obtain factual concurrence with issues identified in the review.
- (b) The Parties shall meet to review each audit report promptly after the issuance thereof and, if appropriate, mutually agree upon the appropriate manner in which to respond to the changes suggested by the audit report and a plan of action for such response. Each such action plan shall include a timeline for the response and completion of the tasks set forth therein.
- (c) BCH shall conduct follow-up reviews within a reasonable period of time after each audit, to ensure that the agreed upon action plan included in the audit report has been successfully carried out.
- (d) If it is determined in an audit conference for a financial audit that ABSBC has either overcharged or undercharged BCH, then (i) in the case of an overcharge, ABSBC shall credit the full amount of the overcharge to the next invoice to BCH for Services and (ii) in the case of an undercharge, ABSBC shall add the full amount of the undercharge to the next invoice to BCH for Services.

14.5. *Statutory Audits.*

- (a) BCH may be subject to statutory audits and other requests for information from taxation and other authorities (each, a “*Statutory Audit*”). ABSBC shall notify BCH’s Controller in a timely manner after being contacted by taxation or other authorities regarding a Statutory Audit. ABSBC shall respond to any Statutory Audit regarding BCH according to BCH’s direction, subject to ABSBC’s obligations under Law.
- (b) ABSBC may provide information to statutory authorities only under the direction of the Controller of BCH (or his designates and agents). ABSBC shall provide such information in a timely manner either to BCH or, at BCH’s request, directly to the applicable statutory authority.
- (c) As part of the Statutory Audit process, ABSBC may be required to answer questions from statutory authorities with respect to their processing of certain transactions for BCH. BCH shall send a representative to be present at all such discussions with such statutory authorities if and to the extent not prohibited by Law.

**ARTICLE XV
INDEMNIFICATION**

- 15.1. *Indemnification by ABSBC.* ABSBC shall indemnify, defend and hold harmless BCH, BCH Affiliates and their respective directors, officers, employees, principals (partners,

shareholders or other holders of an ownership interest, as the case may be), subcontractors and agents (collectively, the “*BCH Indemnitees*”) from and against any and all Losses incurred or suffered in respect of claims by third parties (except in the case of paragraph (a) or (b), in which the claim may also be made by any of the BCH Indemnitees), whether based in whole or in part in contract, tort, negligence, statute or otherwise, arising from any of the following:

- (a) the death of or bodily injury to any third party or to any employee of BCH or any BCH Affiliate (or their respective subcontractors) to the extent caused by the negligence or willful misconduct of ABSBC, any ABSBC Affiliate or any subcontractor of ABSBC or any ABSBC Affiliate;
- (b) the loss of or damage to the real or tangible personal property (whether owned or leased) of any third party or any BCH Indemnitee, to the extent caused by the negligence or willful misconduct of ABSBC, any ABSBC Affiliate or any subcontractor of ABSBC or any ABSBC Affiliate;
- (c) the failure of ABSBC to perform any of its obligations under any licence, lease or other agreement (i) between ABSBC and a third party or (ii) for which ABSBC has assumed administrative, financial or operational responsibility (as applicable) pursuant to this AMSA;
- (d) the failure of ABSBC to perform any obligations under any third-party licence, lease or other agreement assigned to BCH or Newco by ABSBC in connection with the expiration or termination of this AMSA, *provided* that this paragraph (d) shall apply only to the period prior to the date of such assumption;
- (e) ABSBC’s failure to pay and discharge any taxes (including interest and penalties) for which ABSBC is responsible pursuant to the provisions of this AMSA;
- (f) ABSBC’s unlawful or illegal hiring methods or interviews of the Employees Offered Employment;
- (g) any claim asserted against BCH by a Hired Employee to the extent such claim arises from decisions, acts, omissions or violations of statute by ABSBC with respect to such Hired Employee’s employee/employer relationship with ABSBC; or
- (h) any claim by a third-party that has a contractual, statutory or other legal relationship with ABSBC (including customers) and that arises in connection with or as a result of BCH receiving Services under this AMSA (other than those claims caused by BCH’s breach of this AMSA or the negligence or willful misconduct of BCH, its Affiliates or its subcontractors), except to the extent such claims are covered by BCH’s indemnities set forth in Section 15.2 or 15.3(a).

15.2. *Indemnification by BCH.* BCH shall indemnify, defend and hold harmless ABSBC, ABSBC Affiliates and their respective directors, officers, employees, principals (partners,

shareholders or other holders of an ownership interest, as the case may be), subcontractors and agents (collectively, the “**ABSBC Indemnitees**”) from and against any and all Losses incurred or suffered in respect of claims by third parties (except in the case of paragraph (a), (b) or (i), in which the claim may also be made by any of the ABSBC Indemnitees), whether based in whole or in part in contract, tort, negligence, statute or otherwise, arising from any of the following:

- (a) the death of or bodily injury to any third party or to any employee of ABSBC or any ABSBC Affiliate (or their respective subcontractors) to the extent caused by the negligence or willful misconduct of BCH, any BCH Affiliate, Newco or any subcontractor of BCH, any BCH Affiliate or Newco;
- (b) the loss of or damage to the real or tangible personal property (whether owned or leased) of any third party or ABSBC Indemnitee, to the extent caused by the negligence or willful misconduct of BCH, any BCH Affiliate, Newco or any subcontractor of BCH, any BCH Affiliate or Newco;
- (c) the failure of BCH or Newco to perform any of its obligations under any licence, lease or other agreement between (i) BCH and a third party or Newco and a third party (including the ABSBC-Managed BCH Agreements) (except to the extent the liability arises out of a failure of ABSBC to perform an obligation assumed by ABSBC under this AMSA) or (ii) for which BCH or Newco has assumed or retained administrative, financial or operational responsibility (as applicable) pursuant to this AMSA;
- (d) the failure of BCH to perform any obligations under any third-party licence, lease or other agreement assigned by ABSBC to, and assumed by, BCH in connection with the expiration or termination of this AMSA, *provided* that this paragraph (d) shall apply only to the period from and after the date of such assumption;
- (e) BCH’s failure to pay and discharge any taxes (including interest and penalties) for which BCH is responsible pursuant to the provisions of this AMSA;
- (f) any claim asserted against ABSBC by current or former employees of BCH arising out of actions or omissions of BCH related to this AMSA, except to the extent covered by ABSBC’s indemnities set forth in paragraphs (f) and (g) of Section 15.1;
- (g) any claim by a third-party that has a contractual, statutory or other legal relationship with BCH (including customers), and that arises in connection with or as a result of ABSBC providing Services under this AMSA (other than those caused by ABSBC’s breach of this AMSA or the negligence or willful misconduct of ABSBC, its Affiliates or its subcontractors), except to the extent such claims are covered by ABSBC’s indemnities set forth in Section 15.1 or 15.3(a);

- (h) amounts expended by ABSBC to obtain (through purchase, lease or otherwise) any BCH Available Assets from one or more third parties in accordance with Section 6.8(c);
- (i) any third-party claims or other amounts owing to any third party as a result of BCH failing to provide notice to ABSBC of its withdrawal of ABSBC's access to use BCH Available Assets in accordance with Section 6.8; or
- (j) any third-party claims or other amounts owing to any third party as a result of BCH or its designee exercising its rights pursuant to Section 17.6 and that arise or result from (i) BCH or its designee exercising such rights without first obtaining any Consent or release from ABSBC's customers or any third party provider, (ii) any failure by BCH or its designee to comply with the provisions of Section 17.6, or (iii) the negligence or willful misconduct of BCH, any BCH Affiliate, Newco or any subcontractor or designee of BCH, any BCH Affiliate or Newco in the conduct of activities permitted by Section 17.6.

15.3. *Infringement Indemnity.*

- (a) The Parties shall have the following indemnification obligations:
 - (i) ABSBC shall indemnify, defend and hold harmless the BCH Indemnitees from and against any and all Losses arising from claims by third parties that any equipment, software (including Work Product or ABSBC Software), information or other resources (or the access or other rights thereto) provided by ABSBC to BCH pursuant to this AMSA (A) infringes a copyright under Canadian statute or perfected under United States statute, or (B) constitutes misappropriation or unlawful disclosure or use of a third-party's trade secrets.
 - (ii) BCH shall indemnify, defend and hold harmless the ABSBC Indemnitees from and against any and all Losses arising from claims by third parties that any equipment, software (including Newco-Owned Software), information or other resources or items (or the access or other rights thereto) provided by BCH or Newco to ABSBC pursuant to this AMSA or the Master Transfer Agreement (A) infringes a copyright under Canadian statute or perfected under United States statute or (B) constitutes misappropriation or unlawful disclosure or use of a third party's trade secrets.
 - (iii) The third-party claims in (i) and (ii) above shall be referred to herein with respect to each Party as "***Infringement Claims.***"
- (b) Notwithstanding anything to the contrary herein, neither Party shall have any liability or obligation to the other Party, such other Party's Affiliates or any other Person under paragraph (a)(i) or (a)(ii) above to the extent that the Infringement Claim is based upon (i) modifications to any item made by or on behalf of the

indemnitee in a manner that causes the infringement, (ii) use of any item in combination with any hardware, software or other products or services in a manner that causes the infringement and where such combination was not within the reasonable contemplation of the Parties given the intended use of the item, (iii) the failure of a Party to use corrections or enhancements to such deliverables that are made available by the other Party or (iv) detailed, non-discretionary designs or specifications provided by the indemnitee that necessarily caused such Infringement Claim. If any deliverable or item provided by a Party hereunder is, or in such Party's reasonable judgment is likely to become, the subject of an Infringement Claim, the providing Party, at its expense, shall use reasonable efforts to procure for the other Party the right to use and continue using such deliverable or replace it with a noninfringing equivalent or modify it to make its use hereunder noninfringing, *provided* that such replacement or modification does not result in a degradation of the performance or quality of the deliverable. If such option is not available on commercially reasonable terms in the providing Party's good faith judgment, the providing Party shall so notify the other Party, whereupon (A) the other Party shall cease use of such deliverable and return it to the providing Party and (B) the providing Party shall refund (or credit) to other Party any fees paid that are attributable to such deliverable, less a reasonable amount for the other Party's use of such deliverable up to the time of return. In such event, the Parties shall seek to establish mutually acceptable alternative arrangements and to make any appropriate adjustments to their respective obligations under this AMSA through the execution of a Change Order Request pursuant to Section 8.12.

- (c) The foregoing provisions of this Section 15.3 constitute the Parties' sole and exclusive remedies and each Party's entire liability, with respect to Infringement Claims.

15.4. *Indemnification for Third-Party Claims.* The following procedures shall apply with respect to indemnification for third-party claims arising in connection with this AMSA:

- (a) Promptly after receipt by a Person entitled to indemnification hereunder (an "*Indemnitee*") of written notice of the assertion or the commencement of any claim, demand, action, cause of action or other proceeding by a third party, whether by legal process or otherwise (a "*Claim*"), with respect to any matter within the scope of Sections 15.1, 15.2 or 15.3, the Indemnitee shall give written notice thereof to the Party from whom indemnification is sought pursuant hereto (the "*Indemnitor*") and shall thereafter keep the Indemnitor reasonably informed with respect thereto; *provided, however*, that the failure of the Indemnitee to give the Indemnitor such prompt written notice will not relieve the Indemnitor of its obligations hereunder except to the extent such failure results in prejudice to Indemnitor's defense of such Claim. Within 15 days following receipt of written notice from the Indemnitee relating to any Claim, but no later than 10 days before the date on which any response to a writ, statement of claim, complaint or summons is due, the Indemnitor shall notify the Indemnitee in writing that the

Indemnitor shall assume control of the defense and settlement of such Claim (the “*Notice*”).

- (b) If the Indemnitor delivers the Notice relating to any claim within the required notice period, the Indemnitor will be entitled to have sole control over the defense and settlement of such Claim; *provided, however*, that the Indemnitee will be entitled to participate in the defense of such Claim and to employ counsel at its own expense to assist in the handling of such Claim. After the Indemnitor has delivered a Notice relating to any Claim in accordance with the preceding paragraph, the Indemnitor will not be liable to the Indemnitee for any legal expenses subsequently incurred by such Indemnitee in connection with the defense of such Claim.
- (c) If the Indemnitor fails or chooses not to assume the defense of any such Claim within the prescribed period of time, then the Indemnitee may assume the defense of any such Claim at the cost and expense of the Indemnitor. The Indemnitor will not be responsible for any settlement or compromise made without its consent, which consent shall not be unreasonably withheld or delayed. The Indemnitor shall reimburse the Indemnitee for its costs and expenses incurred as a result of Indemnitor’s failure to assume the defense of such Claim.
- (d) The Indemnitee shall provide reasonable assistance to the Indemnitor (at the Indemnitor’s expense), including reasonable assistance from the Indemnitee’s employees, agents, independent contractors and Affiliates, as applicable. Notwithstanding any provision of this Section 15.4 to the contrary, the Indemnitor shall not consent to the entry of any judgment or enter into any settlement or make any compromise that provides for injunctive or other nonmonetary relief or contains any non-monetary penalties or conditions affecting the Indemnitee without the prior written consent of the Indemnitee, which consent shall not be unreasonably withheld or delayed.

ARTICLE XVI LIMITATION OF LIABILITY

16.1. *Limitation of Liability.*

- (a) Subject to the exclusions set forth in paragraph (b) below, if either Party shall be liable to the other for any matter relating to or arising from this AMSA, whether based upon an action or claim in contract, warranty, equity, negligence, intended conduct or otherwise (including any action or claim arising from the acts or omissions, negligent or otherwise, of the liable Party), the aggregate amount of all Losses recoverable hereunder against the liable Party with respect to any and all breaches, performance, nonperformance, acts or omissions hereunder will not exceed an amount equal to the charges for Services payable to ABSBC under this AMSA during the **[Redacted]**-month period immediately preceding the most recent event giving rise to the claim (or if such event occurs in the first

[Redacted] months of the Agreement Term, the amount estimated to be paid in the first [Redacted] months of the Agreement Term.)

- (b) [Redacted]
- (c) If ABSBC fails to meet any Service Level with respect to which a Service Level Demerit applies, the net cumulative payment by ABSBC to BCH as contemplated in Section 2.8 of Schedule 5.1 shall reduce ABSBC's maximum aggregate liability to BCH under paragraph (a) above by an amount equal to the cumulative amount so paid, subject to the exclusions set forth in paragraph (b) above.
- (d) Each Party has a duty to mitigate the damages that would otherwise be recoverable from the other Party pursuant to this AMSA by taking appropriate and commercially reasonable actions to reduce or limit the amount of such damages.

16.2. *Limitation on Category of Liability.*

- (a) Subject to the exclusions set forth in paragraph (b) below, in no event will the measure of damages payable by either Party include, nor will either Party be liable for, any consequential, indirect, incidental, exemplary or punitive damages (including, without limitation, damages due to business interruption or lost profits, savings, competitive advantage or goodwill) arising from or related to this AMSA, regardless of the type of claim, whether in contract, tort, negligence, strict liability or other legal or equitable theory, whether or not foreseeable, and regardless of the cause of such damages even if the Party has been advised of the possibility of such damages in advance. [Redacted].
- (b) [Redacted]
- (c) [Redacted]

16.3. *Contractual Statute of Limitation.* Neither Party may assert against the other Party any claim through mediation, arbitration or litigation for breach or nonperformance in connection with this AMSA unless the asserting Party has given the other Party written notice of the claim within two years after the asserting Party first knew or reasonably should have known of the underlying facts giving rise to such claim.

16.4. *Recourse.* The Parties agree that they will look only to the corporate or firm assets of the other Party or the Affiliate named as guarantor for such Party in connection with any liabilities hereunder and in no event shall they have any claim against any shareholder, partner or holder of an ownership interest in the other Party in connection with this AMSA.

16.5. *Insurance.*

- (a) Each Party will determine the types and amounts of insurance coverage it requires in connection with this AMSA. Neither Party is required to obtain insurance for the benefit of the other Party. Each Party shall pay all costs and receive all benefits under policies arranged by it. Each Party waives rights of subrogation it may otherwise have regarding the other Party's insurance policies, including property insurance, business interruption insurance, and other first-party insurance.
- (b) In the event of a material change in the financial condition of ABSBC or any of the guarantors under the Guaranty, a material change in relevant industry and marketplace conditions, any BCH Reorganization, any BCH policy change, a material change in the scope of the Services or other material event that could reasonably be expected to materially and adversely impact ABSBC or any of the guarantors under the Guaranty, BCH may request from time to time and ABSBC shall acquire and maintain certain insurance policies, fidelity bonds or other similar insurance vehicles which are supplemental to the insurance vehicles that are then maintained by ABSBC, *provided* that such insurance vehicles are reasonably requested under the circumstances and are generally consistent with the requirements of service providers in similar circumstances. The full cost of acquiring and maintaining insurance policies acquired pursuant to this Section 16.5(b) shall be borne by BCH.

16.6. *Allocation of Risks; Acknowledgements and Applicability of Limitations.*

- (a) Each Party acknowledges to the other that it understands the legal and economic ramifications of this Article XVI. Each Party acknowledges that (i) the Parties are sophisticated commercial enterprises with relatively equal bargaining power, (ii) the provisions of this Article XVI were the subject of active and complete negotiation and constitute an essential element of the benefit of the bargain reflected in this AMSA, (iii) such provisions, together with the indemnities, representations and warranties set forth the bargained-for allocation of risk under this AMSA, (iv) each Party actively considered such provisions in determining the specific risks that it assumed in agreeing to its obligations under this AMSA and the price to be paid to ABSBC in consideration for its services under this AMSA, and (v) the Parties had meaningful choices with respect to such provisions, and such provisions are not unreasonably favorable to either Party. Each Party irrevocably accepts the limitations and exclusions contained in this Article XVI.
- (b) The limitations and exclusions contained in this Article XVI will apply regardless of (i) the form of action (including, without limitation, any action in contract, warranty, negligence, gross negligence, tort, strict liability or statute and any action for breach of any representation or warranty contained in Article XI), (ii) any claim or finding that any breach of or default under this AMSA was total or fundamental, (iii) the type of damages, (iv) any claim or finding with respect to the adequacy, failure, purpose or sufficiency of any remedy offered or provided

for under this AMSA and (v) whether a Party was informed or aware of, or otherwise could have anticipated the possibility of, such damages or liability.

- 16.7. *Subcontractor Liability.* The exclusions and limitations of liability under this Article XVI will operate to the benefit of each Party's subcontractors under this AMSA to the same extent that such provisions operate to the benefit of that Party. Any limitations of liability hereunder will be computed for a Party and its subcontractors in the aggregate. Each Party's subcontractors shall be deemed third-party beneficiaries of this Article XVI.
- 16.8. *Rights and Remedies.* Subject to the provisions of this AMSA, each Party shall have such rights and remedies as may be otherwise available to such Party at law or in equity, including such rights and remedies (including a claim for monetary damages) as may be available in connection with any breach of Section 11.3(a).

ARTICLE XVII TERMINATION

17.1. *Termination for Cause.*

- (a) *ABSBC Material Breach.* BCH may after initiating a Discussion Period (as set forth in paragraph (h) below) and, after completion of such Discussion Period, giving ABSBC at least 30 days prior written notice of termination (identifying specifically the basis for such notice and referring to this Section 17.1(a)), terminate this AMSA, in whole but not in part, (i) for ABSBC's material breach of its obligations under this AMSA unless ABSBC has within such 30-day period either (x) cured such breach (if such breach is curable) or (y) made substantial progress to cure such breach (if such breach is curable) and implemented a plan that results in a cure of such breach within 60 days or (ii) if ABSBC breaches Section 11.4 (British Columbia Locus). Such notice shall specify the effective date of such termination.
- (b) *BCH Material Breach.* ABSBC may after initiating a Discussion Period (as set forth in paragraph (h) below) and, after completion of such Discussion Period, giving BCH at least 30 days prior written notice of termination (identifying specifically the basis for such notice and referring to this Section 17.1(b)), terminate this AMSA, in whole but not in part, for BCH's material breach of its obligations under this AMSA unless BCH has within such 30-day period either (x) cured such breach (if such breach is curable) or (y) made substantial progress to cure such breach (if such breach is curable) and implemented a plan that results in a cure of such breach within 60 days.
- (c) *BCH Failure to Pay Charges.* ABSBC may after initiating a Discussion Period (as set forth in paragraph (h) below) and, after completion of such Discussion Period, giving BCH at least 30 days prior written notice of termination (identifying specifically the basis for such notice and referring to this Section 17.1(c)), terminate this AMSA, in whole but not in part, for the failure by BCH to pay undisputed charges owed to ABSBC when due under this AMSA totaling an

amount equal to or exceeding ABSBC's average monthly fees for Services provided during the preceding **[Redacted]** months (or, if shorter, the number of months that have passed since the Service Commencement Date) unless BCH has within such 30-day period cured such breach. Such notice shall specify the effective date of such termination.

- (d) *Cross Default.* Either Party may terminate this AMSA, in whole but not in part, upon the termination for material breach of the other Party under any Transaction Document by initiating a Discussion Period (as set forth in paragraph (h) below) and, after completion of such Discussion Period, giving the other Party at least 30 days prior written notice of termination (identifying specifically the basis for such notice and referring to this Section 17.1(d)), *provided* that the terminating Party (i) adheres to the notice and cure procedures for termination of the applicable Transaction Document and (ii) is not in material breach of any other Transaction Document (including this AMSA). In the case of termination pursuant to this paragraph (d), the effective date of termination for this AMSA shall be the same as the applicable terminated Transaction Document.
- (e) *Service Level Defaults.*
 - (i) **[Redacted]**
 - (ii) **[Redacted]**
 - (iii) Except as provided in this Section 17.1(e), although ABSBC has undertaken the contractual obligation to meet the Service Levels set forth in Schedule 5.1, neither ABSBC's failure to comply with any particular Service Level nor any Service Level Default will necessarily be deemed to constitute a material breach of this AMSA.
- (f) **[Redacted]**
- (g) *BCH Legal Capacity.* ABSBC may terminate this AMSA, in whole but not in part, by delivering notice to BCH within the 30 day period following a finding by the BCUC or a final judgment by a court of competent jurisdiction that BCH was not empowered under its organizing statute to enter into this AMSA, unless BCH has within such 30-day period either (x) cured such breach (if such breach is curable) or (y) made substantial progress to cure such breach (if such breach is curable) and implemented a plan that results in a cure of such breach within 60 days. Any termination of this AMSA by BCH, in whole or in part, that is mandated by any finding of the BCUC or a final judgment by a court of competent jurisdiction shall be considered a termination effected pursuant to this Section 17.1(g).
- (h) *Discussion Period.* Prior to providing the applicable written notice of termination under any of paragraphs (a) through (g) above, each Party shall for a 15 day period from the initiation of such period (the "*Discussion Period*") make one or

more of its senior executives available to meet with their counterparts from the other Party to discuss the facts and events giving rise to the potential termination and the overall status of the relationship between the Parties. The Party initiating the Discussion Period shall provide written notice of such initiation to the other Party identifying its designated senior executive, the proposed meeting schedule and the grounds for the possible termination.

17.2. *Other Termination.*

17.2.1 *AMSA Transition Termination.* Either Party may terminate this AMSA in whole, but not in part, immediately upon notice to the other Party if the AMSA Transition Plan milestones identified in Schedule 3.8(a) as “critical” are not completed by March 31, 2006.

17.2.2 *General BCH Termination.*

- (a) *Convenience.* At any time following the **[Redacted]** anniversary of the Service Commencement Date, BCH may terminate this AMSA for convenience (i.e., for any reason or for no reason) in whole, or in part (with respect to one or more Service Categories) upon at least **[Redacted]** months’ prior written notice to ABSBC, provided that BCH may not terminate this AMSA in part as contemplated in this Section 17.2.2(a) with respect to either the IT or Customer Care Service Categories if as a result of such termination, the AMSA would then be terminated with respect to each of the IT and Customer Care Service Categories.
- (b) *Customer Care.* **[Redacted]** BCH may terminate this AMSA in respect of the Customer Care Service Category **[Redacted]**.
- (c) *Executive Satisfaction Survey.* **[Redacted]** BCH may terminate this AMSA, in whole but not in part, **[Redacted]**.

17.2.3 *Benchmarking Dispute Termination.* **[Redacted]** BCH may terminate this AMSA in whole or in part **[Redacted]**.

17.2.4 *Termination of PE Services.* The Parties may terminate the PE Services in accordance with the provisions set forth in Schedule 4.4(d).

17.2.5 *Minimum Threshold Event Termination.* **[Redacted]** either Party may, **[Redacted]** terminate this AMSA in respect of the Base Service Domain to which the Base Minimum Threshold Event **[Redacted]** terminate this AMSA in respect of the IT-AM Services, **[Redacted]**.

17.3. *Termination for Insolvency.* Either Party may terminate this AMSA, in whole but not in part, immediately upon notice to the other Party if the other Party (i) becomes insolvent or is unable to pay its debts, (ii) enters into or files a petition, arrangement, application, action or other proceeding seeking the appointment of a trustee or liquidator of or a

receivership for all or a substantial part of its assets and relief or protection under the bankruptcy laws of Canada or any similar Laws of Canada or any province of Canada or any other country, (iii) suffers the appointment of a receiver-manager or other third party with similar power over the assets or (iv) has proceedings seeking any such appointment in clauses (ii) or (iii) commenced against it which are not terminated or dismissed within 90 days of such commencement.

17.4. *Termination Amounts.*

- (a) Upon any termination, in whole or in part, or expiration of this AMSA, the provisions of Schedule 17.4(a) shall apply.
- (b) If BCH purportedly terminates this AMSA pursuant to Section 17.1 but ABSBC disputes BCH's right to so terminate this AMSA and it is ultimately determined that BCH did not have the right to terminate this AMSA pursuant to Section 17.1, then for purposes of determining the amounts payable to ABSBC pursuant to Schedule 17.4(a), such termination will be deemed to have been a termination effected pursuant to Section 17.2.2(a).
- (c) Upon any termination of this AMSA in whole or in part, ABSBC shall promptly make a cash payment to BCH in the net aggregate amount of the accrued post-retirement benefit obligations (the "**PRB Obligations**") applicable to all employees of ABSBC [Redacted] (the "**Transferred Employees**"), [Redacted]. The amount of the cash payment made by ABSBC to satisfy the PRB Obligations shall be equal to the sum of the following:
 - (i) in respect of each Transferred Employee who transferred from BCH to ABSBC pursuant to the Master Transfer Agreement, that portion of the aggregate payment of [Redacted] made by BCH to ABSBC in April and November of 2003 that is attributable to such Transferred Employee, as described in the employee data file settled and confirmed by Mercer Human Resource Consulting and Hewitt Associates in March of 2006 (a copy of which has been provided to each of ABSBC and BCH prior to the AMSA Effective Date, and which ABSBC shall maintain in British Columbia with ABSBC's corporate records for the duration of the Agreement Term); and
 - (ii) the present value of the change in the accrued post-retirement benefit obligations from April 1, 2003 [Redacted] in respect of the Transferred Employees, based on (x) the ABSBC plan terms and conditions in place for the Transferred Employees at the date of termination, and (y) the assumptions used in ABSBC's most recent accounting valuation, *provided that* if BCH (in its sole discretion) is not satisfied with such assumptions, the Parties shall apply assumptions determined by a mutually acceptable independent third party actuary, the costs of which shall be borne equally by the parties, *provided that* if the return of the Transferred Employee is

directly attributable to a termination or change in the In-Scope Services initiated by BCH pursuant to Sections 4.6 or 17.2.2(a), such costs shall be borne entirely by BCH.

17.5. *Termination Assistance Services.* Commencing at the later of (i) six months prior to the scheduled expiration date of this AMSA, or (ii) the delivery of any notice of termination or non-renewal of this AMSA (or such other date as mutually agreed by the Parties), and continuing through the effective date of the expiration or termination (the “**Termination Assistance Period**”), ABSBC shall provide to BCH, or at BCH’s request to BCH’s designee, such reasonable cooperation, assistance and services, in accordance with Schedule 17.5, to allow the Services to continue without interruption or adverse effect, to facilitate the orderly transition and migration of the Services to BCH or its designee (the “**Termination Assistance Services**”). ABSBC’s obligation to provide Termination Assistance Services shall be subject to the payment of any charges applicable to such Termination Assistance Services monthly in advance. Upon at least 30 days prior written notice to ABSBC, BCH may extend, from time to time, the Termination Assistance Period until the six-month anniversary of the effective date of the expiration or termination of this AMSA.

17.6. **[Redacted]**

(a) **[Redacted]**

(b) **[Redacted]**

(c) **[Redacted]**

(d) **[Redacted]**

(e) **[Redacted]**

(f) **[Redacted]**

(g) **[Redacted]**

(h) **[Redacted]**

17.7. **[Redacted]**

17.8. *Survival of Provisions.* Upon the expiration or termination of this AMSA for any reason, the provisions of Article XI, Article XII, Article XIII, Article XIV, Article XV, Article XVI, Article XVII, Article XVIII, Article XIX and Article XX and Sections 4.14(a), 9.2, 10.9, 10.11 and 10.12 shall survive indefinitely.

ARTICLE XVIII
DISPUTES

18.1. *Informal Dispute Resolution.*

- (a) Except as provided in Section 18.3, prior to the initiation of formal dispute resolution procedures, the Parties shall first attempt to resolve any dispute, controversy or claim (and any failure by the Parties to reach agreement where this AMSA expressly requires the Parties to agree) arising under or in connection with this AMSA (a “*Dispute*”) informally, as follows:
- (i) First, the BCH Contract Manager and the ABSBC Contract Manager shall meet as often and as promptly as the Parties deem necessary to discuss the Dispute and negotiate in good faith in an effort to resolve the Dispute.
 - (ii) If the BCH Contract Manager and the ABSBC Contract Manager are unable to resolve the Dispute within 5 days after referral of the Dispute to them, the Dispute will be referred to the ABSBC Contract Executive and the BCH Contract Executive. The ABSBC Contract Executive and the BCH Contract Executive shall meet as often and as promptly as the Parties deem necessary to discuss the Dispute and negotiate in good faith in an effort to resolve the Dispute.
 - (iii) If the ABSBC Contract Executive and the BCH Contract Executive are unable to resolve the Dispute within 5 days after referral of the Dispute to them, the Dispute will be referred to the Executive Steering Committee. The Executive Steering Committee shall use reasonable efforts to resolve such Dispute, including, without limitation, negotiating a modification or amendment to this AMSA. The Executive Steering Committee shall meet as often and as promptly as the Parties reasonably deem necessary to discuss the Dispute and negotiate in good faith in an effort to resolve the Dispute.
 - (iv) If the Executive Steering Committee is unable to resolve the Dispute within 10 days after the referral of the Dispute to them, the Dispute shall be referred to the President of ABSBC and President of BCH.
 - (v) During the course of such discussions, all reasonable requests made by one Party to another for non-privileged information, reasonably related to the Dispute, will be honored in order that each of the Parties may be fully apprised of the other’s position. The specific format for such discussions will be decided by mutual agreement of the Parties, but may include the preparation of agreed-upon statements of fact or written statements of position.
 - (vi) If the Dispute has not been resolved by the President of ABSBC and the President of BCH within 30 days (or such longer period to which the

Parties may agree) after the referral of such Dispute thereto, either Party may upon written notice (the “*Mediation Notice*”) to the other Party elect to submit the Dispute to non-binding mediation. Within five business days after the date of the Mediation Notice or the mutual agreement of the Parties not to submit the dispute to non-binding mediation, each Party shall deliver a written offer to the other Party setting forth the specific terms and conditions under which each of them would be prepared to finally resolve the subject Dispute. Such offers must expressly provide that they will remain open for acceptance by the other Party for a period of five business days after the date thereof. If either such offer shall be accepted by the receiving Party within that period, such offer and acceptance shall constitute a legally binding agreement between the Parties and the subject Dispute shall be resolved in accordance therewith.

(vii) If the Dispute has not been resolved by the method prescribed in clause (vi) above, the Parties shall thereafter attempt to promptly agree upon and appoint a sole mediator. If the Parties are unable to agree upon a mediator within 10 days after the effective date of the written notice of mediation, any Party may request that the American Arbitration Association appoint a mediator. Any mediator so appointed shall be deemed to be accepted by the Parties. The mediation shall be conducted at a time, in a city and a specific location agreed by the Parties with the mediator, or if the Parties cannot agree, as designated by the mediator. The mediation shall be held within 20 days after the mediator is appointed. If any Party has substantial need for information from another Party in order to prepare for the mediation, the Parties shall use reasonable efforts to agree on procedures for the formal exchange of information. Each Party shall be represented in the mediation by at least an individual with authority to settle the Dispute on behalf of that Party and, if desired by that Party, by counsel for that Party. The Parties’ representatives in the mediation shall continue with the mediation as long as the mediator reasonably requests, but in no event longer than 30 days from the first day that the Parties meet to commence mediation. Unless otherwise agreed by the Parties, each Party shall pay one-half of the mediator’s fees and expenses and shall bear all of its own expenses in connection with the mediation. No Party may employ or use the mediator as a witness, consultant, expert, or counsel regarding the Dispute or any related matters.

(b) Formal proceedings for the resolution of a Dispute may not be commenced until the tenth calendar day following the date that non-binding mediation concluded with respect to such Dispute.

18.2. *Formal Dispute Resolution.* If a Dispute cannot be resolved as provided in Section 18.1, either Party may proceed in accordance with the procedures set forth in Schedule 18.2. Notwithstanding anything to the contrary herein, this Section 18.2 shall not apply to any

Dispute arising from a Change Order Request initiated by ABSBC, or any Dispute described in Section 18.4.

18.3. *Exceptions to Dispute Resolution Procedure.* The provisions of Sections 18.1 and 18.2 will not be construed to prevent a Party from:

- (a) seeking a temporary restraining order or injunctive or other equitable relief with respect to a breach (or attempted breach) of this AMSA by the other Party; or
- (b) instituting litigation or other formal proceedings to the extent necessary (i) to avoid the expiration of any applicable limitations period or (ii) to preserve a position with respect to other creditors.

18.4. **[Redacted]**

18.5. *Confidentiality.* The proceedings of all negotiations, mediations and arbitrations as part of the Dispute resolution process shall at all times be privately conducted. The Parties agree that all information, materials, statements, conduct, communications, negotiations, mediations, arbitrations, offers of settlement, documents, decisions, and awards of either Party, in whatever form and however disclosed or obtained in connection with that portion of the Dispute resolution process which precedes the commencement of formal legal proceedings in a court or other tribunal: (a) shall at all times be Confidential Information; (b) shall not be offered into evidence, disclosed or used for any purpose other than the Dispute resolution process under Section 18.1; and (c) will not constitute an admission or waiver of rights.

18.6. *Continuity of Services (Non-Scope Disputes).* ABSBC acknowledges that the timely and complete performance of its obligations pursuant to this AMSA is critical to the business and operations of BCH. Accordingly, in the event of a Dispute other than a Scope Dispute (a) ABSBC shall continue to so perform its obligations under this AMSA in good faith during the resolution of such Dispute unless and until this AMSA is terminated in accordance with the provisions hereof and (b) BCH shall continue to pay any undisputed amounts subject to Section 10.11.

18.7. *Continuity of Services (Scope Disputes).*

- (a) In the event of a Dispute relating to the scope of In-Scope Services (a “*Scope Dispute*”), and regardless of whether the Dispute relates to whether a particular function, task or activity is included within Schedule 4.2, constitutes a Discretionary Service and/or is a New Service, such Dispute shall not disrupt the ongoing performance of the In-Scope Services, including the specific functions, tasks or activities that are in dispute (collectively, the “*Disputed Services*”), unless ABSBC reasonably demonstrates to BCH or to the Panel that the functions, tasks and activities comprising the Disputed Services:
 - (i) are not aligned in any reasonable way with the type of services ABSBC (or its Affiliates) provide in their normal course of business;

- (ii) cannot be performed because ABSBC and its Affiliates do not have the necessary capabilities or expertise, and cannot reasonably obtain such resources, to perform the Disputed Services in the time periods required by BCH; and
 - (iii) do not reflect the ongoing evolution or development of the In-Scope Services over time in a manner reasonably consistent with marketplace practices for services of a similar kind.
- (b) BCH shall withhold the Service Charges and any other compensation that may be in dispute in relation to a Scope Dispute (the “*Disputed Amount*”) pending the resolution of such Dispute either by mutual agreement of the Parties or by order of the Panel.
- (c) Section 10.11 shall apply to any Disputed Amounts determined to be payable by BCH to ABSBC in respect of a Disputed Service, *provided that* this Section 18.7 shall continue to apply with respect to the ongoing performance of the Disputed Service.

ARTICLE XIX FORCE MAJEURE

19.1. *Force Majeure Events.*

- (a) Except as provided in Section 19.2, each Party will be excused from performance under this AMSA (other than obligations to make payments that become due and payable pursuant to this AMSA) for any period and to the extent that it is prevented from or delayed in performing any obligations pursuant to this AMSA, in whole or in part, as a result of a Force Majeure Event. If either Party is prevented from, or delayed in performing any of its obligations under this AMSA by a Force Majeure Event, it shall promptly notify the other Party by telephone (to be confirmed in writing within five days of the inception of the delay) of the occurrence of a Force Majeure Event and describe, in reasonable detail, the circumstances constituting the Force Majeure Event and of the obligations, the performance of which are thereby delayed or prevented. The Party claiming that a Force Majeure Event has occurred shall continue to use commercially reasonable efforts to mitigate the impact or consequence of the event on the other Party and to recommence performance whenever and to whatever extent possible without delay (except that a Party is not required by this Section 19.1 to compromise its position with respect to or settle any Labour Dispute in order to satisfy its obligations hereunder). In the event of any Force Majeure Event other than a Labour Dispute, BCH shall not pay any Service Charges in respect of the Service so affected other than ABSBC’s actual out-of-pocket fixed costs incurred by ABSBC to deliver the affected Services, which are deemed to **[Redacted]**.
- (b) A “*Force Majeure Event*” shall mean the occurrence of an event or circumstance beyond the reasonable control of a Party, *provided that* (i) the non-performing

Party is without fault in causing or failing to prevent such occurrence and (ii) such occurrence can not be circumvented by reasonable precautions and could not have been circumvented through the use of commercially reasonable alternative sources, workaround plans or other means (including, with respect to ABSBC, by ABSBC meeting its disaster recovery obligations described in this AMSA). Force Majeure Events will include, without limitation, (i) explosions, fires, flood, earthquakes, catastrophic weather conditions, pandemics, or other elements of nature or acts of God, (ii) acts of war (declared or undeclared), acts of terrorism, insurrection, riots, civil disorders, rebellion or sabotage (iii) acts of federal, provincial, local or foreign governmental authorities or courts, (iv) labour disputes, lockouts, strikes or other industrial action, whether direct or indirect and whether lawful or unlawful (any such event, a “*Labour Dispute*”) that affect the Party claiming Force Majeure, (v) failures or fluctuations in electrical power or telecommunications service or equipment and (vi) delays or failures caused by third-party nonperformance (except that a Party will not be excused for delays caused by such Party’s subcontractors or agents unless the event or circumstance is a Force Majeure Event as to such subcontractor or agent). In no event will any failure to perform solely as a result of a Party’s lack of funds or financial ability or capacity to carry on business be deemed a Force Majeure Event.

- (c) If a Force Majeure Event relating to ABSBC prevents, hinders or delays performance of a particular Service to the standard performed prior to the Force Majeure Event for more than **[Redacted]**, then BCH may terminate the Service so affected. Upon any such termination, BCH shall pay certain termination amounts as determined under and in accordance with Schedule 17.4(a). At such time that ABSBC resumes, or is reasonably prepared to resume, providing the Services that were so prevented, hindered or delayed, the unexercised termination right described in this paragraph (b) shall terminate with respect to such Force Majeure Event.
- (d) Nothing in this Article XIX will relieve ABSBC’s obligations to provide disaster recovery services in accordance with this AMSA.

19.2. **[Redacted]**

- (a) **[Redacted]**
- (b) **[Redacted]**
- (c) **[Redacted]**
- (d) **[Redacted]**
- (e) **[Redacted]**
 - (i) **[Redacted]**

- (ii) [Redacted]
- (iii) [Redacted]
- (f) [Redacted]
- (g) [Redacted]

ARTICLE XX MISCELLANEOUS

- 20.1. *Assignment.* This AMSA will be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. Neither Party shall assign this AMSA or any part hereof or any benefit or interest herein without the prior written consent of the other Party (except that BCH may assign this AMSA in the event of any BCH Reorganization by complying with Section 4.13); *provided, however*, that either Party may assign this AMSA in whole but not in part to any of its Affiliates; provided, further, that in the case of an assignment by either Party to an Affiliate of such Party, as a condition to the effectiveness of such assignment, the assigning Party must establish to the other Party's reasonable satisfaction that the assignment will not have a material adverse effect on the transaction structure established by the Transaction Documents. In the event of an assignment of this AMSA, the assigning Party shall not be released from any of its liabilities or obligations hereunder. In the event of any permitted assignment of this AMSA by either Party, the designated assignee shall assume, in writing (in form and substance reasonably satisfactory to the other Party), the rights and obligations of the assigning Party under this AMSA. This Section 20.1 shall not apply to the subcontracting by ABSBC of any portion of the Services in accordance with Section 8.10.
- 20.2. *Cooperation; Consents.* Each Party will cooperate with the other Party in good faith in the performance of its respective activities contemplated by this AMSA through, among other things, making available, as reasonably requested by the other Party, such management decisions, information, approvals and acceptances in order that the provision of the Services under this AMSA may be accomplished in a proper, timely and efficient manner. Where agreement, approval, acceptance or consent of either Party is required by any provision of this AMSA, such action will not be unreasonably withheld or delayed.
- 20.3. *Relationship of Parties.* In connection with this AMSA, each Party is an independent contractor. Except as expressly provided in this AMSA, ABSBC does not undertake to perform any obligation of BCH, whether regulatory or contractual, or to assume any responsibility for BCH's business or operations. This AMSA establishes and shall only be construed as establishing a contract between unrelated business entities for the provision and purchase of certain services and does not and shall not be deemed to create a joint venture, partnership, fiduciary or agency relationship between the Parties for any

purpose. In no event shall ABSBC be deemed to be acting in a fiduciary capacity for BCH. With respect to its own personnel, each Party is independently responsible for all obligations incumbent upon an employer.

- 20.4. *Notice.* Wherever under this AMSA one Party is required or permitted to give notice to the other Party (and no specific person is named as the appropriate recipient of such notice), such notice shall be in writing and shall be delivered personally, sent by facsimile transmission, sent by nationally recognized express courier or sent by certified mail (return receipt requested). Any such notice shall be deemed given when actually received and shall be addressed as follows:

In the case of BCH:

British Columbia Hydro & Power Authority
333 Dunsmuir Street
Vancouver, BC V6B 5R3
Attention: Director, Strategic Partnerships
Facsimile No.: (604) 623-4545

with a copy (which shall not constitute effective notice) to:

British Columbia Hydro & Power Authority
333 Dunsmuir Street
Vancouver, BC V6B 5R3
Attention: Senior Vice-President, Corporate Resources and General
Counsel
Facsimile No.: (604) 623-4323

In the case of ABSBC:

Accenture Business Services of British Columbia Limited Partnership
Suite 1400
401 West Georgia Street
Vancouver, BC V6B 5A1
Attention: President
Facsimile No.: (604) 663-3801

with copies (which shall not constitute effective notice) to:

Accenture Business Services of British Columbia Limited Partnership
Suite 1400
401 West Georgia Street
Vancouver, BC V6B 5A1
Attention: V.P. General Counsel
Facsimile No.: (905) 762-3351

Either Party may change its address for notices upon giving ten days written notice of the change to the other Party in the manner provided above.

- 20.5. *Severability.* If any provision of this AMSA or the application of any such provision to any Person or circumstance, shall be declared to be invalid, unenforceable or void by a court of competent jurisdiction, such decision shall not have the effect of invalidating or voiding the remainder of this AMSA, and it is the intent and agreement of the Parties that this AMSA shall be deemed amended by modifying such provision to the extent necessary to render it valid, legal and enforceable while preserving the original intent of the Parties or, if such modification is not possible, by substituting therefor another provision that is legal and enforceable and that achieves the same objective. If a result of the determination by a court of competent jurisdiction is that any part of this AMSA is invalid, illegal or unenforceable, and, as a result of this Section 20.5, the basic intentions of the Parties in this AMSA are frustrated, the Parties shall use all commercially reasonable efforts to amend, supplement or otherwise vary this AMSA to give effect to their intentions in entering into this AMSA.
- 20.6. *No Third-Party Beneficiaries* Nothing contained in this AMSA is intended or shall be construed to confer upon any Person (other than the Parties hereto and the Indemnitees specifically identified in Article XV) any rights, benefits or remedies of any kind or character whatsoever, and no Person shall be deemed a third-party beneficiary under or by reason of this AMSA, except as provided in Section 20.1.
- 20.7. *Publicity.* All advertising, press releases, public announcements and public disclosures by either Party relating to this AMSA which includes (i) the other Party's name, trade names, trademarks, logos, servicemarks or trade dress (collectively, "**Name**") or (ii) language from which the connection of such Name may be inferred or implied, will be coordinated with and subject to approval by both Parties prior to release; *provided, however,* that (i) either Party may indicate to third parties that ABSBC is providing services to BCH, (ii) ABSBC may use BCH as a reference and (iii) either Party may make such press releases, public announcements and public disclosures as may be required by Law or by order of a court of competent jurisdiction or other governmental authority; *provided* that, to the extent reasonable under the circumstances, such Party (i) gives the other Party prior notice of the required or ordered press release, public announcement or public disclosure and (ii) incorporates any reasonable amendments requested by the other Party that do not affect compliance with the applicable Law or order; *provided further,* that if the press release, public announcement or public disclosure includes any Confidential Information of the other Party, the disclosing Party shall comply with Section 12.1.
- 20.8. *Amendment.* This AMSA may not be modified or amended except by a written instrument executed by or on behalf of each of the Parties to this AMSA.
- 20.9. *Entire Agreement.* This AMSA (including (i) the Transaction Documents and the Schedules hereto, each of which is incorporated herein by reference, and (ii) those letter agreements between BCH and ABSBC described at Schedule 20.9) constitute the entire

agreement among the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings, whether written or oral, among the Parties with respect to the subject matter hereof. The Memorandum of Understanding, dated July 18, 2002, between Accenture and BCH is superseded by this AMSA and shall be of no further force or effect. There are no representations, understandings or agreements relating to this AMSA that are not fully expressed in this AMSA.

20.10. *Governing Law.* This AMSA will be governed by and construed in accordance with the laws, other than choice of law rules, of the Province of British Columbia.

20.11. *Rules of Construction.* The article and section headings and the table of contents contained in this AMSA are for reference purposes only and will not affect in any way the meaning or interpretation of this AMSA. As used in this AMSA, unless otherwise provided to the contrary, (a) all references to days, months or quarters will be deemed references to calendar days, months or quarters and (b) any reference to a “Section,” “Article,” “Exhibit” or “Schedule” will be deemed to refer to a section or article of this AMSA or an exhibit or schedule to this AMSA. Unless the context otherwise requires, as used in this AMSA, all terms used in the singular will be deemed to refer to the plural as well, and vice versa. The words “hereof,” “herein” and “hereunder” and words of similar import referring to this AMSA refer to this AMSA as a whole and not to any particular provision of this AMSA. Whenever the words “include,” “includes” or “including” are used in this AMSA, they will be deemed to be followed by the words “without limitation.” Whenever the word “discretion” is used in this AMSA with respect to a Party, it will be deemed to mean such Party’s sole discretion. Whenever the term “good faith” is used in this AMSA with respect to a performance obligation of a Party, it will be deemed to mean that such Party will use commercially reasonable efforts on a diligent basis (and the Party may act in its own self-interest). References in this AMSA to “\$” will be deemed a reference to Canadian dollars unless otherwise specified. References to “this AMSA” includes each New Service Request executed and delivered pursuant to this AMSA.

20.12. *Counterparts.* This AMSA may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one agreement binding on the Parties, notwithstanding that both Parties are not signatories to the original or the same counterpart. Delivery of an executed counterpart of a signature page of this Agreement by fax shall be effective as delivery of a manually executed counterpart of this Agreement.

* * * * *

[Balance of page intentionally left blank; signature page follows.]

IN WITNESS WHEREOF, this AMSA has been duly executed by and on behalf of the Parties hereto as of the AMSA Effective Date.

BRITISH COLUMBIA HYDRO
AND POWER AUTHORITY

ACCENTURE BUSINESS SERVICES OF
BRITISH COLUMBIA
LIMITED PARTNERSHIP
by its General Partner

By: _____
Name: Robert G. Elton
Title: President and Chief Executive Officer

By: _____
Name: William F. Morris
Title: President

ACCENTURE BUSINESS SERVICES
GENERAL PARTNER INC.

By: _____
Name: William F. Morris
Title: President